



**Praveen Khandelwal,
M.P. & General Sec. of CAIT**

“7 YEARS OF INDIA’S GST – STAKEHOLDERS’ EXPERIENCES AND WAY AHEAD”

WELCOME MESSAGE FROM MENTOR OF DGST PROFESSIONALS GROUP, INDIA AND NATIONAL GEN SECY, CONFEDERATION OF INDIAN TRADERS, INDIA, SHRI PRAVEEN KHANDELWAL.

Dear Participant,

On behalf of the Delhi GST Professionals Group, comprising over 200 Members (whether Advocates or CAs or Company Secretaries or CFOs) engaged in the practice of indirect tax in India and abroad) and on behalf of Confederation of Indian Traders, an international trade association comprising over 8 crores Members, I am indeed excite to welcome you all to the mega GST Conference in New Delhi, India titled “ 7 Years of India’s GST – Stakeholders” Experiences and Way Ahead” being held at NDMC Conventional Centre, New Delhi on 5th April 2025.

The Conference Theme, Impact and Vision has been carefully chosen to mark such a milestone for our businesses in India – competition of successful 7 years of India’s GST under the leadership of our beloved Prime Minister Narendra Modi ji.

When my friend Sushil Verma, Advocate proposed this Conference to me a few months ago, I felt very good and when he came up with the topics being discussed I was indeed ecstatic as all the topics were required to be discussed and informed to all the traders, small scale manufacturers and MSMEs. I felt privileged to be Chairman of this Conference that CAIT organised with DGST Gropp as partners including “Knowledge Partners”.

The DGST Group, headed by Sushil Verma and his team of professionals has been doing a great job in recent years and I have been a witness to this on a number of occasions. Its Members have made tremendous contributions in GST research, teaching and practice, resulting impacts in many sectors of India’s businesses. Indeed a very creditable work this Gorup is doing and I am proud of the same.

On my behalf and on behalf of CAIT Team, I thank you DGST Group and especially Shri Sushil Verma ji for such a wonderful conference on topics that were crucial for the participants. The most wonderful aspect of this Conference is that Advocates, CAs, Cost Accountants, Company Secretaries, Finance Professionals, Traders, Directors, and people from the Government participated at one platform and exchanged their views. This was indeed a greater experience.

I keenly look forward to such events in the future and I am told the Group is contemplating organising such events every six months and I offer them all the help at my disposal to achieve such a laudable objective.

Thank you all for making this event a mega success.

PRAVEEN KHANDELWAL



@ Sushil K Verma

"7 YEARS OF INDIA'S GST – STAKEHOLDERS' EXPERIENCES AND WAY AHEAD"

Welcome message from Sushil Verma, Advocate and Head of the DGST Group.

Dear Participant,

DGST Group is an Association of professionals engaged in indirect tax practice comprising Advocates, CAs and other professionals.

It is indeed an honour for the Group to be hosting such a mega event on "7 Years of India's GST – Stakeholders' Experiences and Way Ahead" at a prestigious venue NDMC Convention Centre, New Delhi, India.

My team has poured all their experiences to make this intellectually and professionally stimulating learnings and insights into GST law and practices for the day to day working of all the traders, small scale manufacturers and small and big companies; and more so, for younger professionals who intend entering into field of litigation. Indeed an honour for us to have you in such large numbers for this event which is going live on You Tube.

I feel happy to inform you that for this event under the directions of our Patron, Shri Praveen Khandelwal ji, there was no charge taken from the participants. Perhaps this is the first time that has ever happened in India, to the best of my knowledge. And for this I personally thank you donors who helped us achieve this including great help from CAIT. Our Key Members of the Core Committee who organised this event also contributed handsome amounts to help this pro bono cause for the trade and industry including younger professionals who attended this event in large numbers.

And I can assure all of you that this event shall be organised twice a year to up -date all of you on regular basis and for this the Group is also taking out an E NEWSLETTER on GST and allied laws every month which is circulated by CAIT to its Members. It is a beautiful document that all of you must take printouts and read in your organizations. Further this Group through its website and email..... also can provide free legal advice to trade associations affiliated to CAIT world-over. Senior professionals shall be advising, I can assure you.

I would be failing in my duty if I do not put on record the tireless efforts put in by our Convenor Narender Ahuja Advocate, our core members, Rajmani Jindal, C K Gupta, Kumar Jee Bhatt, Renu Sharma, Neetika Khanna, Rashmi Jain, B. B. Dewan, Vikas Mittal and many others who put in their priceless time for such a wonderful cause. My salute to you all for this great effort!

Well before I close a three cheer to CAIT Team and my dearest friend Shri Praveen Khandelwal ji for motivating this young Group and giving it complete freedom to organise such a mega event. **This group shall remain indebted to Shri Khandelwal for ever.**

Thank you, expect more from DGST Professionals Group.

"Let's make the law simpler"
SUSHIL K VERMA, ADVOCATE.



@Adv. Rajmani Jindal

MESSAGE FROM DY EDITOR

I, consider myself very fortunate to write this message on the occasion of mega DGST AND CAIT joint conference, on the topic "7 Years of India's GST – Stakeholders' Experiences And Way Ahead". I am really short of words to express my enthusiasm, exhilaration, zeal and excitement on this precious moment.

The idea of this conference was conceived, visualized, burgeoned and hatched by our mentor Shri Sushil Verma. That the first joint CAIT & DGST conference, is a baby and meticulous work day and night tirelessly, sleeplessly by the members of our core committee and Shri Sushil Verma Ji, our mentor towards the grand success of this conference.

As we prepare to engage in deep discussions and constructive learning, I would like to take a moment to express my sincere appreciation for the hard work and dedication of the various committees that have played an integral role in organizing this conference. I also want to place my sincere appreciation for the hard work day and night tirelessly by Shri Narendra Ahuja Ji, our convenor of DGST Group. In particular, I would like to highlight the outstanding efforts of the Catering Committee, whose meticulous planning and attention to detail have ensured that every aspect of our dining experience is not only a reflection of quality but also a key part of the event's hospitality.

The Catering Committee has gone above and beyond to curate a thoughtful and varied menu that caters to the diverse needs of our attendees. From ensuring a balance of traditional and contemporary options to accommodating dietary restrictions and preferences, their careful selection of meals aims to provide a satisfying and enjoyable experience for all. Their efforts in coordinating the seamless flow of meals throughout the event demonstrate their professionalism and commitment to excellence.

Moreover, the committee's focus on the presentation and ambiance of the dining spaces contributes to creating an environment where networking and informal discussions can flourish over meals. Whether Morning tea with snacks, lunch session, or High tea in the evening, the Catering Committee has worked tirelessly to ensure that all logistical aspects, such as timely service, comfort, and cleanliness, are of the highest standards, enabling us to focus on the conference's intellectual exchange without distraction.

The dedication and hard work of the Catering Committee serve as a testament to the collaborative spirit that underpins this conference. Their contribution plays a crucial role in creating a welcoming atmosphere, where both participants and guests can feel relaxed and engaged, making the event a truly memorable experience.

In addition, I would like to thank the Reception Committee, whose efforts in welcoming all respected dignitaries on the dais and off the dais, participants be professionals, traders etc. And guiding them through the conference proceedings have been invaluable. Together, these committees embody the core values of hospitality and cooperation, ensuring that every aspect of the event runs smoothly.

As we delve into the complexities of GST, I am confident that this conference will provide a platform for meaningful discussions and lasting partnership. I encourage all of you to engage fully in the sessions.

Thank you once again to all the committees, especially the Catering Committee, for their unwavering support and invaluable contribution to this event. I wish you all a fruitful and enjoyable experience at this conference.

"Success is no accident. It is hard work, perseverance, learning, studying, sacrifice and most of all love of what you are doing or learning to do."

**RAJMANI JINDAL
ADOCATE, DELHI.**



Kumar Jee Bhat
Advocate

MESSAGE FROM DY. EDITOR

To the conference Chairman

I am thrilled to invite you to our upcoming Tax Conference, 7 years of India's

GST Stakeholders Experience & way ahead, scheduled to take place on 05.04.2025 at NDMC Conference Hall, Connaught Place. This conference promises to be an engaging platform for tax professionals, policymakers, and industry experts to discuss the latest developments and challenges in GST.

Tax laws can often feel like a maze—complex, intricate, and sometimes overwhelming. Through this souvenir and conference, we aim to simplify these complexities, offering clear, thought-provoking discussions that are both relevant and practical.

We are releasing a special souvenir, which will feature articles, Question Answer Series and latest developments in the field of GST from leading experts.

The souvenir will be distributed to all delegates attending the conference, as well as to our subscribers and partners.

We look forward to your participation in the conference and your contribution to the souvenir.

Best regards,

Kumar Jee Bhat
Dy.Editor



CA. C.K GUPTA

MESSAGE FROM DY. EDITOR

Dear Esteemed Members and Delegates,

It is with immense pride and pleasure that I extend my warm greetings to you all on the occasion of our upcoming **GST Conference of DELHI GST PROFESSIONAL GROUP with CAIT** on 05 March 2025 under the esteemed mentorship of Sh. Susheel Verma ji. This pivotal event is a testament to our collective dedication to advancing knowledge, fostering dialogue, and promoting excellence in the field of GST.

The introduction of GST has transformed India's taxation landscape, presenting both opportunities and challenges. As professionals committed to staying ahead in this dynamic environment, this conference will serve as a valuable platform for sharing insights, engaging in meaningful discussions, and learning from industry stalwarts.

To commemorate this significant occasion, we are delighted to announce the release of a **Conference Souvenir**. This special publication is a tribute to the collective wisdom of our professional community. It will feature expert articles, case studies, and valuable insights contributed by distinguished professionals and thought leaders. We believe this souvenir will serve as a lasting resource for all attendees, offering guidance and knowledge to navigate the complexities of GST effectively.

I take this opportunity to express my heartfelt gratitude to all contributors, organizers, and participants who have played a crucial role in making this conference and souvenir a reality. Your dedication and expertise continue to inspire us all.

We look forward to your active participation and valuable contributions at the conference. Together, let us work towards fostering greater understanding and excellence in GST practices.

With Warm Regards,

C.K. GUPTA (CA)



@ ADV. NARENDER AHUJA

Message from the Convenor

Dear Esteemed,

It is with immense pleasure and great honour that I welcome you to this landmark conference **“7 YEARS OF INDIA’S GST – STAKEHOLDERS’ EXPERIENCES AND WAY AHEAD”** Over the past months, our team led by our mentor Adv. Sushil Verma has worked tirelessly to curate a platform that fosters learning, collaboration, and innovation in our field. The energy and enthusiasm of our mentor, Sh. Sushil Verma Ji, whom we affectionately call SV Sir, is unparalleled.

The concept for the conference was conceived by SV Sir himself and later approved by Sh. Praveen Khandelwal, the Patron of the group. Sh. Praveen Khandelwal, who also serves as the General Secretary of CAIT and a Member of Parliament from Chandni Chowk, Delhi, finds time in his busy schedule to attend the monthly seminars addressing various critical issues of GST.

SV Sir personally handpicked and trained the new generation of speakers, including myself. His dedication and passion for mentoring young professionals are truly unmatched.

On this occasion, our committee is proud to present a souvenir that includes articles, messages, and all the PowerPoint presentations of the speakers, transformed into article formats. Both the Deputy Editors, Adv. Kumar Jee Bhat and Adv. Rajmani Jindal, have worked tirelessly to bring this souvenir to life.

It would be remiss of us not to acknowledge the efforts of CA Rashmi Jain and CA Renu Sharma, who have dedicated themselves tirelessly to this cause. Their unwavering commitment has been invaluable.

I would like to extend my sincere gratitude to all our distinguished speakers, panellists, and participants for their invaluable contributions. Your expertise and enthusiasm have made this event possible, and we are incredibly grateful for your presence.

Last but certainly not least, I would like to extend my heartfelt thanks to all the team members of this conference who worked tirelessly, day and night, to make this day possible. Their dedication and hard work have been crucial to the success of this event.

On behalf of the entire organizing committee, I wish you a productive and rewarding conference. Let’s make these moments count

Narender Ahuja
Convenor, Conference Committee



@Adv. Sushil K. Verma

“Constitutional Scheme of Litigation Rights in India”

Some time back I had thoroughly read such notes and I accumulated and now in the form of this Article for all of you readers.

1. India is primarily a common law jurisdiction, although some personal laws (ie, laws followed by and applicable to only persons of a particular faith or religion) are based on customary practice and religion.

Civil courts in India are governed by the procedure set out in the Code of Civil Procedure 1908. Criminal offences are covered by the Indian Penal Code 1860, and criminal courts are governed by the procedure set out in the Code of Criminal Procedure 1973.

India's judicial system is broken up into three distinct streams –

criminal cases, civil cases and other cases that may be referred to specific statutorily constituted courts and tribunals depending on the subject matter and the statutes concerned.

Jurisdiction of a court is dependent on its territorial and pecuniary limits and may also be circumscribed by subject matter. **Some courts and tribunals are conferred with exclusive jurisdiction over matters and disputes of a particular subject matter. Like PMLA Courts etc.**

The principal court of original jurisdiction is a city civil court (in metropolitan areas) and a court of civil judge, senior division (in non-metropolitan areas).

There are 25 high courts covering the 29 states and seven union territories of India (established under article 214 of the [Constitution of India](#)). A high court is a court of appeal and has supervisory jurisdiction over all lower courts and tribunals in the state or union territory over which it has territorial jurisdiction. The High Courts of Bombay, Delhi, Calcutta, Madras and Himachal Pradesh also have original jurisdiction.

The Supreme Court of India (established under article 124 of the Constitution) has authority over all high courts, lower courts and tribunals in India, and is the final court of appeal.

Presently, there are a total of [34 judges](#) of the Supreme Court, which is the prescribed number. Each high court has different number of judges; there are 840 high court judges in 25 high courts, rather than the prescribed 1,114.

The jurisdiction of Indian courts is limited by territory, the pecuniary value of the claim or dispute, and the subject matter. A court has territorial jurisdiction over a dispute if the defendant habitually resides, carries on business or works for gain within its territory or, if the cause of action arises or immoveable property is the subject matter of the claim, within the territorial limits of such court.

The pecuniary jurisdiction of a court is determined by the relevant state in which the court is situated. The valuation of a plaintiff's claim (and the defendant's counterclaim, if any) determines which court has pecuniary jurisdiction over the case.

Subject matter also plays a part, and exclusive jurisdiction may be statutorily conferred upon certain courts or tribunals, to the exclusion of regular civil courts, depending on the type of claim or dispute.

The Commercial Courts, Commercial Appellate Courts Commercial Division and Commercial Appellate Division of High Courts Act 2015 (the [Commercial Courts Act 2015](#)) was enacted to establish specialised commercial courts and divisions for expeditious adjudication of commercial disputes in a timely manner. Commercial disputes of a specified value (ie, 300,000 rupees or above (amended and reduced from 10 million rupees originally)) are adjudicated by such commercial courts.

Certain statutes exclude civil court jurisdiction and confer exclusive jurisdiction on statutorily constituted tribunals or quasi-judicial bodies, such as the National Company Law Tribunal and National Company Law Appellate Tribunal, which deal with matters of company law and insolvency, and the Debt Recovery Tribunals and Debt Recovery Appellate Tribunals, which deal with expeditious adjudication for the recovery of debts owed to banks and financial institutions. There are other tribunals set up to decide matters in relation to competition and unfair trade practices, environmental issues, real estate, electricity tariffs, etc.

- B. Indian court proceedings are adversarial (ie, where parties present their case before a judge who must remain impartial). As India follows the common law system, judges do not generally act as inquisitors, which may be the case in a civil law jurisdiction. However, it is not uncommon for judges to put questions to a witness or direct parties to lead evidence or make disclosure on certain issues, meaning they are not completely passive in their role.
- C. Only an Indian citizen may be appointed as a member of the judiciary. A citizen, having held judicial office for at least 10 years, or an advocate, registered as an advocate of a high court for more than 10 years, may be appointed as a judge of a high court. To be appointed as a judge of the Supreme Court, a citizen must have served as a judge of a high court for more than five years or have practised as an advocate of a high court for more than 10 years, or must, in the opinion of the President of India, be a distinguished jurist. The age of retirement of a high court judge is 62 years, while for a Supreme Court judge it is 65 years.
- D. Diversity in the higher judiciary, at present, does not reflect the intersectional plurality of India. For the first 40 years since the Supreme Court's inception, only men had been appointed as judges with Ms Fathima Beevi, the first woman justice of the Supreme Court, being appointed only in 1989. As at 14 May 2024, there are only three women judges in the Supreme Court – although one of them, Justice B V Nagarathna, is set to become the first female Chief Justice of India in 2027. This lack of representation has been a systemic issue throughout the judiciary and the Bar, but there has been a conscious effort to increase diversity and have more equitable gender representation.
- E. Under the Limitation Act 1963, the general period of limitation for civil suits is three years from the date on which the cause of action first arose. The period of limitation varies in certain specific instances: for instance, 12 years for a suit to recover possession of immovable property, 12 years for execution of a decree, one year for an action based on tort and 30 years for suits by or on behalf of the government. Limitation for filing an appeal varies from 30 to 90 days.

Limitation may be extended under certain circumstances, for instance, where there has been a part-payment or acknowledgement in writing of a debt before the expiry of the prescribed period of limitation, or where a party has wrongly but in good faith pursued an action in a court that does not have jurisdiction.

Courts do not have the power to extend the period of limitation; a suit filed after its expiration is bound to be dismissed even if limitation has not been taken up as a defence. However, a court may, under certain limited circumstances, condone a delay in filing appeals.

During the covid-19 pandemic lockdown, the Supreme Court, in exercise of its powers under article 142 of the Constitution, suspended the period of limitation for all claims for a period of about one-and-a-half years, thereby permitting these claims to be brought even after the strict period of limitation had lapsed, subject to certain rules for the calculation of such limitation.

F. Certain statutes prescribe mandatory pre-action steps to filing of certain proceedings, for instance:

- the Code of Civil Procedure 1908: no suit may be instituted against a government or public officer for official acts without two months' written notice containing the cause of action, the name, description and residence of the plaintiff, and the relief claimed;
- the Insolvency and Bankruptcy Code 2016: an operational creditor must issue a 'demand notice', giving the debtor 10 days to respond, before filing any proceedings against a debtor; and
- the Negotiable Instruments Act 1881: prior to initiating proceedings owing to a cheque for insufficiency of funds, the drawee must issue a written demand notice to the drawer along with the relevant bank details showing that the cheque has been returned unpaid. Fifteen days thereafter, if the payment is not made by the drawer of the cheque, the drawee can initiate proceedings.

G. Civil proceedings are commenced by filing a plaint before the court of competent jurisdiction. The defendant is notified of the initiation of proceedings through a writ of summons issued by the court, along with a copy of the plaint.

Court fees are payable at the institution of a suit and are computed in accordance with the Court Fees Act 1870 as well as relevant state amendments. Court fees are computed either on the basis of the amounts claimed in a suit (ie, in proceedings for recovery of money), or on the basis of the value assigned by the Plaintiff to the reliefs sought (ie, proceedings for injunctions or declarations). Courts may interfere and seek revision in the valuation of reliefs claimed by the plaintiff where it appears that the valuation assigned is arbitrary, unreasonable and/or demonstratively undervalued. Further, in cases where the suit and the relief sought therein can be objectively valued, the plaintiff would not be permitted to ascribe an arbitrary valuation de hors such objective standard so as to deliberately undervalue the claim. In fact, a plaint is liable to be rejected under the Code of Civil Procedure 1908 if the reliefs sought are undervalued and not appropriately rectified by the Plaintiff on being notified to do so.

E. The Code of Civil Procedure 1908 governs the procedure and timeline for civil cases. A civil suit is instituted by the presentation of a plaint (in the format set out in the Code), which must include details of the cause of action, the facts showing that the court has jurisdiction and that the suit is filed within the period of limitation, and the relief claimed, along with a statement of the value of the subject matter of the suit for the purposes of jurisdiction and of court fees.

The plaint should have annexed to it a list of documents referred to or relied upon by the plaintiff that are relevant to the dispute and the claim.

A suit must include the whole of the claim that the plaintiff is entitled to make in respect of the cause of action; if a plaintiff omits to sue in respect of, or intentionally relinquishes any portion of, their claim, they are precluded afterwards from suing in respect thereof (unless they have obtained leave of the court for that purpose). The plaint must be supported by an affidavit deposed by the plaintiff verifying the correctness of facts.

The defendant must issue its defence by way of filing a written statement within 120 days of receipt of the writ of summons. The defendant, simultaneous with or prior to the filing of the written statement, may also file a counterclaim against the plaintiff. Such counterclaim would

have the same effect as the defendant filing a suit against the plaintiff. If the defendant does not appear or does not file a written statement, the court may proceed to hear the case, and may even pass judgment, *ex parte*.

The procedure thereafter is broadly as follows:

- Disclosure of documents: each party discloses, under oath, documents referred to and relied upon. The counterparty is entitled to inspect these documents and has the right to request the court to direct further disclosure or inspection. A party also has the right to request the other party to provide particulars or to answer interrogatories.
- Framing of issues: the court, in consultation with the parties, frames issues for determination in the suit.
- Evidence: oral testimony and witness evidence-in-chief are filed by way of an affidavit of evidence-in-chief, with a right of cross-examination by the counterparty.
- Hearing: the plaintiff, ordinarily, has the right to begin, and the other parties reply in turn. The party beginning has the right to reply generally on the whole case after all parties have stated their case.

A judgment must be pronounced within 30 days of the date of the conclusion of arguments, which is extendable to 60 days in exceptional circumstances. A decree must be drawn up within 15 days thereafter. The time taken for civil trials varies depending on the court and can be anywhere from five to 10 years (or shorter, if the proceeding is before a commercial court or division).

There is a right of first and second appeal, and they can take several years for adjudication.

- F. During pendency of trial, parties have a duty to preserve documents and other evidence. Each party is required to share copies of the evidence relied on with counterparties and make the originals available for inspection. The Code of Civil Procedure also provides for discovery and interrogatories, and parties must produce documents unhelpful to their case if called upon to do so. Additionally, during cross-examination, a witness can be compelled to produce a document. The court also has the power to impose exemplary costs against a defaulting party that fails to disclose essential documents or wrongfully withholds or refuses to produce them.
- G. Evidence in India is governed by the Indian Evidence Act 1872, which sets out categories of privileged communications and documents that (except in specific circumstances) cannot be disclosed, including:
- communications between spouses made in the maintenance of marriage;
 - professional communications between a legal professional (including their employees) and their client, which are privileged unless the communication was in pursuit of an illegal purpose, or the commission of a crime or fraud has been observed by that legal professional since commencement of his or her engagement. Communications and advice rendered to employers by in-house lawyers employed full-time can, in certain cases, be treated as privileged, particularly if created for the purposes of litigation; and
 - some official government communications and documents are also privileged, including unpublished official records relating to state affairs and communications with a public officer in their official capacity when disclosure of this information would be detrimental to public interests, and additionally, a magistrate, police officer or revenue officer cannot be compelled to disclose the source of information regarding commission of an offence.

H. What interim remedies are available?

The power to grant interim relief stems from the Code of Civil Procedure, whereby interim relief is available in the form of injunctions (including for the freezing of accounts), the attachment of property, the appointment of receiver, the furnishing of security, etc. Search and seizure orders may also be granted in certain cases. These interim remedies are not available in support of foreign proceedings.

Substantive remedies are available in the form of:

- declarations;
- injunctions;
- specific performance;
- monetary relief in the form of damages or compensation, or both; and
- interest on the claimed amount.

Punitive or exemplary damages may be awarded by the courts, but in practice they are rarely awarded.

- I. Court proceedings are usually held in 'open court', meaning that hearings are held in public, subject to the court's discretion as to the existence of circumstances that justify holding proceedings behind closed doors or in camera as set out in the Code of Civil Procedure. Instances that may necessitate in camera proceedings include sensitive matters of family law, those involving the reputation of the parties or issues involving privacy or business. Further, the confidentiality of proceedings may also be maintained pursuant to an application made by a party to the proceedings.

Ordinarily, operative parts of judgments are pronounced in open court. Orders and judgments of the Supreme Court, high courts and district courts are available in the public domain, with digital copies being uploaded to their respective websites; pleadings, witness statements and documents relied on by parties may be specifically procured by filing an application with the relevant court and explaining the need for such document.

Further, parties to a commercial suit may by making an appropriate application before the court, request that certain sensitive documents be filed in a sealed cover – however, such procedure differs in each state. For example, Chapter VII, Rule 17 of the Delhi High Court (Original Side) Rules, 2018 (2018 Rules) prescribes the constitution of a Confidentiality Club, consisting of select personnel to allow limited access to such documents/information. In doing so, the court may set up a structure/protocol for the establishment and functioning of a Confidentiality Club, as it may deem appropriate. An illustrative/structure protocol of such a club is provided in Annexure F of the 2018 Rules and includes, inter alia, the manner in which sensitive evidence must be stored.

- J. Yes, the ability of a group of plaintiffs to seek collective redress is available. The remedy of class actions enables an action to be brought by a few in the name of, and for the benefit of, many. Relevant statutes and provisions are briefly set out below.

The Code of Civil Procedure enables plaintiffs to collectively bring a claim to court in a representative capacity for the benefit of a group or class of persons. Similar provisions enable a group of representative defendants to enter a defence on behalf of the entire group.

- K. **Public interest litigation**

Public interest litigation filed by a few petitioners for the general benefit of the public is often filed for the enforcement of fundamental rights under the Constitution. This remedy is only available against government entities in performance of their duties. This route is not available against private entities performing private functions or for the enforcement of private or contractual rights. As this action is filed on behalf of the public at large, the petitioners are not required to have suffered the legal injury complained of or to be part of the affected class.

- L. **Consumer protection**

The Consumer Protection Act 2019 introduced the remedy of consumer class action, in which one or more consumers can file a class action on behalf of a group. Complaints may be filed in relation to any goods sold or delivered, provided the consumers have the same interest or grievance and seek the same relief on behalf of or for the benefit of the group.

The central and state governments are also empowered to file a complaint either in their individual or in their representative capacity for the interests of consumers in general.

M. Companies Act 2013

Members and depositors of a company may, either individually or as a class, join together for redress or seek appropriate relief from the National Company Law Tribunal. There is a numerical threshold to be met as a condition to using this remedy: namely, a minimum of 100 members or 10 per cent of the total members of a company.

Relief may be sought against the company and its directors, auditors, experts, advisers or consultants for any fraudulent, unlawful or wrongful act, including monetary compensation or damages for commission of fraudulent acts or those that are prejudicial to the interests of the company or its members or depositors, or against public interest. Orders passed are binding on everyone concerned.

There is no maximum cap on the compensation or damages that may be awarded, or the manner in which they may be distributed among the applicants; this is left to the discretion of the Tribunal.

N. Industrial Disputes Act 1947

Representative actions are permitted to be brought by workers' unions as a mechanism to promote collective bargaining to improve the conditions of workers. There also is a voluntary arbitration mechanism, whereby the appropriate government may (if satisfied that the parties in voluntary arbitration are the majority) also invite non-parties to present their cases to the arbitrator for adjudication of the dispute.

O. On what grounds and in what circumstances can the parties appeal? Is there a right of further appeal?

Decrees of civil courts are appealable by way of a first appeal to a higher court, unless specifically barred by statute. Thereafter, if there is a substantial question of law involved, a second appeal will go to a high court. A first appeal is a matter of right, while a second appeal is generally discretionary and more limited in scope. Appeals may go to the Supreme Court on a substantial question of law of general importance or one involving interpretation of the Constitution. Additionally, the Supreme Court may grant special leave to appeal against any judgment, decree, determination, sentence or order passed by any court or tribunal in India if it involves a substantial question of law in the public interest.

P. What procedures exist for recognition and enforcement of foreign judgments?

A foreign judgment is deemed to be conclusive unless proven otherwise. Under the Code of Civil Procedure, foreign judgments passed by superior courts in a reciprocating territory (identified by the government through gazetted notifications) can be enforced in India. Presently, only 13 countries are deemed to be reciprocating territories, including the United Kingdom, Singapore and the United Arab Emirates. A judgment from such territories is enforceable as a decree of an Indian court, unless:

- it has not been pronounced by a court of competent jurisdiction;
- it has not been given on the merits of the case;

- the proceedings in which the judgment was obtained are opposed to natural justice; or
- it has been obtained by fraud, etc.

To enforce a judgment from a non-reciprocating country a suit must be filed. The onus of proof in this regard is on the judgment debtor who is opposing enforcement.

The enforcement of a judgment from a non-reciprocating country must be through filing a substantive suit in India before the appropriate court on the back of this judgment. In such a case, the foreign judgment will be persuasive but will not be binding in the same way that it would have been if it had been a judgment from a reciprocating territory.

Q. Are there any procedures for obtaining oral or documentary evidence for use in civil proceedings in other jurisdictions?

A request to examine a witness or obtain evidence situated within the jurisdiction of a particular high court in India in furtherance of civil proceedings before a foreign court may be communicated to that high court through: a letter from the highest consular officer of that country in India; a letter from that foreign court transmitted through the central government; or a party to those foreign proceedings producing such a letter from the foreign court before the high court. If a foreign court wishes to obtain evidence from a witness residing within the local limits of a particular high court in India in civil proceedings, that high court may, under the Code of Civil Procedure, issue a commission to examine the witness on an application by a party to the foreign proceeding or on an application by a state government law officer.

@SV



@Adv. Rajmani Jindal

“THE FUTURE OF ON LINE GAMES IN INDIA? SHOULD INDIA PROMOTE THIS INDUSTRY?”

India's vibrant **online gaming** industry is rapidly gaining traction, fuelled by a burgeoning **digital economy** and a tech-savvy population. With a burgeoning youth population, widespread **accessibility to smartphones** and **high-speed internet**, India's gaming sector is poised to leave an indelible mark on the global gaming landscape.

India is currently the largest gaming market in the world, boasting a user base of 568 million gamers and over 9.5 billion gaming app downloads in 2023. The sector in India has experienced an impressive growth trajectory, with a staggering **28% Compound Annual Growth Rate (CAGR)** between FY20 and FY23. This remarkable growth is not only attracting significant foreign and domestic investments but also generating substantial direct and indirect employment opportunities.

The online gaming industry in India is a rapidly growing sector, experiencing strong growth fuelled by factors like a large young population, affordable data, and increasing smartphone penetration, with projections indicating a significant increase in revenue and gamers.

India's online gaming industry is estimated to double to INR 66,000 crore by 2028, with the potential to create an additional 2 to 3 lakh jobs in the next few years. Industry leaders advocate for clear regulations to promote responsible gaming and encourage innovation amid regulatory challenges.

The Indian gaming landscape, despite facing several challenges, is experiencing a period of steady growth, with the potential to evolve into a dominant force in the global arena. It is fuelled by a potent combination of factors, including a burgeoning young population with high digital fluency, widespread access to affordable mobile data, and a thriving start-up ecosystem.

While the global gaming revenues grew from USD 219 billion in 2019 to USD 342 billion in 2023, and are estimated to grow at a compound annual growth rate (CAGR) of 8% to USD 503 billion by the end of 2028, the total size of the Indian online gaming market was INR 33,000 crore in 2023, estimated to reach INR 66,000 crore, growing at a CAGR of 14.5% between 2023–2028. The realisation of this potential value will be heavily dependent on seizing the opportunities while addressing the challenges highlighted in the report.

As per the report, the real money gaming (RMG) market - the largest sub-component of India's online gaming market - is predicted to reach INR 26,500 crores by 2028. The gaming industry's growth is also having a transformative impact on the Indian economy, generating an additional 2–3 lakh direct and indirect jobs in the next few years. Global investors see value in this sector and have invested a staggering USD 2.8 billion in investment over the past five years. The growth primarily hinges on resolution of the taxation issues and regulatory clarity

India's online gaming boom is at risk and only a central law can save it

India's online gaming sector faces regulatory challenges, offshore gambling issues, and tax evasion. A uniform national policy and stronger regulations are crucial for protecting domestic businesses, boosting innovation, and positioning India as a global gaming hub with economic potential.

Goods and services tax (GST) intelligence officers have blocked 357 websites of illegal offshore online gaming firms and attached about 2,400 bank accounts. **The Finance Ministry said on Saturday, March 22, that about 700 offshore e-gaming companies are under the Directorate General of Goods and Services Tax Intelligence (DGGI) scanner** for evading GST by failing to register, concealing taxable pay-ins, and bypassing tax obligations.

The finance ministry cautioned the public against engaging with offshore gaming platforms, even though many Bollywood celebrities and cricketers, besides social media influencers, are found to be endorsing these platforms.

IPL 2025: GST officers crack down on illegal e-gaming sites

Investigations also revealed that these offshore companies operated through some 'mule' bank accounts to process transactions, the DGGI blocked 166 'mule' accounts. "So far, 357 websites/URLs of illegal/non-compliant offshore online money gaming entities have been blocked by the DGGI, in coordination with the Ministry of Electronics and Information Technology (MeitY)," the finance ministry said in a statement.

Online money gaming platforms outside India were found to be conning Indian customers. they were using mule bank accounts to collect money from customers in India.

The investigation revealed that these individuals facilitated online money gaming to Indian customers through various illicit online platforms, including Satguru Online Money Gaming Platform, Mahakaal Online Money Gaming Platform, and Abhi247 Online Money Gaming Platform.¹

India's online gaming industry is valued at nearly \$3 billion – a number that reflects its potential as a fast-growing sector. Ironically, this is also the minimum amount the Indian exchequer loses annually in unpaid GST due to the unchecked rise of illegal offshore gambling websites targeting Indian users with impunity. While home-grown companies comply with ever-evolving regulations, offshore platforms operate outside the tax net, drain revenue, and pose serious risks to national and economic security.

This is a sector that was once among the biggest magnets for foreign direct investment (FDI) in India's digital economy. But a series of disruptive policy changes – from retrospective GST notices to a 400% increase in GST on pay-to-play gaming – has thrown the industry into turmoil. Many businesses have shut down, thousands of jobs have been lost, and what was once a thriving, promising industry is now in survival mode. The Supreme Court is currently reviewing the retrospective GST matter, and one hopes it will provide relief. Meanwhile, companies are trying to navigate the new tax regime, consolidating and restructuring to stay afloat.

Yet, amid these challenges, one of the biggest problems remains the lack of a uniform regulatory framework. The current system is a patchwork of state laws, where some states outright ban online gaming while others allow it. Every time a state government imposes a ban, the industry has to fight estranged legal battles, and courts have repeatedly upheld gaming as a legitimate business activity protected under the Indian Constitution. However, this endless cycle of legal challenges has disrupted business continuity, deterred investment, and stifled innovation.

ONLINE MONEY GAMING SECTION 2(80A) 2(80B) 2(102A) and SEC14A OF IGST ACT Along with rule 14, 31(B) 46(f) proviso, 64 and rule 87(3) proviso

¹ <https://www.livemint.com/news/india/ipl-2025-gst-crackdown-dggi-blocks-357-offshore-e-gaming-sites-to-curb-tax-evasion-ahead-of-ipl-2025-11742642679736.html>

Since the pandemic, the online gaming industry has witnessed exponential growth. As the revenue of the industry grew, it came under intense scrutiny by the Tax department. Before 01.10.2023, the online gaming industry was paying 18% Goods and Services Tax ('GST') on the Platform fee charged by them and not on the winning money or deposit amount. W.e.f. 01.10.2023, the GST rate has been increased to 28% and on the full value of consideration for online gaming irrespective of whether the gaming activity is a game of skill or a game of chance.

'Game of chance' v. 'Game of skill'

The Tax department issued notices to various online gaming platforms proposing to levy 28% GST instead of 18% on the ground that these are not 'game of skill' but 'game of chance' and equivalent to betting or gambling. One such notice came to be challenged before the Rajasthan High Court¹. Further, a writ petition seeking to initiate criminal proceedings² against the Platforms and a Public Interest Litigation³ was filed on this issue before some High Courts. All the High Court's gave similar observations, that the said games are 'game of skill' and would not be covered as game of chance or gambling. These judgments were primarily based on the decisions of the Hon'ble Supreme Court in the case of *K.R. Lakshmanan (Dr.) v. State of T.N.*,⁴ which relied upon *R.M.D. Chamarbaugwala & Anr. v. Union of India & Anr.*⁵

The Games Kraft decision

In September 2022, *M/s Games Kraft Technologies Pvt Ltd* was issued a GST notice of ₹21,000 crores. This notice was challenged before the Karnataka High Court⁶, Games Kraft directly approached the High Court on the premise that games such as Rummy which are predominantly based on skill, whether played with or without stakes cannot be brought within 'gambling or betting' under Entry 6 of Schedule III of the Central Goods and Services Tax Act, 2017 ("CGST Act")⁷.

The Karnataka High Court allowed the writ petition of Games Kraft and quashed the GST notice, the key observations of the High Court are as under:

- that there is a clear difference between games of skill and games of chance, which is of constitutional significance as the former is protected under Article 19(1)(g) as legitimate businesses whereas the latter is treated to be *res extra commercium*.
- That "though Section 2(17) of the CGST Act recognises even wagering contracts as included in the term business, however, that in itself would not mean that lottery, betting, and gambling are the same as games of skill. The meaning of the terms "lottery, betting, and gambling" as contemplated in Entry 6 of Schedule III of the CGST Act should be construed *no men juris* (no *men juris* is used to interpret words in a statute in their general sense) in the light of the decisions of the Supreme Court, and various High Courts, which have taken a contrary position. Entry 6 in Schedule III to the CGST Act taking actionable claims out of the purview of supply of goods or services would clearly apply to games of skill.
- Those games of chance, such as lottery, betting, and gambling would be taxable. Taxation of games of skill is outside the scope of the term 'supply' in view of Section 7(2) of the CGST Act, 2017 read with Schedule III of the Act." Further, the Court clarified that a game of chance if played with stakes is gambling, however, a game of skill whether played with stakes or without stakes is not gambling.
- "The expressions, 'betting' and 'gambling' having become *nomen juris*, the same are applicable to give meaning to terms under GST. Consequently, the terms, 'betting' and 'gambling' contained in Entry 6 of Schedule III to the CGST Act are not applicable to online/electronic/digital rummy, whether played with stakes or without stakes as well as to any other online/ electronic/digital games, which are also substantially and preponderantly games

of skill." The terms 'betting' and 'gambling' appearing in Entry 6 of Schedule III of the CGST Act do not and cannot include games of skill within its ambit.

However, this Judgment has been stayed and the issue is now pending consideration before the Hon'ble Supreme Court⁸.

GST Council's recommendations

While the Industry was contesting the notices before the Courts, a Group of Ministers (GoM) was proposed to be constituted to look into issues relating to the taxation of horse racing, casinos, and online gaming in the 42nd Meeting of the Goods and Services Tax (GST) Council.

In the 45th Meeting of the GST Council held on 17 September 2021, the GoM was mandated to examine all issues including rates and valuation of online gaming, horse racing, and casinos.

The GoM submitted its first report ahead of the 47th GST Council Meeting that was held on 28-29 June 2022. This report recommended 28% GST on the full value of consideration for online gaming irrespective of the gaming activity being a game of chance or game of skill. The full value of the consideration would be taken for calculating the levy of 28%. In the case of casinos, the report recommended 28% GST on the purchase value of chips. However, the GST Council decided that the GoM may relook into all the issues once again.

The GoM submitted its second report before the 50th GST Council Meeting that was held on the 11th July 2023. The GoM, in this report, had stated that no consensus could be reached on whether the activities of online gaming, horse racing, and casinos should be taxed at 28% on the full-face value of bets placed or on the Gross Gaming Revenue (GGR), accordingly, the GoM asked the GST Council to take appropriate decision at their end.

Consequently, the GST Council recommended a levy of 28% GST uniformly on the total game value for online gaming, horse racing, and casinos, irrespective of whether they are games of chance or games of skill.

Thereafter, GST Council regrouped on 02nd August 2023 for the 51st GST Council meeting and recommended certain amendments in the CGST Act 2017 and the IGST Act 2017 to provide clarity on taxation of the online gaming industry, casino, and horse racing.

Taxability of actionable claims under GST:

Section 2(52) of the CGST Act' 2017 includes the actionable claims under the definition of Goods. Para 6 of the Schedule III provides that Actionable Claims other than lottery, betting, gambling and race horse shall neither treated as supply of goods, nor treated as supply of services under GST

Further, Rule 31A(2) and 31A(3) of the Central GST Rules' 2017 provides mechanism for valuation of actionable claims lottery and betting/gambling/horse race respectively.

In simple words, actionable claims are not taxable under GST except for lottery, betting and gambling or horse race.

Amendments in GST-

Key amendments are as follows:

- Online gaming and online money gaming were distinguished and defined separately w.ef 1st Oct 2023 vide notification no. 4/2023 -integrated tax :
 - '(80A) "online gaming" means offering a game on the internet or an electronic network and includes online money gaming;

- (80B) "online money gaming" means online gaming in which players pay or deposit money or money's worth, including virtual digital assets, in the expectation of winning money or money's worth, including virtual digital assets, in any event including game, scheme, competition or any other activity or process, whether or not its outcome or performance is based on skill, chance or both and whether the same is permissible or otherwise under any other law for the time being in force;'

Thus, online gaming and online money gaming have been specifically defined under the CGST Act by CGST (Amendment) Act 2023, Prior to this there was no such definition under the CGST Act.

- Introduction / Amendment of various definitions in the Act
 - Amendment to Schedule III (no supply cases) of the CGST Act, 2017 to exclude "Specified actionable claims" vide notification no. 48/2023-central tax from 1st oct 2023 from the definition of actionable claims to provide clarity regarding the taxability of actionable claims involved in or by way of casinos, horse racing, and online gaming.
 - Section 2(1) of CGST ACT defines Actionable claims as same meaning as assigned to it in section 3 of Transfer of property act 1882. In simple words means a claim which can be enforced by a legal action or suit.
 - "specified actionable claim" is defined to mean the actionable claim involved in or by way of— (i) betting; (ii) casinos; (iii) gambling; (iv) horse racing; (v) lottery; or (vi) online money gaming;
 - '(117A) "virtual digital asset" shall have the same meaning as assigned to it in clause (47A) of section 2 of the Income-tax Act, 1961.

These amendments have been made to clear the embargo for taxing online money gaming. A new category of actionable claims has been introduced, i.e., 'specified actionable claims' and online money gaming has been included in this category.

- "Online money gaming" has been excluded from the definition of 'Online Information and Data Access or Retrieval (OIDAR)' services prescribed under the IGST Act 2017. This distinction ensures that online money gaming activities, where participants deposit funds with the anticipation of winning money or equivalent assets, are treated separately from digital service offerings covered under OIDAR.
- Amendment to the definition of "Supplier" in clause (105), by inserting the following proviso: "Provided that a person who organizes or arranges, directly or indirectly, supply of specified actionable claims, including a person who owns, operates or manages digital or electronic platform for such supply, shall be deemed to be a supplier of such actionable claims, whether such actionable claims are supplied by him or through him and whether consideration in money or money's worth, including virtual digital assets, for the supply of such actionable claims is paid or conveyed to him or through him or placed at his disposal in any manner, and all the provisions of this Act shall apply to such supplier of specified actionable claims as if he is the supplier liable to pay the tax about the supply of such actionable claims";

Thus, the scope of supplier has been expanded to include a person who supplies specified actionable claims and a person who owns, operates or manages platforms for such supplies.

- New Rule 31B was introduced to help determine the value of supply for online money gaming consideration it says that, the value of supply would be the amount deposited or paid/payable with the supplier in the form of money or money's worth including a virtual digital asset by or on behalf of the player. Further, the amount returned or refunded shall not be deducted/ nor reversed from the total face value amount of online money gaming.
- Amendment in Section 24 of the CGST Act, 2017 is proposed to mandate the obligation to get registered in terms of the Indian GST Laws for the persons providing online money gaming services from a place outside India.

Generally, in the case of import, the recipient is liable to pay GST under the reverse charge mechanism, and the entity situated outside India is not required to take a GST registration. However, the Government for the 1st time has introduced registration on a foreign entity if it is supplying online money games to a person in India.

- Further, Section 14A has been introduced in the IGST Act, 2017 to provide for special provisions for specified actionable claims vide notification no. 04/2023 -integrated tax w.e.f. 1st oct 23 supplied by a person located outside the taxable territory. Accordingly, it provides for special provision for online money gaming supplied by a person located outside the taxable territory to a person located in India, including the requirement of taking a single registration under the Simplified Registration Scheme, payment of Integrated Tax on such supplies and provision for blocking of supplier's online money gaming-related information in any computer resources for access by the public in India in case of non-compliance.

This shows that the Government does not want to leave any stone unturned and wants the entities to be as compliant as any other Indian entity.

From the above amendments, it is very much clear that the Government wanted to treat all online gaming platforms in the same manner as a betting house/casino, without making a distinction between 'games of skill' and 'games of chance' and tax all of them in the same rate, i.e., 28%. To overcome the rulings of the Court these amendments have been made to end the debate between a game being 'a game of skill' or 'a game of chance' and to overcome the decisions given by the Supreme Court and the High Courts in favour of assesseees.

However, this does not close the issue indefinitely as the Games Kraft matter is still pending before the Hon'ble Supreme Court. Also there may be a situation where the amended provisions are challenged before the Courts.

Footnotes

1. Myteam11 Fantasy Sports Pvt. Ltd. v. Union of India, D.B. Civil Writ Petition No. 1100 of 2023, decided on 18-1-2023
2. Shri Varun Gumber v. U.T. of Chandigarh, CWP No. 7559 of 2017 decided on 18.04.2017
3. Gurdeep Singh Sachar v. Union of India, Criminal Public Interest Litigation Stamp No. 22 of 2019, decided on 30-4-2019
4. (1996) 2 SCC 226
5. AIR 1957 SC 628
6. Gameskraft Technologies (P) Ltd. v. Directorate General of Goods and Services Tax Intelligence & others 2023 SCC OnLine Kar 18
7. Actionable claims, other than lottery, betting and gambling.

8. Directorate General of Goods and Services Tax Intelligence v. Gameskraft Technologies (P) Ltd., SLP(C)
No. 19366-19369/2023

9. (47A) "virtual digital asset" means—

- (a) any information or code or number or token (not being Indian currency or foreign currency), generated through cryptographic means or otherwise, by whatever name called, providing a digital representation of value exchanged with or without consideration, with the promise or representation of having inherent value, or functions as a store of value or a unit of account including its use in any financial transaction or investment, but not limited to investment scheme; and can be transferred, stored or traded electronically;
- (b) a non-fungible token or any other token of similar nature, by whatever name called;
- (c) any other digital asset, as the Central Government may, by notification in the Official Gazette specify:

Provided that the Central Government may, by notification in the Official Gazette, exclude any digital asset from the definition of virtual digital asset subject to such conditions as may be specified therein.
Explanation.—For the purposes of this clause,—

- (a) "Non-fungible token" means such digital asset as the Central Government may, by notification in the Official Gazette, specify;

(b) the expressions "currency", "foreign currency" and "Indian currency" shall have the same meanings as respectively assigned to them in clauses (h), (m) and (q) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999)

Should India promote such gaming?

Personally speaking with younger generational taking off for new riches instantly even by borrowing money EMIs selling their land etc, our Government should be slow to give it a free hand; lest the personal debt of citizens, especially living below poverty line, may face insurmountable ramifications in times to come. Wait for the second edition as a continuation.....

@ Rajmani



CA. C.K GUPTA

Understanding Section 74A of the CGST Act, 2017: A Consolidated Approach to Tax Adjudication under GST

RAMIFICATIONS OF SECTION 74A DEMYSTIFIED

To redefine India's tax landscape, the Finance Minister's Budget 2024 presentation in Parliament shows a game-changing addition to the GST framework. The updated **section 74A changes GST compliance** and enforcement in the country.

The Goods and Services Tax (GST) framework in India was introduced in 2017. Since then, various changes have been made to improve its compliance and effectiveness in terms of revenue generation. In 2024 Union Budget, Section 74A has been introduced to further standardize the GST structure from the perspective of litigation.

As Section 74A has been introduced as part of the Union Budget 2024 with the intention to address tax-related issues including non-payment, short payment, erroneous refunds, or inaccurate input tax credits relevant to Financial Year 2024-25 and subsequent years. *The primary objective of Section 74A is to standardize the timeframe for issuance of show cause notices and orders across all cases—regardless of whether fraudulent activity is involved or not.* Notably, existing regulations under Sections 73 or 74 will continue to apply for tax matters concerning periods up to FY 2023-24; however, provisions outlined in Section 74A will be implemented beginning with FY 2024-25.

Section 74A has 12 sub sections and we need to read and appreciate the import of all these sub sections as all have a bearing on the ultimate interpretation of law.

It is noteworthy that GST officers are allowed approximately five years from the conclusion of the relevant financial year to issue orders. Should this timeframe be fully utilized, taxpayers may face significant increases in interest liabilities subject to obtaining orders near the limitation date of issuance of order. Additionally, ongoing litigation concerning penalty recovery—regardless of whether it stems from fraudulent or non-fraudulent activities—is expected to remain a pertinent issue under these new provisions as well.

Key Provisions of Section 74A

1. Determination of Tax Liability

Section 74A covers cases of:

- Non-payment or short payment of tax.
- Erroneous refunds.
- Wrongful availing or utilization of ITC.

2. Issuance of Notice and Statements

- **Notice (Section 74A(1)):** A notice must be served when tax discrepancies arise due to reasons **other than fraud**.
-
- **Statement (Section 74A(3)):** A statement detailing tax discrepancies for periods not covered in the original notice may also be issued. However, the grounds for discrepancies in the statement must align with those in the original notice as per **Section 74A(4)**. Service of statement to be deemed to be service of SCN if grounds relied upon are same as mentioned in earlier SCN.

3. Time Limits for Issuance of SCN and GST orders

- The notice under Section 74A(2) must be issued **within 42 months** from the due date of filing the annual return or the date of the erroneous refund.
- The time limit for passing an order under Section 74A(7) is **12 months** from the date of the notice, extendable by upto **6 months** under certain conditions with prior approval of the commissioner or an authorized senior officer provided reasons for delay are recorded.

4. Penalty Provisions for Non-Compliance

- **Non-Fraud Cases:** A penalty of **10% of the tax due or ₹10,000**, whichever is higher, under Section 74A(5)(i).
- **Fraud Cases:** A penalty equivalent to the **tax due** from the tax payer is levied under Section 74A(5)(ii).

5. Encouraging Voluntary Compliance

Section 74A encourages early settlement by offering relief on penalties:

- **Non-Fraud Cases (Section 74A(8)):**
 - **Before SCN:** No penalty if tax and interest are paid voluntarily.
 - **After SCN:** No penalty if paid within **60 days** of the SCN.
- **Fraud Cases (Section 74A(9)):**
 - **Before SCN:** Penalty is limited to **15%** of the tax due.
 - **Within 60 days of SCN:** Penalty increases to **25%**.
 - **Within 60 days of Order:** Penalty escalates to **50%**.
 - **After 60 days of Order:** Penalty reaches **100%**.

6. Addressing Non-Payment of Self-Assessed Tax

Section 74A(11) imposes penalties in line with the provisions of **74A(5)** for failure to pay self-assessed or collected tax within **30 days** of the due date. This provision underscores the importance of timely compliance with self-assessed tax obligations. For traders, manufacturers

and other corporate stake holders the implications are significant. Companies will be required to update their compliance systems to ensure accurate tax calculations and on-time payments. It is essential to train finance teams on these new provisions to avoid unintentional non-compliance. **All the stake holders now ought to be prepared for more stringent scrutiny, particularly in matters that have ITC claims- resulting in more show cause notices, audits, special audits, returns' scrutiny leading to inflated adjudication orders; more so when now time from 42 months to 60 month may be involved.**

7. Policy Rationale and Clarifications

The introduction of Section 74A reflects several key policy considerations discussed in GST Council meetings:

1. **Unified Time frame for Notices:** By prescribing a uniform limitation period of **42 months** for both fraud and non-fraud cases, Section 74A eliminates procedural ambiguities that existed under Sections 73 and 74.
 2. **Simplified Compliance and Reduced Litigation:**
 - Consolidation of fraud and non-fraud provisions minimizes confusion. It empowers tax authorities to act decisively against willful defaulters while ensuring genuine taxpayers are not unfairly burdened.
 - Lower penalties for early settlements incentivize prompt resolution of disputes.
 3. **Input Tax Credit (ITC) Treatment:**
 - To avoid double taxation, ITC cannot be denied to recipients when taxes, interest, and penalties have already been paid by suppliers. It ensures that the taxpayers are not penalized twice for the same offence.
 - Blocking ITC alongside hefty penalties was deemed excessive and detrimental to compliance.
-

8. Implications for Taxpayers

Section 74A strikes a balance between enforcing tax compliance and offering relief for voluntary settlements. Key benefits include:

1. **Simplified Procedures:** Consolidation reduces complexity and expedites the resolution process.
2. **Incentivized Compliance:** Reduced penalties for timely payments encourage taxpayers to address discrepancies early.
3. **Litigation Reduction:** The standardized framework limits disputes over procedural issues.

However, stringent penalties for fraud cases emphasize the importance of accurate reporting and compliance with GST regulations.

Conclusion

The insertion of **Section 74A** in the CGST Act, 2017, represents a significant step toward improving tax administration under GST. By unifying the framework for tax determination and incentivizing voluntary compliance, the provision promotes transparency and minimizes litigation. The emphasis on fairness, particularly in ITC treatment, underscores the GST

regime's commitment to creating a taxpayer-friendly system. For businesses, understanding and adhering to this section is essential to avoid legal complications and maintain compliance in the evolving GST landscape.

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Adv. R.K. Khurana

Valuation of Taxable Supply under CGST Act 2017

Introduction

1. The Goods and Service Tax (GST) is a transaction-based tax system. It is leviable on supply of goods or services. The supply includes on all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business. Any transaction-based tax must provide for the following important components:
 - i. There should be authority with the government to impose tax. Not tax can be levied or collected except with the authority of law.
 - ii. The law authorizing levy of tax should provide for the rate at which the tax is to be levied.
 - iii. The law should provide for the time and place for payment and collection of tax
 - iv. The transaction-based tax system should also provide for the basis or value of transaction on which tax is to be levied and collected.

The present article proposes to describe in detail the basis for valuation of goods and services.

Determining the value of taxable supply

2. The provisions on valuation of supply of goods and services are given in Chapter IV: Sec 15 of CGST Act 2017 read with Rules 27 to 35 of the CGST Rules 2017. As per Sec 15 (1) of the Act, value of a supply of goods and /or services shall be the transaction value. This is the price actually paid or payable for the said supply of goods and / or services or both. The transaction value system on valuation of supply is subject to following two conditions:
 - i. The supplier and the recipient of the supply are not related, and
 - ii. The price is the sole consideration for the supply.

When are supplier and recipient related?

3. For the purposes of supply of goods or services, the persons i.e. supplier and recipient 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 the other or
- v. Any person holds twenty-five per cent or more of the outstanding voting stock or shares of both.
- vi. One of them directly or indirectly controls the other.
- vii. Both of them, are directly or indirectly controlled by a third person
- viii. Together, they directly or indirectly control a third person; or
- ix. They are members of the same family.

The 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.

What is a family:

4. As per Sec 2 (49) of the CGST Act, 2017, the term 'Family' means: —

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

Supplier and recipient deemed related

5. As per Explanation (b) to Section 15 of the CGST Act,, 2017, the persons associated in the business of one another if one is the sole agent or sole distributor or sole concessionaire (i.e. a person or business that has been given the right to sell something on property owned by someone else), of the other, shall be deemed to be related.

Inclusions in the value of supply

6. The value of supply shall include the following-

- i. 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.
- ii. 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;
- iii. 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;
- iv. Interest or late fee or penalty for delayed payment of any consideration for any supply; and

- v. The subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.

For the purposes of calculating the value of supply, the (amount of) subsidy shall be included in the value of supply of the supplier who receives the subsidy.

Exclusions from the value of supply:

- 7. The value of the supply shall not include the following two kinds of discounts:
 - a. The discount which is given before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply; and
 - b. After the supply has been affected, if-
 - i. Such a discount is established in terms of an agreement entered at or before the time of such supply and specifically linked to relevant invoices; and
 - ii. The input tax credit as is attributable to the discount on the basis of document issued by the supplier, has been reversed by the recipient of the supply.

Determining value of supply where the two conditions (i.e. price to be sole criteria and the supplier and recipient) are not related is not fulfilled:

- 8. Where the value of the supply of goods or services or both cannot be determined in a manner provided under Section 15(1), i.e. the two conditions involving the price to be sole consideration for supply and that the supplier and recipient are not related, are not fulfilled, the value of supply shall be determined in such manner as may be prescribed.

The CGST Rules 2017 for determining value of supply

- 9. The Central Government has prescribed Rules 27 to 35 of the CGST Rules 2017. The circumstances under which these rules are applicable are briefly summarized in the following paragraphs.

Value of supply where the consideration is not wholly in money

- 10. The Value of supply of goods or services where the consideration is not wholly in money, the value of the supply shall be determined as under:
 - a. The open market value of such supply;
 - b. If the open market value is not available under clause (a), be the sum total of consideration in money and any such further amount in money as is equivalent to the consideration not in money, if such amount is known at the time of supply;

- c. If the value of supply is not determinable under clause (a) or clause (b), be the value of supply of goods or services or both of like kind and quality;
- d. If the value is not determinable under clause (a) or clause (b) or clause (c), be the sum total of consideration in money and such further amount in money that is equivalent to consideration not in money as determined by the application of rule 30 or rule 31 in that order.

This is explained as per the following illustrations:

Illustrations :

- i. Where a new phone is supplied for twenty thousand rupees along with the exchange of an old phone and if the price of the new phone without exchange is twenty-four thousand rupees, the open market value of the new phone is twenty-four thousand rupees.
- ii. Where a laptop is supplied for forty thousand rupees along with the barter of a printer that is manufactured by the recipient and the value of the printer known at the time of supply is four thousand rupees, but the open market value of the laptop is not known, the value of the supply of the laptop is forty-four thousand rupees

Value of supply where the consideration is not wholly in money. –

- 11. Where the supply of goods or services is for a consideration not wholly in money, the value of the supply shall, -
 - i. be the open market value of such supply;
 - ii. If the open market value is not available under clause (a), be the sum total of consideration in money and any such further amount in money as is equivalent to the consideration not in money, if such amount is known at the time of supply;
 - iii. If the value of supply is not determinable under clause (a) or clause (b), be the value of supply of goods or services or both of like kind and quality;
 - iv. If the value is not determinable under clause (a) or clause (b) or clause (c), be the sum total of consideration in money and such further amount in money that is equivalent to consideration not in money as determined by the application of rule 30 or rule 31 in that order.

Value of supply between distinct or related persons, other than through an agent.

- 12. The value of the supply of goods or services or both between distinct persons (registered at different places under the same PAN) as specified in sub-section (4) and (5) of section 25 or where the supplier and recipient are related, other than where the supply is made through an agent, shall-
 - i. be the open market value of such supply;
 - ii. If the open market value is not available, be the value of supply of goods or services of like kind and quality;
 - iii. If the value is not determinable under clause (i) or (ii), be the value as determined by the application of rule 30 or rule 31, in that order:

However, where the goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to ninety percent of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person.

Where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services.

The value of supply of services by a supplier to a recipient who is a related person located in India, by way of providing corporate guarantee to any banking company or financial institution on behalf of the said recipient, shall be deemed to be one per cent of the amount of such guarantee offered 4[per annum], or the actual consideration, whichever is higher. Where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the value of said supply of services.

Value of supply made or received through an agent.

13. The value of supply of goods between the principal and his agent shall-

- a. be the open market value of the goods being supplied, or at the option of the supplier, be ninety percent. of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person, where the goods are intended for further supply by the said recipient.
- b. Where the value of a supply is not determinable under clause (a), the same shall be determined by the application of rule 30 or rule 31 in that order.

Value of supply based on cost

14. Where the value of a supply of goods or services or both is not determinable by any of the preceding rules of this Chapter, the value shall be one hundred and ten percent of the cost of production or manufacture or the cost of acquisition of such goods or the cost of provision of such services.

Residual method for determination of value of supply

15. Where the value of supply of goods or services or both cannot be determined under rules 27 to 30, the same shall be determined using reasonable means consistent with the principles and the general provisions of section 15 and the provisions of this Chapter:

In the case of supply of services, the supplier may opt for this rule, ignoring rule 30.

Value of supply in case of lottery, betting, gambling and horse racing

16 The value in respect of supplies specified below shall be determined in the manner provided hereinafter.

- i. The value of supply of lottery shall be deemed to be 100/128 of the face value of ticket or of the price as notified in the Official Gazette by the Organising State, whichever is higher.
- ii. The value of supply of actionable claim in the form of chance to win in betting, gambling or horse racing in a race club shall be 100% of the face value of the bet or the amount paid into the totalisator.

Value of supply in case of online gaming including online money gaming.

17 The value of supply of online gaming, including supply of actionable claims involved in online money gaming, shall be the total amount paid or payable to or deposited with the supplier by way of money or money's worth, including virtual digital assets, by or on behalf of the player. However, any amount returned or refunded by the supplier to the player for any reasons whatsoever, including player not using the amount paid or deposited with the supplier for participating in any event, shall not be deductible from the value of supply of online money gaming.

Value of supply of actionable claims in case of casino

18 The value of supply of actionable claims in casino shall be the total amount paid or payable by or on behalf of the player for –

- i. Purchase of the tokens, chips, coins or tickets, by whatever name called, for use in casino; or
- ii. Participating in any event, including game, scheme, competition or any other activity or process, in the casino, in cases where the token, chips, coins or tickets, by whatever name called, are not required.
- iii. Any amount returned or refunded by the casino to the player on return of token, coins, chips, or tickets, as the case may be, or otherwise, shall not be deductible from the value of the supply of actionable claims in casino.

Determination of value in respect of certain supplies.-

19 The value in respect of supplies specified below shall, at the option of the supplier, be determined in the manner provided below:.

Nature of supply	Value of supply
Sale/purchase of foreign currency, including money changing (A)	a. Difference b/w RBI buying & selling rate b. 1% of gross amount received/ provided, if RBI reference rate not available
Sale/purchase of foreign currency, including money changing.	1% of gross money exchange up to 1 Lakh (Min INR 250/-)
1% of gross money exchange up to 1 Lakh (Min INR 250/-)	INR 1,000/- + 0.5% of amount exceeding INR 1 lacs (up to 10 lacs)

	INR 5,500/- + 0.1% of exceeding INR 10 lacs (Max INR 60,000/-)
Air Travel Agent	a. 5% of basic fare in Domestic bookings b. 10% of basic fare in International bookings
Life Insurance Business	Value = Gross premium less investment amount (identified) a. Single premium – 10% of such premium b. All other cases – 25% first year, 12.5% all subsequent years c. Term plan (life insurance, no maturity) – Entire premium
Second Hand goods	Difference between Sale price and purchase price No ITC on purchase of such goods
Goods repossessed from a defaulting borrower, against loan	Purchase price less 5% per quarter (or part thereof) between the dates of purchase and sale

Value of supply of services in case of pure agent.-

20 The expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply, if all the following conditions are satisfied, namely,-

- (i) The supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorisation by such recipient;
- (ii) The payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and
- (iii) The supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account

Value of supply inclusive of integrated tax, central tax, State tax, Union territory tax. -

21 Where the value of supply is inclusive of integrated tax or, as the case may be, central tax, State tax, Union territory tax, the tax amount shall be determined in the following manner, namely,-

Tax amount = (Value inclusive of taxes x tax rate in % of IGST or, as the case may be, CGST, SGST or UTGST) ÷ (100+ sum of tax rates, as applicable, in %)

Conclusion

22 It may be observed from the above that the CGST Act 2017 read with CGST Rules, 2017 provides for the detailed mechanism for valuation of goods and services. The taxpayers

are expected to keep these in view at the time of undertaking the business transactions.

In case the taxpayers charge more tax than leviable under these provisions, the he cannot keep with him the excess tax collected, but have to pay the whole amount to the government. However, in case the taxpayer, by any error or omission, collects short tax, he is liable to pay the tax short collected and paid to the government along with applicable interest and penalty.

It is therefore strongly recommended that the taxpayers should be careful in charging and paying the government the correct amount of tax. Wherever necessary, it will be advisable to take appropriate legal advice.



NARENDER AHUJA
(ADVOCATE)

INPUT TAX CREDIT – A TRADER’S PROSPECTIVE

Why Input tax credit is so important?

Most of the notices received by the all of you from tax period 2017-18 to 2020-21 were based on the wrongful input tax credit availed against the invoices issued by the suppliers whose registrations were cancelled by the department suo motto due to one or another reasons retrospectively and you faced tax, interest and penalty for no wrong done by you. WHY SO? No doubt right to claim input tax credit is subject to conditions laid down in law Section 16(2) -and if you fail to fulfil the conditions the revenue may deny the claim of input tax credit. The reason is settled by the Supreme Court in many judgments that this is only a benefit or concession given by the law makers to all of you and not a right without any conditions. But whether such a condition as above is written in law? We shall explore this in this presentation. Further, it is a well-settled principle that when interpreting tax laws, strict interpretation must be followed, both in favour of the revenue and the Assessee. A taxing statute must be read based on its clear and explicit language. The Court cannot read into the statute provisions that are not expressly stated, nor can it fill any gaps in the law.

What the ACT says - Basic Condition

Section 16 of the CGST Act, 2017 outlines the conditions for availing input tax credit. According to Subsection 1 of Section 16, any registered person under Section 24 of the Act, subject to the provisions of Section 49, is eligible to avail and utilize input tax credit for goods, services, or both, used in the course or furtherance of their business. While Subsection 1 of Section 16 deals with the eligibility of a person to claim input tax credit, Subsection 2 of Section 49 specifies the manner in which the input tax credit can be utilized.

So it is clear from the above discussion that the registered person can avail input tax credit subject to the conditions laid down under sub section 16(2) to 16(4)

KEY CONDITIONS

2 (a) He must be in possession of the tax invoice or debit note issued by the supplier registered under this Act, or such tax paying other documents as may be prescribed;

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 and such details have been communicated to the recipient of such invoice or debit note in the manner specified under [section 37](#);"

(b) he has received the goods or services or both.

c the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilization of input tax credit admissible in respect of the said supply; and

(d) he has furnished the return u/s 39

Burden of Proof - Section -155

Where any person claims that he is eligible for input tax credit under this Act, the burden of proving such claim shall lie on such person. Accordingly, it is the recipient of the goods or services or both who is under obligation to provide the genuinity of the transaction. The question is how all of you prove that you had a genuine transaction which is being

doubted after a gap of many years? Dealer claiming ITC has to prove beyond doubt the actual transaction which can be proved by furnishing Name and address of selling dealer, Details of the vehicle which has delivered the goods, Payment of freight charges, Acknowledgement of taking delivery of goods, Tax invoices and payment particulars

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Particulars of payment etc. In fact, if a dealer claims Credit on purchases, such dealer/purchaser shall have to prove and establish actual physical movement of goods, genuineness of transactions by furnishing details referred above and mere production of tax invoices would not be sufficient to claim ITC.

Burden to prove genuineness of transaction is on purchasing dealer. Mere production of invoices and/or payment by cheque is not sufficient and cannot be said to be proving burden.

State of Karnataka Vs. Ecom Gill Coffee Trading (P) Ltd (2023) 4 Centax 223 (SC)

Opportunity of Cross examination

It is important to ask for the opportunity to cross examine the persons who have made submissions based on which SCN is issued. There can be no denying that when any statement is used against an assessee, an opportunity of cross-examination of the persons who made those statements ought to be given to assessee, Right of cross examination, of the person who had given a statement against the assessee, even in a quasi-judicial proceeding is a valuable right given to the accused/notice which cannot be taken away unless the circumstances relating to unavailability of such person referred to in Section 136B exists.

Basudev Garg vs Commissioner of Customs [2014] 42 taxmann.com 62 (Del) / [2013] 294 ELT 353

1	On Quest Merchandising India (P.) Ltd. Delhi High Court	Delhi High Court observed that buyer cannot be put in jeopardy when he has done all that law requires him to do and further that purchasing dealer has no means to ascertain and secure compliance of selling dealer
2	Arise India Limited	Section 9(2)(g) of Delhi VAT could not be invoked by VAT officer to penalise a bonafide purchasing dealer for the failure of a selling dealer to submit the requisite records proving the genuineness of the transaction. High Court allowed the purchaser to take credit even if the selling dealer had not discharged VAT on the sale of goods. The SLP was filed before the Supreme Court and rejected (nothing was discussed)

3	Tata Motors Limited Jharkhand High Court	Jharkhand High Court held that once a buyer of input receives invoices of excisable items unless factually it is established to contrary, it will be presumed that when payments have been made in respect of those inputs based on invoices, buyer is entitled to assume that excise duty has been/will be paid by the supplier on the excisable inputs. The buyer will be entitled to claim Modvat credit on the said assumption. It would be most unreasonable and unrealistic to expect buyer of such inputs to go and verify the accounts of the supplier or to find out from department of Central Excise whether the actual duty has been on inputs paid by supplier. No business can be done like this, and the law does not expect the impossible
4	Juhi Alloys Limited Allahabad High Court	The Allahabad High Court held that once it is demonstrated that the buyer had taken reasonable steps to ensure that the inputs in respect of which credit being taken, appropriate excise duty was paid, which is a question of fact in this case, it would be contrary to the Rules to cast an impossible or impracticable burden on the assessee.
5	Mahalaxmi Cotton Ginning Pressing and Oil Industries = Bombay High Court	Notably, the Bombay High Court, in a case, have held that ITC is a concession and legislature can put conditions and restriction relating to its availment. The High Court upheld the pre-condition of payment of tax by the supplier
6	Onyx Designs Karnataka High Court	The Karnataka High Court held that in the absence of any other allegations made against the purchasing dealer in the assessment orders, merely for the reason that selling dealers had not deposited the collected tax amount or some of the selling dealers had been subsequently deregistered could not be a ground to deny the input tax credit

CBIC Clarifications

1	RP issued tax invoice without supplies of Goods/ services	Activity does not satisfy criteria of u/s. 7 so no demand and recovery is to be made against issuer of invoice but penalty shall be imposed u/s.122 (1)(ii)
2	Registered person availed and utilized fraudulent ITC based on the tax invoice issued without underlying supply	Person availing the ITC shall be liable for demand or recovery u/s. 73 or 74 of CGST Act on account of availing and utilizing fraudulent ITC and in terms of section 75(13) , no penalty including u/s 122 to be levied if penal action is taken under section 74 of CGST Act.
3	RP avails ITC based on the said tax invoice and further passes on the said	Person availing the ITC shall liable for demand or recovery u/s. 73 or 74 of CGST Act, as the case

	ITC to another registered person by issuing invoices without underlying supply of goods or services or both	may be and liable for penal action u/s. 122(1)(ii) and 122(1)(vii) of CGST Act
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Reversal & its Re-Claim

Reversal of input tax credit in the case of non-payment of consideration.- Rule (37) A registered person, who has availed of input tax credit on any inward supply of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, but fails to pay to the supplier thereof, the amount towards the value of such supply [whether wholly or partly] along with the tax payable thereon, **within the time limit of 180 days, shall pay or reverse an amount equal to the input tax credit availed in respect of such supply in proportionate to the amount not paid to the supplier,] along with interest payable thereon u/s 50, while furnishing the return in FORM GSTR-3B for the tax period immediately following the period of one hundred and eighty days from the date of the issue of the invoice:**

Interest Payment

Interest shall be calculated from the date when the period of 180 days ends. This means the recipient shall be liable to pay the interest @ 24% per annum from the date starting from the 181 days of the invoice up to the date of payment and not from the date of invoice.

Reclaim of the Input Tax Credit

Where the said registered person subsequently makes the payment of the amount towards the value of such supply along with tax payable thereon to the supplier thereof, he shall be entitled to re-avail the input tax credit referred to in Sub-rule (1).] Major issues to be considered.

ITC AND CIRCULAR TRADING

1. ITC AND PURCHASES FOR BUSINESS OR IN THE COURSE OF BUSINESSES
2. PLACE OF SUPPLY ISSUE
3. ITC AND NOTIFICATIONS STRICT INTERPRETATION

Consequences of claiming input tax on the basis of fake invoices

Credit on the basis of fake invoices there are serious consequences of availing input tax credit on the basis of fake invoices. This is a criminal offence which even led serious penalties including confiscation of goods and imprisonment in some cases.

Penalties

The person who claim input tax credit on the basis of fake invoices may be served a notice u/s 74 of the GST Act asking the recipient to pay a amount of tax which he has claimed against fake invoices along with the interest u/s 50 of the Act and a penalty which can go up to 100%

of the tax. Apart from the above the both the supplier and recipient can be charged with the penalty equivalent to tax evaded. (S. 122)

Imprisonment

Section 132 of the Act provides for the imprisonment. Accordingly whosoever (a) supplies any goods or services or both without issue of any invoice, in violation of the provisions of this Act or the rules made thereunder, with the intention to evade tax;

(b) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made there under leading to wrongful availment or utilisation of input tax credit or refund of tax; 2[(c) avails input tax credit using the invoice or bill referred to in clause (b) or fraudulently avails input tax credit without any invoice or bill;] The Imprisonment can go up to 5 Years depending on the amount of tax evaded.

Reversal of Input tax credit for personal use or used for exempt supply

1. Restriction on availing of ITC Section 17 Goods used for personal used

Where the registered person claims input tax credit on goods or services that are used partially for business and partially for personal purposes, they must reverse the input tax credit in proportion to the amount used for personal use.

2. Goods used for exempt supply

Where the registered person uses goods or services, or both, partly for making taxable supplies, including zero-rated supplies under this Act or the Integrated Goods and Services Tax Act, and partly for making exempt supplies under the same Acts, the credit amount will be limited to the input tax attributable to the taxable supplies, including zero-rated supplies.

Exempt Supply will include the following

- Supplies on which the recipient is liable to pay tax under reverse charge mechanism.
- Transactions in securities
- Sale of land and
- Sale of building (Subject clause (b) to paragraph 5 of schedule II,)

Blocked Credit

Earlier, we read that subsection 1 of section 16 states that every registered person is eligible to claim input tax credit. However, regardless of anything mentioned in section 16(1) or section 18, the following input tax credit will not be available to the recipient of goods, services, or both.

1. Motor Vehicle, vessel or air craft if not used for the furtherance of the business.
2. Repair and Maintenance of Motor Vehicle or General Insurance of Motor vehicle.

A dealer can claim input tax credit on the above only if he uses the motor vehicle for the purpose of:

Transportation of goods, or making the following taxable services:

- i. Further supply of such vehicles/conveyances, or
 - ii. Transportation of passengers, or
 - iii. Training for driving/ flying/ navigating such vehicles/ conveyances
3. Food or beverages, outdoor catering, beauty treatment, health care services, renting or leasing of motor vehicle, cosmetic and plastic surgery.

Allowed ONLY if goods/ services of a particular category are used towards making taxable outward supplies of the same category)

4. Membership of a health & fitness club,
5. Travel benefit extended to the employee on vacations or home travel concession.
6. 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;

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.

7. Goods or services or both on which tax has been paid under [section 10](#);
8. Goods or services or both received by a non-resident taxable person except on goods imported by him;
9. Goods or services or both received by a taxable person, which are used or intended to be used for
10. Activities relating to his obligations under corporate social responsibility referred to in section 135 of the Companies Act, 2013;]
11. Goods or services or both used for personal consumption;
12. Goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples; and
13. any tax paid in accordance with the provisions of 6[section 74 in respect of any period up to Financial Year 2023-24]

(6) The Government may prescribe the manner in which the credit referred to in sub-sections (1) and (2) may be attributed.

Explanation.- For the purposes of this Chapter and Chapter VI, the expression "plant and machinery" means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes Supply of Capital goods on which ITC already taken

Supply of Capital goods on which ITC had been taken earlier

Pay Tax on higher of:

ITC availed earlier Reduced Percentage of deduction as may be specified

OR

Transaction Value

ITC: Change in Constitution of Taxable Person

Change in Constitution of Registered Taxable Person On account of: Sale, Merger, Demerger, Amalgamation, Lease, or Transfer of business Transfer of Unutilized ITC in the books allowed to such:

Sold,
Merged,
Demerged,
Amalgamated,
Leased, or
Transferred Business

ITC in respect of goods sent for job work

Inputs/ Capital Goods sent for job work

ITC available if the conditions and restrictions under job work are satisfied If not received/directly supplied in time: Principal to pay ITC availed

+ Interest.

He can reclaim this ITC on receiving back such inputs/ capital goods.

Refund of ITC on cancelation of Registration

When a GST registration is cancelled, the registered person can claim a refund for: Unutilized Input Tax Credit (ITC): ITC accumulated due to the inward supply of goods or services. Excess Balance in Electronic Cash Ledger: Any surplus balance in the electronic cash ledger after settling liabilities.

How to do a ITC reversal? You have to mention the ITC reversal amount due to Rule 42 & 43 or for any other reasons in Table 4B of the GSTR-3B. Also, you have to make annual calculations on ITC reversal and mention the same in GSTR-9.

Narender Ahuja



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COMPOSITION SCHEME AND ITS CONSEQUENCES

What is the Composition Scheme?

It is a Scheme under which a taxable person having a turnover not exceeding Rs. 1.50 crores in the preceding financial year, can choose COMPOSITION SCHEME and can pay the tax on his total turnover at the prescribed rate of tax instead of rate of tax applicable to a general taxable person.

This Scheme is an OPTIONAL SCHEME by the taxable person having turnover not exceeding Rs. 1.50 crores in the preceding financial year

Under the Scheme the, registered taxable person is not required to maintain meticulous record of his turnover and required to deposit tax at the prescribed rate instead of general rate of tax thus enjoyed a specific privilege by choosing a composition scheme.

State wise Monetary Limit for choosing Composition Scheme.

State	Turnover Limit
Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura	75 Lakhs
Assam, Himachal Pradesh	1 Crore 50 Lakhs (Vide Notification No. 14/2019-CGST dated 07.03.2019)
Uttarakhand	75 Lakhs (Vide Notification No. 14/2019-CGST dated 07.03.2019)
Other States/UTs	1 Crore 50 Lakhs
Suppliers of Services covered u/s 10 (2A)	50 Lakhs

Person having more than one GSTIN

In case this scheme is opted by a registered person for his one GSTIN, then this scheme shall be applicable on all the GSTIN issued under the same Permanent Account Number.

Taxpayer is registered in UP, Delhi and Punjab under same PAN

If the taxpayer have opted for the Composition Scheme in UP then mandatorily he had to opt the same Composition Scheme in Delhi & Punjab also. Deviation is not permitted under GST Law.

Persons not eligible to avail this Scheme

- Person making Inter-State supply of Goods
- Person supplying goods which are not leviable to tax under GST

- Person supplying any goods through E-Commerce operator
- Person is neither a casual taxable person nor a non-resident taxable person [As amended vide Finance (No. 2) Act, 2019 which was made effective from 01.01.2020 through Notification No. 02/2020 dated 01.01.2020].
- Person engaged in the manufacture of such goods as notified by Government. {Ice Cream, Aerated Water, Pan Masala, Tobacco Products, Fly ash bricks, blocks, etc.}

Goods whose manufacturers are not eligible to avail Scheme

S.No.	Tariff item, sub-heading, heading or Chapter	Description
1	2105 00 00	Ice cream and other edible ice, whether or not containing cocoa [Since inception of GST]
2	2106 90 20	Pan Masala [Since inception of GST]
3	2202 10 10	Aerated Water [Inserted w.e.f. 01.10.2019 vide N. No. 18/2019-CT (Rate) dated 30.09.2019]
4	2401	Tobacco and manufactured tobacco substitutes [Since inception of GST]
5	68159910	Fly ash bricks, blocks, etc.

DO S

- Mention “Composition Taxable Person” on every sign board or displayed at the business premises
- 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.
- Shall issue “Bill of Supply” in place of “Tax Invoice”.
- Shall pay tax under reverse charge mechanism as provided under sub-section (3) or sub-section (4) of section 9 on inward supply of goods or services or both.

DON'T s

- Cannot opt to pay under general provisions for his other units under same PAN.
- Cannot collect any tax from the recipient on supplies made by him.
- Cannot take credit of input tax.

Rates of Tax Under Composition Scheme

Particulars	CGST	SGST
Manufacturers (substituted for 1% w.e.f. 01.01.2018)	0.5%	0.5%
Restaurants (not serving alcohols)	2.5%	2.5%
Traders	0.5%	0.5%
Both Good & Services Suppliers Section 10(2A) Suppliers	3%	3%
Notification No. 02/2019 dated 20.01.2019 w.e.f 01.02.2019 A person who opts to pay tax under composition scheme may also supply other services, of value not exceeding 10% of turnover in a State or Union Territory in the preceding Financial Year <div style="text-align: center;"> or Rs. 5,00,000/- whichever is higher. </div>		



CA Renu Sharma

Detailed Analysis of Section 69 and Section 132 of GST Law

The Goods and Services Tax (GST) law in India incorporates stringent provisions to ensure compliance and deter tax evasion. Among these, Section 69 and Section 132 of the GST Act play a significant role in enforcement actions, particularly concerning the power to arrest and the penal consequences of serious offenses. These sections aim to uphold the integrity of the taxation system while ensuring legal recourse against tax fraud.

As we all know that Tax prosecution has become increasingly important in recent years, as the government has stepped up efforts to combat and enforce compliance with tax laws in letter and spirit.

Therefore, owing to the importance of the prosecution, it was felt that there was a need to organize a workshop on subject matter to educate the GST officers to understand the various legal and procedural aspects relating to launching of prosecution against the offenders. It is essential that the officers are well-versed on the legal requirements, to ensure that the case of prosecution does not fall victim to procedural and technical defects, which may creep in during the stages of investigation and launching of prosecution.

The provisions governing prosecution under the CGST Act, 2017, have been made applicable to offences under the IGST Act, 2017 vide Section 20 of the IGST Act which specifies that the provisions of the CGST Act shall, *mutatis mutandis*, apply, so far as it may be, as they apply in relation to Central Tax. These include Offences and Penalties. Parallel and identical provisions are contained in the SGST and UTGST Acts.

The term “prosecution” means the institution or commencement of legal proceedings against an offender. It is the process of creating formal charges before the institution of any proceedings. In simple language, it is the process of charging a person with the commission of a crime in a court of law. It is also defined as the act or process of holding a trial against a person who is accused of a crime to see if that person is guilty.

Understanding the Invocation of Section 69 and Section 132

Before delving into the provisions of Section 69 and Section 132, it is essential to understand how officers invoke these sections. This typically

occurs through raids, searches, seizures, or information gathered from AI and other government bodies.

When officers collect information through these methods and determine that a person has evaded ₹5 crore or more in taxes, the provisions of Section 132 comes into effect. If the Commissioner has reason to believe that the person has committed offenses as specified under Section 132, they have the authority to authorize any officer to arrest the individual provided tax evasion is 5 Crore or more .

Legal Distinction Between Sections 69 & 132 and Sections 73 & 74

It is imperative to delineate the legal distinction between Sections 69 and 132 and Sections 73 and 74 under the GST framework.

- Sections 73 and 74 pertain to demand and recovery proceedings, wherein tax authorities issue notices and determine tax liability due to non-payment or short payment of tax. These provisions involve an adjudicatory process leading to the recovery of dues.
- Conversely, Sections 69 and 132 are invoked under the Chapter on Inspection, Search, Seizure, and Arrest. These provisions empower the Commissioner to initiate independent enforcement actions based on specific findings of tax evasion.

Given their distinct legal scope, Sections 69 and 132 function independently and do not have any interplay with Sections 73 and 74. The invocation of Sections 69 and 132 is not contingent upon the proceedings under demand and recovery but is rather based on intelligence, investigation, and conclusive findings of tax evasion. The Commissioner, upon forming a reasoned belief of an offense under Section 132, may authorize the arrest of the person involved, without necessitating prior adjudication under Sections 73 or 74.

Now, let's examine both provisions in detail.

Section 69 – Power to Arrest under GST Law

Section 69 of the Central Goods and Services Tax (CGST) Act, 2017, empowers the Commissioner of GST to authorize the arrest of a person if he has reasons to believe that the person has committed an offense under Section 132.

Key Legal Provisions of Section 69:

- The Commissioner must document and justify his reason to believe that an offense has been committed.
- Arrest can be made for offenses classified as cognizable and non-bailable, particularly where tax evasion exceeds ₹5 crore.
- The arrested individual must be presented before a Magistrate within 24 hours as per the Code of Criminal Procedure (CrPC), 1973.
- The Commissioner may delegate the arrest powers to any GST officer of the rank of Deputy Commissioner or above.

Judicial Safeguards & Limitations:

- Arrest should not be arbitrary; it must be preceded by concrete evidence and a detailed inquiry which is made under Section 132.

- The Supreme Court has upheld in various rulings that arrest powers under taxation laws should be used sparingly and only in cases where the offense is of a serious nature.
- Taxpayers must be given an opportunity to respond before coercive action is taken, in line with principles of natural justice.

Section 132 – Offenses and Punishments under GST Law

Section 132 of the GST Act prescribes criminal penalties for fraudulent activities and tax evasion. The section distinguishes between bailable and non-bailable offenses, as well as the varying degrees of punishment based on the quantum of tax evaded.

Key Offenses Under Section 132-

The GST Act lays down strict provisions to penalize individuals and businesses involved in tax fraud. Some of the major offenses under this section include:

- **Issuing invoices without actual supply of goods or services:** Commonly known as fake invoicing, this practice is used to fraudulently claim Input Tax Credit (ITC).
- **Supplying goods/services without issuing an invoice:** This is done to evade tax liability.
- **Fraudulent availment of ITC:** Claiming ITC without proper documentation or on non-existent transactions.
- **Failure to deposit collected GST:** If a business collects GST from customers but does not remit it to the government, it constitutes a serious offense.
- **Attempting to evade tax exceeding INR 5 crores:** High-value fraud cases fall under this category, attracting severe penalties.
- **There are other provisions also mentioned in the section but we are stick to only offences under which arrest can be made.**

Penalties & Punishments Under Section 132:

1. Tax evasion exceeding ₹5 crore – Cognizable and non-bailable offense punishable with imprisonment up to 5 years and a fine.
2. Tax evasion between ₹2 crore to ₹5 crore – Non-cognizable offense punishable with imprisonment up to 3 years and a fine.
3. Tax evasion between ₹1 crore to ₹2 crore – Punishable with imprisonment up to 1 year and a fine.

Classification of Offenses:

- Cognizable and Non-Bailable:
 - When the tax evasion amount exceeds ₹5 crore.
 - Arrest can be made without prior approval from a magistrate.

- Non-Cognizable and Bailable:
 - When the evasion is between ₹1 crore and ₹5 crore.
 - Arrest requires prior approval from a magistrate.

A COMMENT ON RADHIKA AGGARWAL JUDGMENT OF THE SUPREME COURT.

The Supreme Court has upheld the Constitutional Validity of the provisions regarding the right of the authorised officers to arrest under the Customs Act, 1962 and the Central Goods and Services Tax Act, 2017 (GST Act). The Court was dealing with a Writ Petition along with connected cases in which the fountainhead of legal controversy regarding the power to arrest under the aforesaid Statutes arose from a decision of the Apex Court in the case of Om Prakash and Another v. Union of India and Another (2011).

- Sub-section (10) to Section 67 of the GST Acts postulates that the provisions of the Code relating to search and seizure shall, as far as may be, apply to search and seizure under the GST Acts, subject to the modification that for the purpose of sub-section (5) to Section 165 of the Code, the word 'Magistrate' shall be substituted with the word 'Commissioner'. [Section 69](#), which deals with the power of arrest also deals with the provisions of the Code when the person arrested for any offence under the GST Acts is produced before a Magistrate. It also deals with the power of the authorised officers to release an arrested person on bail in case of non-cognizable and bailable offence, having the same power and subject to the same provisions as applicable to an officer in charge of a police station.
- We would, therefore, agree with the contention that the GST Acts are not a complete code when it comes to the provisions of search and seizure, and arrest, for the provisions of the Code would equally apply when they are not expressly or impliedly excluded by provisions of the GST Acts.
- The offences specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) and punishable under clause (i) of that sub-section shall be cognizable and non-bailable. (6) A person shall not be prosecuted for any offence under this section except with the previous sanction of the Commissioner. Explanation.—For the

purposes of this section, the term “tax” shall include the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or refund wrongly taken under the provisions of this [Act, the State Goods and Services Tax Act, the Integrated Goods and Services Tax Act](#) or the [Union Territory Goods and Services Tax Act](#) and cess levied under the [Goods and Services Tax \(Compensation to States\) Act.](#)”

- It is clear from the aforesaid provisions that, to pass an order of arrest in case of cognizable and non-cognizable offences, the Commissioner must satisfactorily show, vide the reasons to believe recorded by him, that the person to be arrested has committed a non-bailable offence and that the pre-conditions of sub-section (5) to [Section 132](#) of the Act are satisfied. Failure to do so would result in an illegal arrest. With regard to the submission made on behalf of the Revenue that arrests are not made in case of bailable offences, in our considered view, the Commissioner, while recording the reasons to believe should state his satisfaction and refer to the ‘material’ forming the basis of his finding regarding the commission of a non-bailable offence specified in clauses
- (a) to (d) of sub-section (1) to [Section 132](#). The computation of the tax involved in terms of the monetary limits under clause (i) of sub-section (1), which make the offence cognizable and non-bailable, should be supported by referring to relevant and sufficient material.
- The aforesaid exercise should be undertaken in right earnest and objectively, and not on mere ipse dixit without foundational reasoning and material. The arrest must proceed on the belief supported by reasons relying on material that the conditions specified in sub-section (5) of [Section 132](#) are satisfied, and not on suspicion alone. An arrest cannot be made to merely investigate whether the conditions are being met. The arrest is to be made on the formulation of the opinion by the Commissioner, which is to be duly recorded in the reasons to believe. The reasons to believe must be based on the evidence establishing – to the satisfaction of the Commissioner – that

the requirements of sub-section (5) to Section 132 of the GST Act are met.

- SC – QUESTIONS – THE COMMISSIONER MUST ANSWER BEFORE ARRESTING-
- Once the legal ingredients of the offence are made out, the Commissioner or the competent authority must then determine if the answer to any or some of the following questions is in the affirmative:
- Whether the person was concerned in the non-bailable offence or credible information has been received, or a reasonable suspicion exists, of his having been so concerned?
- Whether arrest is necessary to ensure proper investigation of the offence?
- Whether the person, if not restricted, is likely to tamper the course of further investigation or is likely to tamper with evidence or intimidate or influence witnesses?
- Whether person is mastermind or key operator effecting proxy/benami transaction in the name of dummy GSTIN or non-existent persons, etc. for passing fraudulent input tax credit etc.?
- As unless such person is arrested, his presence before investigating officer cannot be ensured.
- Approval to arrest should be granted only where the intent to evade tax or commit acts leading to availment or utilization of wrongful Input Tax Credit or fraudulent refund of tax or failure to pay amount collected as tax as specified in sub-section (1) of [Section 132](#) of the CGST Act 2017, is evident and element of mens rea / guilty mind is palpable.
- Thus, the relevant factors before deciding to arrest a person, apart from fulfillment of the legal requirements, must be that the need to ensure proper investigation and prevent the possibility of tampering with evidence or intimidating or influencing witnesses exists.

In case of Tax collected under Coercion –

- Instruction No. 01/2022-23 [GST – Investigation] Subject: Deposit of tax during the course of search, inspection or investigation – reg.
- Therefore, it is clarified that there may not be any circumstance necessitating 'recovery' of tax dues during the course of search or inspection or investigation proceedings. However, there is also no bar on the taxpayers for voluntarily making the payments on the basis of ascertainment of their liability on non-payment/short payment of taxes before or at any stage of such proceedings. The tax officer should however inform the taxpayers regarding the provisions of voluntary tax payments through DRC-03.

A CONSTITUTIONAL RIGHT GIVEN – BEAUTIFUL OBSERVATIONS BY THE BENCH-

- We would observe that in case there is a breach of law, and the assesseees are put under threat, force or coercion, the assesseees would be entitled to move the courts and seek a refund of tax deposited by them. The department would also take appropriate action against the officers in such cases.

Conclusion

Sections 69 and 132 of the GST Act are significant in enforcing tax compliance and preventing fraudulent activities. While Section 69 deals with the power of arrest in cases of serious offenses, Section 132 prescribes criminal penalties for tax evasion and fraudulent activities.

Given the serious consequences, businesses must ensure GST compliance, maintain accurate records, and seek timely legal counsel to navigate these provisions effectively. Courts have emphasized the importance of due process in implementing these provisions, thereby providing protection to genuine taxpayers while penalizing fraudulent activities.



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Recovery under GST:

Section 79 of the CGST Act provides for Recovery of TAX. While the title of the section mentions “tax”, the provisions deal with recovery of *any amount payable* under the CGST Act or CGST Rules. Therefore, this includes not only tax but *also interest, penalty, late fee, fine and any other sum by whatever name called* but payable under the CGST Act or rules made thereunder.

Section 79 provides for the various modes of recovery of the amount payable under the CGST Act which are as follows:

- By **detaining and selling of goods** belonging to defaulter;
- Recovery from any other person **who owes money** to defaulter;
- Collection by detention of any **movable or immovable property**;
- Recovery through **land revenue authority**;
- Recovery through execution of decree;
- Recovery from **bond/surety**;
- Recovery from **company in liquidation**;
- Various attachments can be done like – Attachment of **interest** in partnership; Attachment of **property in custody of courts**, Attachment of **debts and shares**

Now let’s understand the concepts under recovery with the help of various judicial precedents established:

1. **Recovery proceedings before three-month period should be backed by sufficient reasons:**

Recovery proceedings were initiated even prior to the expiry of the three-month period stipulated in section 78 and amounts were debited from the petitioner’s electronic cash and credit ledgers. The proviso to section 78 under which an officer may, in the interest of revenue, for reasons in writing required payment within a shorter time frame than 3 months was relied on but explanation for the reason to invoke such proviso was absent.

The Hon’ble Madras High court ordered the department to either refund the recovered amount or re-credit the same to the petitioner’s electronic cash or credit ledgers. [*Tvl. Cargotec India (P) Ltd. v. Assistant Commissioner (ST)* – [2024] 162 taxmann.com 83 (Madras)].

2. **Notice prescribing time limit should be Issued:**

In the case of *Sita Pandey v. State of Bihar* [2023] 154 taxmann.com 152 (Patna), the Hon’ble Patna High Court held that as per proviso to Section 78, the officer is required to issue notice as it speaks about “**reasons recorded in writing**” to require the taxpayer to make payment of confirmed amounts “within such period” even before the expiry of appeal period.

The Court also it is a duty on the Assessing Officer to specify the time within which the amounts are to be paid which *intimation* has to go to the assessee as per section 78.

3. Issuance of SCN is essential for recovery:

As noted above, Section 75(12) of the CGST Act provides that any tax which *remains unpaid* may be recovered as per Section 79.

In case of *LC Infra projects (P.) Ltd. v. Union of India [2019] 109 taxmann.com 141 (Kar.)*, the assessee petitioner assailed the recovery proceedings initiated by the revenue department which had attached the bank account of the assessee. The revenue department contended that there was excess availment of input tax credit and proceeded to recover tax without issuing any SCN. The petitioner prayed for quashing of the orders since recovery cannot be made without issue of SCN and putting him to notice. On facts, it was contended the alleged excess availment was on account of non-uploading of particulars by some suppliers. The High court held that any order by a quasi-judicial authority without adhering to principles of natural justice was not sustainable. Section 75(12) does not empower the officer to recover dues without issue of SCN.

In case of *V.N. Mehta & Company v. Assistant Commissioner, Nungambakkam, Chennai [2019] 112 taxmann.com 376 (Mad.)*, it was held that in order to recover sums payable by the assessee the “sum payable” must be determined as per the provisions of the CGST Act and the revenue department cannot proceed to attach the bank account without issuing SCN and conducting proceedings to hear the assessee.

The assessee paid tax along with interest after issue of a notice and the department recovered interest claimed to be short-paid by freezing the bank account. The Jharkhand High court in case of *Godavari Commodities Ltd. v. Union of India [2020] 114 taxmann.com 563 (Jharkhand)* held that issue of SCN is required before any recovery can be made.

The minimum requirement is that the principles of natural justice must be followed. Therefore, the assessee must be given an opportunity to present his case. This is in line with the judgment of the Hon’ble Supreme Court in *Chamoli District Co-Operative Bank Ltd v. Raghunath Singh Rana & Ors. [Civil Appeal No. 2265 of 2011]*

4. Amount Representing TAX:

In Central Excise, Section 11D provided for recovery of any amount collected in the guise of excise duty. A similar provision has been drafted in CGST Act by way of Section 76.

If any amount has been collected representing it as tax, then the same shall be immediately paid to government account. The statute mandates payment “forthwith”. The person who has collected such amount has no authority to retain the same as it is a case of misstatement towards the recipient from whom the amount has been collected. **The provision does not cover registered taxpayers alone but encompasses “every person” who has collected such amount.** The stringency of the provision becomes clear when it seeks payment of the amount whether such amount is taxable or not i.e., even if the amount is not related to taxable supplies the provision will be applicable. **The only requirement is collection as tax.**

Section 76 further provides for recovery of the amount if it is not voluntarily paid by the person concerned. The process of recovery commences with a show cause notice not only demanding the amount but also seeking to impose equivalent amount as penalty (*i.e., 100% penalty*). Interest will be payable and hearing will be provided before passing order. Sub-section (5) mentions hearing opportunity if requested is received in writing. However, as noted in earlier section the principles of natural justice demand that the party against whom action is proposed shall be heard. Because the amount has been collected without any requirement, the recipient has been provided with the right to apply for refund. Adjustment of such amount against tax payable has been provided for.

5. Recovery of GST dues from new management after IBC resolution is not valid:

The Jharkhand High court held that while the new management of the company after resolution under IBC cannot be saddled with liability of earlier management since it was not a taxpayer when resolution plan was approved and management was changed, the benefits like tax credits available to the earlier management will not be available to the current management. The High court quashed the order confirming GST demand against the present management holding that the order had misdirected itself as to recovery with interest and penalties. *[ESL steel Ltd. v. Principal Commissioner, Central Goods and Services Tax & Central Excise – [2024] 160 taxmann.com 333 (Jharkhand)]*

6. Suo motu adjustment of refund against demand is bad in law:

It is quite a common practice to square off accounts and pay only the net of amounts due and receivable in business. However, where the **department seeks to adjust refunds due against outstanding demands it should hear the assessee.**

In case of *DPK Engineers Private Limited v. Union of India [2020] 119 taxmann.com (Kar.)* the department adjusted the amount of refund against tax dues of the previous years. The Karnataka High court set aside this suo motu/unilateral adjustment accepting the contentions of the assessee prior to such appropriation and existence of power under the CGST Act *per se* cannot justify its exercise in violation of principles of natural justice.

As noted above, the CGST Act empowers the officer to adjust the refund against sums due by the assessee. In order for a sum to be considered as due a show cause notice must have been issued and adjudication must have been done. **In the absence of any such action** (under Section 11 of Central Excise Act) it was held in *Shree Pouches v. Commissioner of C. Ex & S.T., Jaipur-I – 2019 (370) E.L.T. 560 (Tri.- Delhi)* that adjustment against a liability which was not confirmed was not sustainable.

7. Garnishee proceedings to be initiated after adjudication:

The attachment of bank account of the assessee in order to recover tax dues must proceed only after adjudication of such dues. In *New India Civil Erectors (P) Ltd. v. Union of India – 2021 (48) G.S.T.L 17 (Bom.)*, it was held that the garnishee notice has to be preceded by determination of the amount due and not paid. The amount payable has to first crystallize.

8. Prior notice to assessee before garnishee order not required:

While before an order in nature of garnishee is issued, there must be issue of SCN and adjudication taking into account the submission of the assessee, there is no requirement to give prior notice to the assessee of the proposed attachment.

In case of *K. Ranganatha Adiga v. Commissioner of Central Tax, Bangalore, 2018 (11) G.S.T.L 62 (Kar.)*, the Hon'ble High court held that prior intimation to the assessee would defeat the purpose of recovery. It started that the garnishee proceedings are in the nature of direction to the third parties, who hold the money on behalf of the defaulting assessee or who come to hold such money for the defaulting assessee, which are directed to be paid directly to the Central Government in satisfaction of the tax dues, as such dues are intended to be satisfied in first preference and have overriding charge over the property of the defaulting assessee and once the tax liability is determined attachment may be done.

9. Garnishee notice cannot be issued to legal heirs:

Garnishee notice cannot be issued to legal heirs or erstwhile clients. The Hon'ble Madras High Court in case of *Deputy Commissioner of Service Tax, Chennai v. Service care (P) Ltd. 2019 (365) E.L.T. 225 (Mad.)*, the SCN was issued to the company in which legal heir of the

proprietary concern was managing director. The company denied any liability on account of the proprietary concern after the death of the proprietor. The department then issued garnishee notices to certain erstwhile clients who continued to avail services from the company under a fresh agreement. The orders were set aside holding that the attempt made by the Revenue to issue garnishee orders for recovering the amount of alleged service tax payable by the erstwhile proprietorship concern owned by the late father of the Managing Director of the writ petitioner company, was bad in law.

10. Recovery as arrears of land revenue:

Taking assistance from officers of State Government for recovery of dues is covered by **“certificate action”**. As per Clause (e) of Section 79 (1), the proper officer may prepare a certificate in Form GST DRC-18 and sent the same to the Collector of the district where the defaulting person owns any property or resides carries in business. The Collector is required to initiate action to recover the dues under GST law as if it were arrears of land revenue. The said form conveys that such **certificate action** can be restored to **only** when the amount due is not recoverable in the manner as provided in CGST Act.

11. Recovery action against ex-director:

Recovery action was initiated against the said ex-director by attaching his personal property and also bank account. The High court held that section 79 could not have been invoked as the petitioner was not a **“registered person”** and principal liability was not on the petitioner.

Subjective satisfaction was held as a requirement before proceeding under section 89 and the same was also absent. The order was without reasons and therefore, the basis for attachment of property was stated by the Hon’ble High Court as not known. The Court held the order as illegal and attachment was ordered to be lifted. [*Prasanna Karunakar Shetty v. State of Maharashtra – [2024] 161 taxmann.com 522 (Bom.)*].

12. Recovery in cases of mismatch between details in GSTR-1 and GSTR-3B:

If tax payable as self-assessed in GSTR-3B return based on outward supplies reported in GSTR-1 return remains unpaid wholly or in part, then the same would be liable for recovery under Section 79 as per **CBIC Instruction No. 01/2022-GST dated 7-1-2022**. However, genuine cases like typographical errors in details reported in GSTR-1 or GSTR-3B and non-declaration in GSTR-1 correctly though tax is paid in will not be covered for such recovery.

In cases of mismatch between supply reported in GSTR-1 and tax paid through GSTR-3B, departmental officers shall send communication seeking explanation from the taxpayer for short payment. Recovery action should be initiated **only if** the difference or short payment of tax is not properly explained.

13. Recovery of GST dues before expiry of appeal period CBIC issues instructions:

CBIC has issued **Instruction No. 01/2024-GST dated 30-5-2024** to its officers whereby certain guidelines have been provided on exercise of power under section 78 to recover dues even before expiry of the time period three months filing appeal. As per the instructions, for time recovery even before expiry of appeal period, jurisdictional Deputy/Assistant Commissioner should place the matter before Principal Commissioner/Commissioner along with justification and the later should provide specific reasons in writing for proposing to recover the amount within such period (less than 3 months).

High risk to government revenue possibility of winding up of business, poor financial condition and likely initiation of insolvency proceedings under IBC could be some of the reasons.

Specific apprehension should exist, and the power should not be used in a mechanical manner.

Liability of various persons to pay the amount payable:

1. **Transfer of Business [Section 85]*:** In the case of a business transfer, both the taxable person and the transferee are *jointly and severally* liable for the tax, either wholly or to the extent of the transfer. If the transferee continues to operate the business, then the transferee shall be responsible for paying the tax.
2. **Agency Business [Section 86]:** When an agent supplies or receives taxable goods on behalf of their principal, both the agent and the principal are *jointly and severally* liable for the tax.
3. **Amalgamation or Merger of 2 or more companies [Section 87]:** In the event of an amalgamation or merger of two or more companies, if the order is effective from a date earlier than the order date, the companies involved are liable to pay tax for any goods or services supplied or received during that period. Further, the companies will be treated as distinct entities until the order date, after which their registration certificates will be canceled.
4. **Private Company in Liquidation [Section 88]*:** If a private company is being wound up, the liquidator must inform the Commissioner within 30 days. If tax, interest, or penalty cannot be recovered from the company, every director during that period is *jointly and severally* liable. However, if a director can prove that non-recovery was not due to gross neglect or breach of duty, they are not liable.
5. **Directors of Private Companies [Section 89]:** Every director of a private company during a period when tax, interest, or penalty is due for the supply of goods or services is jointly and severally liable, unless they can prove that non-recovery was not due to gross negligence. However, if the private company converts to a public company, directors are not liable for taxes due during the private company period unless personal penalties are imposed.
6. **Partners of a Firm [Section 90]:** If a firm is liable to pay tax, interest, or penalty, both the firm and each partner are *jointly and severally* liable. A retiring partner must inform the Commissioner of their retirement date; otherwise, they remain liable until such notice is received.
7. **Death of a Taxpayer [Section 93]**:** If a business continues after the death of a person liable to pay tax, their legal representative is responsible for the tax, interest, or penalty due. If the business is discontinued, the legal representative must pay the dues from the deceased's estate to the extent possible.
8. **Partition of HUF/AOP or Dissolution of Firm [Section 93]**:** In the case of partition among members of a Hindu Undivided Family (HUF) or dissolution of a firm, each member or partner is *jointly and severally* liable for tax, interest, or penalty due up to the time of partition or dissolution.

***Note 1:** It is irrelevant that whether amount is determined before transfer/liquidation & remained unpaid or is determined later/ in the course of liquidation.

****Note 2:** It is irrelevant that dues are determined before his death/partition/dissolution & remained unpaid or is determined after his death/partition/dissolution.



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EASE OF DOING BUSINESS AND GST REGISTRATION PROCESS, AMENDMENTS AND CANCELLATION

REGISTRATION THRESHOLD LIMITED

- Higher threshold for registration for sale of goods – Rs.40 lakhs – For normal category states Rs.20 Lakhs-
- For special category states for providing services -- Rs.20 lakhs – For normal category states Rs. 10 lakhs – For special category state

GST AND REGN IMPACT-EASE OF DOING BUSINESS

- Input tax credit on purchases: - Input credit means at the time of paying tax on output, you can reduce the tax you have already paid on in
- puts. It will result in reduction of costs thus increasing working capital to the already cash-strained BUSINESSES ESPECIALLY NEW START-UP BUSINESSES
- Online simpler procedure under GST: -The entire GST process starting from registration to filing returns and payment of GST tax is online.
- Simpler Taxation: - The burden of tax compliance is considerably reduced for smaller businesses. Instead of multiple taxes, they pay single tax that is GST

BASIC RULES OF REGISTRATION

- Taxable event under GST is supply of goods or services Aggregate turnover in case of supply of goods > Rs40 Lakhs
- Special Category States, Aggregate turnover > Rs 20 Lakhs
- What is Aggregate turnover?
- Taxable Supplies + Exempt Supplies + Exports + Inter State Supplies Taxable supplies does not include Alcoholic Liquor for human consumption
- Specific exclusion of inward supplies liable under reverse charge basis
- Aggregate turnover in case of supply of services > Rs 20 Lakhs Special Category States, Aggregate turnover > Rs 10 Lakhs. IN ONE STATE YOU EXCEED IN ALL OTHER STATES REGISTRATION WILL BE REQUIRED

REGISTRATION – EASE OF DOING BUSINESS

- Registration is required in the State from which he makes taxable supply
- GST is destination-based tax, tax goes to the “destination” State but registration is in the “Origin

State.”

DEATH ETC. AND REGISTRATION

1. Cancellation of Registration Due to Death of Sole Proprietor:

- the event of the death of a sole proprietor, legal heirs have the authority to apply for the cancellation of GST registration. This application is to be submitted electronically through FORM GST REG-16 on the common portal. The reason for cancellation, in this case, must be specified as the “death of sole proprietor.”

2. Registration Liability of Transferee/Successor

- When a business undergoes a change in ownership, as is often the case with the unfortunate demise of the proprietor, the transferee or successor is mandated to register under the GST Act. According to the provisions outlined in sub-section (3) of section 22 of the CGST Act, the transferee must initiate the registration process by electronically submitting FORM GST REG-01 on the common portal. Notably, the reason for registration should be explicitly stated as the “death of the proprietor.”

3. PARTNERSHIP WHERE THERE WERE TWO PARTNERS ONLY

- In view of death of one of the partners, the partnership itself stands dissolved statutorily, by operation of law, in view of provision under [Section 42\(c\)](#) of the [Indian Partnership Act, 1932](#).
- INFORM THE DEPARTMENT WITHIN 30 DAYS IN THE FORM PRESCRIBED
- IF YOU DO NOT INFORM PENALTIES MAY BE LEVIED.
- REGISTRATION OF THE FIRM STANDS CANCELLED. THE REMAINING PARTNER CAN TAKE FRESH REGISTRATION

PROCEDURE FOR REGISTRATION – IN BRIEF

- A person, though not liable to be registered under LAW BUT may get himself registered voluntarily, and all provisions of this Act, as are applicable to a registered person, shall apply to such person.
- A person who have more than 1 registration, each such registrations, be treated as distinct persons. (MEANS SEPARATE TAXABLE UNIT)
- Requirement of PAN/TAN (under Sec 51) is mandatory for grant of registration.
- NON-RESIDENT may get the registration without PAN & TAN under sub-section (1) as per the prescribed documents.

GOODS AND SERVICES

- YOU MUST SPECIFY 5 GOODS OR COMMODITIES IN THE REGISTRATION APPLICATION.
- HSN CODE – INDIA USES OVER 1700 ENTRIES IN HSN – YOU MUST STATE HSN CODE FOR YOUR COMMODITIES OR BUSINESSES
- UP TO 10 BANK ACCOUNTS CAN BE ADDED – DO NOT DO BUSINESS WITHOUT A DISCLOSED BANK ACCOUNT – ITS IS ILLEGAL

NO LIABILITY TO REGISTER

- Liability to register shall not arise where:
- A Person engaged exclusively in the business of supplying non-taxable supplies, or wholly exempt supplies
- Person is an agriculturalist, for the purpose of agriculture as per law.

Registration Process

- Application to be filed online within 30 days
- Application can also be filed through TRP or FC
- Scanned documents to be attached
- Status of the Application – Acceptance / Query

- Rejection only after giving opportunity of being heard
- Rejection of Application under CGST will be a deemed rejection under SGST and vice-versa
- Deemed Approval, if no query

Casual Taxable Persons

- Registration Valid for 90 days with maximum 90 days more.,
- Advance tax to be deposited in cash.

REJECTION REGISTRATION APPLICATION

- It is important to note that a Tax Official cannot reject a registration application without seeking a Notice for Seeking Clarification
- This is feature built into the system to ensure the taxpayer is provided the opportunity to clarify the details of their application
- If the tax official rejects the application, a Rejection Order is passed and emailed to the taxpayer – WHICH IS APPEALABLE UNDER THE LAW

Reasons for Cancellation

- Transfer of business or discontinuation of business
- Change in the constitution of business. (Partnership Firm may be changed to Sole Proprietorship due to death of one of the two partners, leading to change in PAN)
- Persons no longer liable to be registered under Schedule V (Except when he is voluntarily registered)
- Where registered taxable person has contravened provisions of the Act
- A composition supplier has not furnished returns for 3 consecutive tax periods/ any other person has not furnished returns for a continuous period of 6 months
- Non-commencement of business within 6 months from date of registration by a person who has registered voluntarily.
- Where registration has been obtained by means of fraud, wilful statement or suppression of facts, the registration may be cancelled with retrospective effect.

Cancellation of Registration

- Cancellation can be done by Proper Officer **Suo moto** or on application made by the registered taxable person
- Retrospective cancellation in case of fraud, wilful misstatement or suppression of fact
- Liability to pay tax before the date of cancellation will not be affected
- Cancellation under CGST Act will be deemed cancellation under SGST Act and vice-versa
- Substantial penalty in case registration obtained with fraudulent intentions
- Notice of hearing and opportunity of being heard is a MUST before cancellation.
- Application for revocation or cancellation of registration shall be made within 30 days of date of service of cancellation order.

AMENDMENTS IN REGISTRATION – YOU CAN

***CORE FIELDS – APPROVAL OF PROPER OFFICER REQUIRED**

- Name of Business
- All Stakeholders' Details
- Principal Place of Business
- Must provide valid reason & prescribed documents
- Requires approval from Tax Official

***All other fields**

- No reasons or documents required
- No approval required from Tax Official
- You can do edit non-core fields online on your own!

AUTHORISED SIGNATORIES

- AUTHORISED SIGNATORIES CAN BE ADDED- BUT DONOT FORGET TO ADD PRIMARY AUTHORISED SIGNATORY

BASIC RULES OF REGISTRATION

- Transfer of Business
- Transferee to obtain registration in case of Sale
- Succession
Amalgamation or De-merger

COMPULSORY REGISTRATION – NO THRESHOLD LIMITS APPLICABLE

- Interstate suppliers
- Casual Taxable persons
- Persons taxable under the reverse charge basis
- Non-resident taxable persons
- Persons required to deduct TDS under GST
- Persons required to deduct TCS under GST
- Input Service Distributors
- Persons making a sale on behalf of someone else whether as an Agent or Principal.
- Every E-commerce Operator who provides a platform to suppliers to make supply through it.
- Suppliers who supply goods through E-commerce operator who is liable to collect tax at source.
- Online Service Providers providing service from outside India to a nonregistered person in India.



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EXPORT OF GOODS AND ITS IMPLICATIONS

That the exports are inter-state supplies and have been defined by Section 7 of IGST Act, 2017.

As under:

Section 7(5) Supply of goods or services or both, —

- a) when the supplier is located in India and the place of supply is outside India;
- b) to or by a SEZ developer or a SEZ unit for **authorized purpose**;

Further section 16 stipulates that any supplies to the recipient as above shall be Zero-rated supplies which has been defined as under:

16(1) "Zero rated supply" means:

- a) export of goods outside India
- b) to SEZ unit or Developer for **authorised operations**

In normal course since Zero-Rated supplies are inter-state supplies so tax i.e. IGST thereon is required to be paid. However, subject to provision of section 16 of IGST Act and Section 54 of CGST Act.

Reason for Zero Rating:

Under GST regime tax is charged by the supplier at the time of supply, which is collected and therefore passed on by way of ITC to the Recipient being RTP who can avail the same and therefore such GST does not constitute part of cost.

But **in case of zero rated supply** the **recipient is not liable to pay GST** nor can he avail such GST on the inward supplies. It is pertinent Zero-rated supply does not mean that rate of tax applicable is 0% but herein recipient being located at place out of India (including SEZ) is entitled to pay '0%' GST to the supplier.

In absence of provision Zero rate supplies the tax so charges and not collected would become cost of export.

This does not mean that such supplies do not attract any tax but the supplier get the concession of not paying tax or avail refund of ITC accumulated as a result of Zero-rated supply or pay tax and claim refund subject to certain conditions as stipulated in section 16 of IGST Act and section 54 of CGST Act.

Refund of tax

Any person claiming refund of any tax may make an **application before** expiry of **two years** from **relevant date** in prescribed manner.

Where Relevant Date is**a) If goods exported out of India by:**

- i. Sea or Air when which vessel containing such goods leaves India.
- ii. Land when such goods pass Indian frontier
- iii. Post date of dispatch of goods by post office outside India

b) Deemed Exports date when return relating thereto is furnished;**c) Special Economic Zone the due date for furnishing return u/s 39 i.e. GSTR-3B**

S. No.	If Refund is more than Rs. 2 Lakhs	S. No.	If Refund is less than Rs. 2 Lakhs
	Application to be accompanied with		Application to be accompanied by
	Documentary evidences to establish that		
1	Refund is due And		
2	Amount claimed as Refund was paid And		
3	Incidence of Tax had not been passed to any person And	1	Declaration that Incidence of Tax had not been passed to any person

On receipt application for refund

proper officer on being satisfied may make an order to refund whole or part amount within 60 days from the date of receipt of application. Further 90% of the refund to be issued on a provisional basis within 7 days of acknowledgment Final settlement after document verification.

Special Conditions

No refund shall be issued

- If refund less than Rs. 1000
- Such zero rated supply of goods is subjected to export duty
- Drawback in respect of central tax
- Claims refund of the IGST paid on such supplies.
- Specified class of person to make zero-rated supplies at only against payment of IGST.
- Specified class of good and services to be supplied at zero-rate only against payment of IGST.

<u>Types of Zero-Rated Supplies</u>	
Without IGST Payment	With IGST Payment
Export out of India	Export out of India
Exporters must:	Exporters must:
File LUT (GST RFD-11) before exporting.	Charge IGST on invoice.
Not charge IGST on invoice.	File shipping bill as refund application.
Claim ITC refund in GST RFD-01 within 2 years.	Ensure export manifest submission for auto-refund processing.
Ensure foreign exchange realization within 1 year for services, else refund must be repaid.	File GSTR-3B to link transactions in GST & Customs portals.
Supplies to SEZ	Supplies to SEZ
Supplier must:	Supplier must:
File LUT (GST RFD-11) before exporting.	Charge IGST on invoice.
Not charge IGST on invoice.	Claim IGST refund in GST RFD-01.
Obtain proof-of-admittance from SEZ Officer.	Ensure SEZ does not claim ITC on IGST paid.
Claim ITC refund in GST RFD-01.	
Refund	Refund
Apply in Form GST RFD-01 within 2 years.	Shipping Bill = Refund Application.
90% provisional refund issued within 7 days.	Processed automatically by Custom portal
Final refund processed after verification.	if GSTR-3B and Export General Manifest (EGM) are filed
Fill LUT Detail on Portal while applying	Refund is issued for each Invoice = shipping bill
Annexed all the prescribed documents as an evidence pertinent to refund	Details of Shipping Bill and Invoice in GSTR-1 should match with ICEGATE
	Refund in both the cases is directly credited to the bank account.
<u>Tax Invoice to indicate</u>	
"Supply meant for export/supply to SEZ unit or SEZ Developer for authorised operations under letter of undertaking without payment of integrated tax",	"Supply meant for export/supply to SEZ unit or SEZ Developer for authorised operations on payment of integrated tax"
AS MENTIONED IN SECTION 31 READ WITH RULE 46	
<u>LUT</u>	
All Exporters except those prosecuted for tax evasion exceeding ₹2.5 crore are eligible to apply for LUT which has validity of One F.Y. Renewable annually. To be applied online which is approved on real time basis with ARN.	
AS MENTIONED IN SECTION 54(3) READ WITH RULE 96A	

POINTS TO BE CONSIDERED IN EXPORTS

1. Time Limit For Export Of Goods

That Rule 96A(1)(a) of IGST Act and FEMA, 1999 stipulates that goods shall be exported within 3 months from date of export invoice which can be extended by The Commissioner.

In case of default

Recovery of the refund so claim along with interest u/s 50 of CGST Act, 2017 within 15 days of expiry of above time limit.

2. Time Limit For Realization Of Payment From Overseas Buyer

Provision to section 16 (3) read with Rule 96B of IGST Act, 2017 refers to FEMA, 1999 for the purpose of realization of the value of goods exported out of India.

Which being

A. P. (DIR SERIES 2019-20) Circular No. 27, April 01, 2020:

Normal Provisions for the Period within which export value of goods/software/services to be realized:

- (1) The amount representing the full export value of goods/software/services exported shall be realised and repatriated to India **within nine months from the date of export** which being from the *date of shipment of goods* or **the date of invoice** whichever is later

Extension: Above period can be extended by RBI on an application made to that effect.

SEZ units and providers *are also required to observe the above provisions as per FEMA, 1999.*

3. Non Realisation Of Export Value

If export value is not realised as above then

In case of such default

Recovery of the **refund** so claim along with **interest u/s 50 of CGST Act, 2017** *within 30 days* of expiry of above time limit.

Situations

100% payment is not received	100% of Refund claimed to be paid with Interest
Part of Payment not received	Proportionate Refund to be paid with Interest thereon.

4. Return Of Exported Goods

If goods exported out of India, are returned by the overseas buyer due to any reason

Than it will be deemed that no export of goods had taken place and all the export benefits shall have to be reversed.

This would result in non-receipt of export realisation from the Overseas Buyer consequently non-compliance of section 16(3) read with rule 96B of IGST Act, 2017.

Liability under GST

Recovery of the refund so claim along with interest u/s 50 of CGST Act, 2017

5. Change In Value Of Export:

A. Upward Revision Of Prices Of Exported Goods:

Circular No. 226/2024 – Refund of Additional IGST Due to Price Revision

- Upward price revisions: Exporters can claim refund for additional IGST
- Downward price revision: Excess refund must be returned with interest.

Rule 89 (1B) , 89 (2)(bb) & 96 of CGST Act, 2017 read with Circular No. 226/20/2024-GST

Filing of refund claim for additional IGST paid on account of upward revision of prices of exported goods:

Debit Note is required to be raised for the amount of upward revision of price of exported goods subsequent to exports with payment of IGST.

That **debit note as per section 34** of CGST Act, 2017 shall be raised **for additional consideration and IGST thereon.**

The said procedure is to be followed in both situations whether zero rated supply had been made with payment of IGST or without payment of IGST under LUT.

Exporter to

- 1. Pay IGST along with interest on said amount**
- 2. file an application for refund of such additional IGST paid**

which shall be **issued only subsequent to the issuance of refund of IGST arising at the time of export of goods** as per section 54 read with rule 96 and such application shall be moved within of period of two years as mentioned in section 54 explanation 2 clause (a)

Herein, even though IGST had been charged on **debit note at the time of upward revision in the prices** of exported goods but the **refund thereof cannot be claimed through custom portal as there is no actual export of goods.**

Interest received on delayed payment as per agreement but within the purview of FEMA shall be treated as above.

B. Downward Revision Of Prices Of Exported Goods:

Credit Note is required to be raised for the amount of downward revision of price of exported goods subsequent to exports **with** payment of IGST. The said amount would represent deduction in output tax liability on export of goods consequent to downward revision of prices of exported goods. The said amount also represents excess payment of tax and excess receipt of refund at the time of export of goods.

That is **credit note as per section 34** of CGST Act, 2017 shall be raised **For reduced consideration and IGST thereon.**

Exporter to

- 1. Pay IGST equivalent to amount of excess refund claimed and interest thereon as per section 50 of CGST Act, 2017.**

The above said situation may arise due to Cash Discount arising from supply of defective goods or any other reasons.

C. Exchange Fluctuation:

The price of goods sought to be exported are normally fixed in foreign currency, say USD

In case of exports there emerges two dates

Date of recording export sales	Price of USD
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Date of realization of exports	Price of USD
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The difference between the price of USD on the above said dates leads to a difference which is termed as exchange fluctuation.

Herein, importantly the receipts in USD are same.

So, there is no resultant upward and downward revision of price of exported goods as specified in Rule 89 (1B), 89 (2)(bb) & 96 of CGST Act, 2017 read with Circular No. 226/20/2024-GST.

Herein, the difference would be the INR value of USD prevalent to the above said two dates.

Further that the above said difference is not due to outward supplies of forex that is USD in normal course of business. As the number of USD on both dates are same.

This would be deemed as financial gain / loss and not subject to GST.

6. Advance Payments against Exports

There is no GST on receipt of such advance as incidence of tax arises at the time of supply of Goods Sec 12 of CGST Act, 2017.

Further, Notification No. **CGST Notification No.66/2017 w.e.f. 15.11.2017** further stipulates that advance received against supply of goods shall not be considered as outward supplies and therefore shall not be subject matter of GST.

So, tax would arise only on export (zero-rated supplies) of goods as per sec 12 of CGST Act, 2017 and sec 16 read with section 7 of IGST Act.

7. Interest paid on Advance Payments against Exports

No Tax on interest paid being financial transaction not covered by definition of supply

As per the definition of Goods given u/s 2(52) and definition of services given u/s 2(102) of CGST Act, 2017 money is excluded. So, any amount paid towards usage of money received as advance is exempt.

8. Export of Exempted Goods and application of Section 17 (2)

It is worth appreciating that if the **exempted goods** (Supply whereof constitutes NIL-Rated supply) are exported (Supply whereof constitutes Zero-Rated supply) even then the ITC pertinent to such exempted goods shall become available as per section 16 of IGST Act.

Further that the unutilised accumulated ITC pertinent to taxable inward supplies related to and arising due to export of such exempted goods can be claimed as refund complying provision of section 54 of CGST Act, 2017.

Eg.

Salt being *exempted* goods as per sec 11 of CGST Act, 2017 and outward supply thereof constitutes exempted supply and is not subject to tax. Therefore, when **supplied** in the domestic market, Bill of Supply is raised and no tax is levied, charged or collected. In other words, no tax is leviable at the time of sale as applicable rate of tax thereon is NIL and therefore is *termed as NIL-Rated supply*. No ITC is available.

However, if salt is exported out of India then **All ITC pertinent to** taxable inward supplies related to and arising due to export of *salt* is **available. It is pertinent that herein salt is exempted and so rate of tax thereon is NIL and so No ITC is available when sold in domestic market. But However, when salt is exported out of India, it becomes Zero-Rated supply and loses the colour of being a NIL rated.**

And

- Tax invoice shall be raised without charging tax thereon and against LUT (Bill of Supply will not be raised since exempted/ Nil-Rated in domestic market and Zero-Rated at the time of export.
- And claim refund of unutilised ITC arising from exports of salt.

- Availment of ITC would result in accumulation of unutilised ITC and same can be claimed as refund.
- Herein, since the item is not taxable so the invoice thereof cannot be raised on payment of IGST since it would not result in refund from the custom authority.

Herein, the refund has to be applied in RFD-01 to Proper Officer on common portal.

Herein

All ITC shall become available because the outward supplies herein are zero rated and not nil rated supplies as Laid down in section 11 subject to section 16 read with section 17(5) of CGST Act, 2017.

ITC shall not be available in respect of domestic Nil-Rated supplies as per sec **17(2) of the CGST Act**.

However, ITC shall be available in respect of Zero-Rated supplies and restrictions as per sec **17(2) of the CGST Act** is not applicable.

9. Restriction of ITC blocked u/s 17 (5) of CGST Act, 2017

It needs to be appreciated that ITC pertinent to certain inward supplies of goods and services is blocked as per section 17(5) i.e. not available to discharge the output tax liability arising from outward supplies of goods or services including Zero-Rated.

It is pertinent to mention that the same is required to be availed and then reversed while furnishing GSTR-3B of the tax period to which such inward supplies of goods or services have been received.

Meaning thereby such ITC cannot be availed and claimed as refund as part of unutilised ITC accumulated due to zero-rated outward supplies of goods.

E.g.

if the 100% EOU make purchase of car for personal use or incurs expenses of repairs or insurance pertinent to car ITC not available as per section 17(5) so no refund.

10. Treatment Of Duty Credit Scrips On Exports

Such schemes may be in form of Ro DTEP, or any other form which are export incentives,

- Exporters to indicate on Shipping Bill whether or not they intend to claim Ro DTEP on export.
- The scrips have validity of 24 months from its creation.
- Receipt of such duty credit scrips from the custom does not come within the purview of GST and hence not taxable receipt.

11. Treatment On Sale Of Scrips Under Gst:

- Such Scrips are goods as per section 2(52) of CGST Act
- Sale thereof is outward supplies as per section 7(1)
- Outward supplies of such scrips are exempted supplies so no GST is leviable.

That relevant extracts of notification pertinent thereto is being reproduced herein as under:

Notification no. 35/2017 dt. 13.10.2017

However, transfer of such scrips are exempted as per section 11(1) as per entry no. 122A inserted vide Notification no, 35/2017 dt. 13.10.2017 amending schedule of exempted items annexed with Notification no. 2/2017-CTR dt. 28-06-2017 and HSN thereof being 4907.

Circular No. 46/20/2018-GST dated June 06, 2018

Further para No. 7 of the above Circular, clarifies that the duty credit scrips attract Nil GST under S.NO. 122A of Notification No. 2/2017-Central Tax (Rate) dated 28.06.2017.

- On transfer of scrips as above exempted supply i.e. NIL rated supplies becomes part of total turnover of an export unit.
- Further since the said supply is an exempt supply so the bill of supply is required to be raised
w. r. t. outward supplies of such scrips as per section 31(3).

Note That

On transfer of scrips as above exempted supply i.e.

- **NIL rated supplies** becomes part of total turnover of an export unit.
- Comply with provisions section **17(2) Read with Rule 42 of CGST Act, 2017** required to reverse proportionate ITC of the common services **ONLY**.

Such as ITC of Audit Fees, Professional Charges, etc.

12. GST on Goods taken for Trade Fair/Exhibitions abroad

Circular No. 108/27/2019-GST dated 18.07.2019.

Any Person participating in Trade Fair/ Exhibition outside India can take/export goods for Trade Fair/ Exhibition_and_sale outside India.

a. The movement of goods out of India as above shall

- i. be accompanied by a delivery challan raised as per Rule 55 of the CGST Rules.
- ii. not constitute supply of goods under GST as there is no consideration received and therefore not zero-rated supply resulting to non-execution of a bond or LUT, under section 16 of the IGST Act.

- b. The above goods shall either be **sold or brought back within six months** from date of removal. In default thereto. Tax Invoice on expiry of above period is to be issued for Quantity Not brought back Or Not Sold abroad No benefit of zero rating including refund shall be available.

c. Sale of such goods abroad'

fully or partially *within the period of six months* Tax Invoice to be issued *in respect of quantity sold which shall become zero-rated supplies at the time of issuance thereof*. The said invoice shall be raised on without payment of IGST against LUT only.

However, refund in relation to such supplies shall be available only as refund of unutilized ITC on export against LUT And not as refund of IGST on export made on payment of IGST Refund thereto to be applied through RFD-01 on common portal:

- d. Good brought back to India within the period of six months. No Tax Invoice required to be issued** The sale proceeds of the items sold are repatriated to India in accordance with the Foreign Exchange Management (Realisation, Repatriation, and Surrender of Foreign Exchange) Regulations, 2000.

13. Goods taken abroad for re-import for certain Job Work, etc. Capital Goods taken abroad for re-import for repair, etc.

In both the above cases there is no transfer of ownership / property in the goods and herein only the possession of goods as above is transferred under an agreement and the ownership whereof remains with the sender.

So, there is no supply of goods under GST as there is no transfer of property in goods consideration received there is only transfer of possession of goods and would be re-imported in India.

That FEMA, 1999 permits the above movement with prior approval and on the condition that such exporters shall produce Bill of Entry within one month of re-import of goods so sent out of India.

Therefore, there is no supply, no zero-rated supply and no implementation of sec 16 read with sec 7 of IGST Act.

14. Insurance Claim

If in default of payment from overseas buyer

The exporter **gets claim** from ECGC or other insurance company (Indian or foreign company) on account of non-receipt of export realisation from the Overseas Buyer even then it shall be deemed **export proceeds had not been received**.

That the situation remains unchanged whether claim is received in INR or Forex.

GST Liability on Non-Receipt of Payment

Recovery of the **refund** so claim along with **interest u/s 50 of CGST Act, 2017**

Loss Of Shipment In Transit

If goods exported are lost in transit

Than there are two situations:

- a. Non -receipt of export realisation from the Overseas Buyer

Being non-compliance of section 16(3) read with rule 96B of IGST Act, 2017

Consequence being

Recovery of the refund so claim along with interest u/s 50 of CGST Act, 2017

- b. Availment of ITC of inward supplies pertinent to goods lost in transit.**

To Reverse ITC so availed as per section 17(5)(h) of CGST Act, 2017.

Treatment of Insurance Claim under GST

That such insurance claim is actionable claim as laid down **In the Union of India v. Sarada Mills (1972) case, the Hon'ble Supreme Court held** that the actionable claim would include a right to recover insurance money.

And further

As per **section 2(52)** of the CGST Act, 2017 every kind of including actionable claims is covered within the definition of "goods".

Read with

Para 6 of Schedule III to the CGST Act, 2017, actionable claims other than lottery, betting, and gambling are not treated as supply of goods or services.

On a conjoint reading it is evident that the receipt of such claim does not constitute supply of goods or services hence does not come under the purview of GST.

Treatment of GST on Insurance Premium on Goods to be exported

GST paid on such insurance premium is available as goods are meant for export in furtherance of business as per Section 16 (2) and therefore does not come u/s 17(5).



C.A. Rashmi Jain

7 YEARS OF INDIA'S GST-STAKEHOLDERS EXPERIENCES AND WAY AHEAD

DGPG and CAIT Conference

5 April 2025

THE INVOICE MANAGEMENT

HSN -Mistake & Mandatory Requirement

E invoice – Consequences

E- way Bill – precautions

Bill to ship to Transaction

IMS - Functionality

HSN Mistake & Mandatory Requirement

HSN: Harmonized System of Nomenclature code for goods or services

Importance of identification of correct HSN:

Required to determine the rate of tax applicable, examine the availability of exemptions.

Source to search or identify the HSN:-

The best source to identify the HSN is Government GSTN portal .

Mandatory requirement of HSN :

- Up to 5 Cr. – 4 Digit , B2 C optional
- Above 5 Cr. – 6 Digit

Mistake in identification of correct HSN:

• In case of composite and mixed supply .composite supply -HSN of Principal supply will applicable Mixed

Supply - highest rate HSN will applicable.

- Renting of Machinery: Supply of Service but while in movement HSN of Machinery (Goods) will applicable

Consequences of incorrect classification:

Wrong tax payment, high payment of tax , ITC not available , Can attract Penalty for non-compliance. Interest payment

E invoice – Consequences

1. **E-invoicing is a system** - supplier upload invoice details on Government Invoice Registration Portal (IRP), Invoice Reference Number (IRN) generated .It is only the intimation not preparation of invoice.

2. **Documents Covered** – B2B, B to Govt, Export Invoice, RCM, CN/DN

3. **Exemption to RTP**- Govt. Dept., Local Authority, insurer, Banking and Non-banking co . GTA Passenger Transportation service, Admission fees in cinema

4. **Preparation of invoice** in triplicate in case of goods and in duplicate in case of services shall not apply to an e-invoice.

5. **No need to carry the physical copy of e- invoice**, production of the Quick Response (QR) code having an embedded Invoice Reference Number (IRN) electronically is sufficient, correct information will flow in GSTR returns, auto population of data in GSTR1

E invoice – Consequences - 2

Can a E-invoice generated be deleted or cancelled?

- The invoice reference number once generated cannot be deleted.
- The E invoice can be cancelled by the generator within 24 hours of generation.

Consequences of non-compliance of e invoicing:

- Supply without generating E- invoice may attract penalty under section 122, detention under section 129 (E-way Bill) etc.
- Holding up invoice payments/ITC claims may be denied to Recipient.
- Non-generation of e-invoices or incorrectness could also affect the e-way bills, affecting logistics and causing delays in delivery.

E- way Bill – precautions

Movement of goods to and from transporter place of business

Part B is not required to be furnished:

Goods are transported for a distance of up to 50 kms within the State or Union territory, from the place of business of the consignor to the place of business of the transporter for further transportation , from the place of business of the transporter finally to the place of business of the consignee.

Movement of goods for weighment:

where the goods are being transported upto a distance of twenty kilometres 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.

Interstate transfer of goods by principal to Job worker

E-waybill to be generated irrespective of the value of the consignment.

No

Important to Note:

1. Responsibility lies on Supplier or Recipients who causes the movement to ensure that Part B is updated i.e vehicle number is furnished.

2. If Parts B not updated within 15 days then unique number generated will be expired. Part A only invoice details E way slip generated. To generate E way bill part B vehicle detail needed.

3. Supplier required to get Registration at transporter godown as additional place of business, in case where Goods are stored at transporter Godown

Bill from Dispatch from Transactions:

Bill-from: The person or organisation sending the goods. Dispatch-from: The place from where the goods are

dispatched (Godown /warehouse). E waybill prepared accordingly.

Bill-to-Ship-to Transactions

Bill-to-ship-to transactions result in twin-supply transactions, they require a single EWB since the movement is singular.

Section 10 (1)(b) IGST Act

Bill to ship to Transaction

Lays down the provisions to determine the place of supply in cases where there is a tripartite arrangement of supply, commonly known as bill-to-ship-to transactions or where there is a sale of goods in transit by the original buyer. Goods are delivered by the supplier to the recipient at the instruction of a third person, the place of supply is the principal place of business of such third person and not of the actual recipient.

In this provision recipient is the one who actually collects the Goods and third person is the one who enjoys privity with the supplier to be able to direct him to deliver the goods and make payment to the supplier.

For such cases by virtue of explanation to section 16(2)(b), it is deemed that the third person has received the goods

.ITC will be available to the third person on whose instructions the goods are delivered to the recipient.

In a typical “bill-to-ship-to” model of supply, three persons are involved in the transaction, namely:

- A (third person) who has ordered B to send goods directly to C.
- B (supplier) is the person who is sending goods directly to C on instructions 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

IMS System

Invoice Management System (IMS) is a facility in GST system, where the invoices/records saved/filed by the supplier in GSTR-1/1A/IFF, can be:

- Accepted,
- Rejected or
- kept pending

by recipients in order to correctly avail ITC.

The Said functionality is expected to reduce errors in claiming ITC and improve the reconciliation between the ITC which is availed in form GSTR 3 B vis-a- vis the ITC which is available in form GSTR 2 B .

“Pending action” is not allowed in IMS in case of Credit Notes



Adv. Virender Yadav

First Appeal Mechanism Against an Order or Decision passed by the GST Officer of Trade and Tax Department

Taking considered note from the previous article published in first edition of the E. Legal Newsletter under the title “Article-GST Litigation” duly written by our Mentor and Ld. Advocate & chief editor Shri Sushil Verma Ji, I wish to put forward my legal thought on the redressal of grievances of the litigants. My respectful, I feel pleasure and privilege to have this opportunity to articulate my views and thought to redress the disputes and litigations through exercising the statutory right of appeal given under sec.107 of Central Goods and Services Act 2017. The said article clearly depicts the scenario of instances of arising litigations from the inappropriate orders and/or decisions of Adjudicating Authorities or GST officers due to lack of interpretation skills and paucity of legal knowledge of authorities on the subject. For sake of convenience of better understanding I would like to quote the closing and relevant remarkable para of the article at the end as followings:

“Therefore, in the days to come, the scope of legal disputes and litigations are going to increase as the law will be implanted to its full swing, including audit, periodical and annual returns, full-fledged procedural compliances etc.”

The statement of author positively addresses us that there would be forthcoming days when we would face the numerous litigations on the GST issues. There are already expressed a lot of issues by our learned chief editor like, issues on Assessments, Classifications, Registrations, scope of Supply, input tax credit, refunds and many more. It is humbly submitted that all the disputes arose under the issues discussed above can be resolve only by exercising the right under the statue and/or getting directions by way of writs to be issued by High Courts and Apex Court of the country.

Introduction

As the term Appeal has not been defined anywhere in the Central Goods and Services and Rules thereof. In general parlance an Appeal means a request to

higher authority to resolve the grievance of any person or taxpayer who is aggrieved from the decision or order of his subordinate authority. Section 107 of the Central Goods and Services Tax (CGST) Act, 2017 allows anyone unhappy or aggrieved person with a decision or order by a GST officer or an adjudicating authority he has to file an appeal before Appellate Authority constituted under the CGST Act. This provision provides statutory right to the persons and helps taxpayers to redress the disputes/litigation at the primary stage and it also explains quid pro quo remedy to file an appeal before the appropriate statutory authority. It also depicts the rules and conditions to be followed to exercise the right of appeal.

At the outset we would like to know the stages of appeals in the Central Goods and Services Tax Act 2017 as following:

Appeal Against Orders of	Appropriate Forum
Adjudicating Authority [Sec.2(4)]	Appellate Authority (Sec.107)
Appellate Authority [Sec.2(8)]	Appellate Tribunal (Sec.112)
Appellate Tribunal [Sec.2(9)]	High Court (Sec.117)
High Court	Supreme Court (Sec.118)

It is pertinent to mention here that it is kept open for the taxpayer or any persons whose is aggrieved by the decision or order of adjudicating authority or first appellate authority and not having any appellate remedy against its orders and/or decision he may kindly approach directly to the Hon'ble High Court/s and Supreme Court under Article 226 and 32 of the constitution of India by way of writs thereof.

Root of the Litigation: Impugned Order of Adjudicating Authority

I feel no hesitation to say that litigation just starts from erring application of minds by way of inappropriate orders/decision and creation of injustice by the Adjudicating Authorities of Central or State Governments. Therefore, at the outset we would know the jurisdictional power of the adjudicating Authority mentioned under Sec. 2(4) CGST Act 2017 which provides that any authority, appointed or authorized to pass any order or decision under this Act. **but does not include the following authorities** to pass and order/decision for adjudication of tax demands, interest and penalties under the GST Laws:

- The Central Board of Indirect Taxes and Customs,
- Revisional Authority,
- Authority for Advance Ruling,
- Appellate Authority for Advance Ruling,

- The National Appellate Authority for Advance Ruling,
- The Appellate Authority,
- The Appellate Tribunal
- Anti-Profiteering Authority

It is foremost duty to vigilant litigator to check the competence of authority who has passed the impugned order having competence and jurisdiction for the adjudication of the case and duly signed, sealed and stamped the said order by that officer concerned.

Assessment Orders which are appealable by the aggrieved persons

1. Assessment order under section 62
2. Assessment order under section 63
3. Assessment order under section 64
4. Acceptance or Rejection of application filed under section 64 (2)
5. Withdrawal of Assessment order issued under section 64
6. Order under section 125 imposing penalty
7. Order under section 122, 125, 127 for dropping the penalty proceedings
8. Order against remanded cases (DRC-07 also in case of remand under 73./74/76)
9. Assessment Order for the proceedings under section 73/74 /76
Summary of the order
10. Order for dropping the proceedings under section 73/74
11. Rectification of Order
12. Order of rejection of application for rectification
13. Order for dropping proceedings U/s 63

Enforcement Order which are appealable by the aggrieved person

1. Order of Demand of Tax and Penalty
2. Order of Confiscation of Goods and Conveyance and Demand of Tax, Fine and Penalty for proceeding under section 129
3. Order of Confiscation of Goods and Conveyance and Demand of Tax, Fine and Penalty for proceeding under section 129
4. Order of Rectification/modification in DRC-08 for MOV-09/11
5. Order of Rectification/modification in DRC-08 for MOV-09/11

Non- appealable decisions and orders.

It is pertinent to mention here that Sec.121 specifically bars the right of appeal of orders against one or more by an officer of central tax of the following matters namely: —

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

Where right of appeal against non-appealable decision or order is not available, the taxpayer shall be at liberty to exercise remedy of Writs under Article 226 and Article 32 of the Constitution. the writs can be issued by Hon'ble High Court and Apex Court against these types of orders of the Commissioner.

Key Provision of First Appeal under Sec.107 of CGST Act 2017

Aspect	Description
Who Can file appeal	Anyone aggrieved by a GST officer's decision or order.
Time Limit	File within 3 months communication of impugned order; <i>1-month extension only allowed with valid sufficient reasons thereof. (MP Steel case is bible for dealing condonation)</i>
Pre-Deposit	Full admitted tax + 10% of the disputed amount (max INR 25 crore).
Forms	File appeal using Form GST APL-01. Receive acknowledgment via GST APL-02.
Relevant Rules	Rule 108 (filing procedure) and Rule 109 (appeal disposal process).

Q. Whether an Appeal can be filed after the end of limitation period of three months?

Yes, Appeal can be filed after three months but within one from date of completion of three months limitation. This is not the right of the supplier but the discretion of the appellate authority subject to the satisfaction of showing sufficient reasons for the condonation of delay.

Q. Whether the period of one month delay can be mandatorily condoned by the first appellate authority?

No, First Appellate Authority is not bound to condone the delay of one month but subject to the production of sufficient reasons thereof.

Q. Whether first Appellate Authority has the discretion to condone the delay beyond the specified periods Three months and extended one month?

No, First Appellate Authority is not empowered to condone such delay in any circumstance. The limitation periods are sacrosanct for the revenue authorities.

Documents Required for Filing an Appeal

Document Type	Purpose
Original Order from GST Officer	To identify the decision being challenged.
Proof of Pre-Deposit Payment	Shows compliance with the mandatory payment requirement.
Supporting Evidence (Invoices, etc.)	Strengthens your case with relevant data.
Copy of GST Returns	Verifies compliance with GST filings

Important Points to Kept in Mind Before Filing Appeal before the first Appellate Authority: - As we know that this is the first grievance redressal authority where the appeal is going to be filed within limitation period and jurisdiction. Therefore, it is important to keep in mind before filing that each and every allegation leveled or wrong appreciation of law in impugned order must be properly rebutted para wise in the petition at this stage. Since in the later stage no court shall take your prayer in the consideration if not raised at the earlier stage. No documents shall be kept in abeyance so that the merit of evidence must be appreciated by the appellate authority accordingly. It is also pertinent to keep in mind that limitation period of appeal filing is exhausted; there is no other higher court reluctant to give the remedy.

KEY JUDGMENTS IN THE SUPPORT OF ADJUDICATION

Case Name	Key Takeaway
Brand Equity Treaties Ltd v. UOI	Filing appeals within the time limit is crucial; delays can lead to rejection
Amarendra Singh Sherawat v. UOI	Pre-deposit is mandatory and cannot be waived.
ITC Limited v. Comm. of CGST	Orders from the Appellate Authority must be clear and detailed.

How to File an Appeal: Step-by-Step

Steps	Actions
1.	Prepare Your Appeal: Write reasons for disagreement and gather documents
2.	File the Appeal: Log into the GST portal and submit Form GST APL-01. Attach supporting documents and pay the pre-deposit.
3.	Get Acknowledgment: Receive Form GST APL-02 as confirmation.

4.	Attend Hearings: Present your case before the Appellate Authority.
5.	Receive Final Order: Appellate Authority will issue their decision within 1 year (extendable by 6 months).

Conclusion

Filing an appeal under Section 107 before the first appellate authority is a straightforward and regular process if we follow the prescribed steps and rules as per the provision CGST rules. This structured mechanism helps taxpayers and tax payers to seek fair resolutions for their disputes arising from orders or decision of adjudicating authorities. With careful drafting and preparation, timely action, and with proper documentations. By applying proper and strategic approach towards the case, this can be represented and contested very effectively securing the real justice for the taxpayers and litigants.

LEGAL TRIVIA

Caveat – A caution registered with the public court to indicate to the officials that they are not to act in the matter mentioned in the caveat without first giving notice to the caveator.

Dictum – Statement of law made by the judge in the course of the decision but not necessary to the decision itself.

Ex post facto – Out of the aftermath. Or after the fact.

According to Wikipedia, It is a law that retroactively changes the legal consequences (or status) of actions that were committed or relationships that existed before the enactment of the law. In criminal law, it may criminalise actions that were legal when committed; it may aggravate a crime by bringing it into a more severe category than it was in when it was committed; it may change the punishment prescribed for a crime, as by adding new penalties or extending sentences; or it may alter the rules of evidence in order to make conviction for a crime likelier than it would have been when the deed was committed.

Ipsa facto – By the mere fact.

In promptu – In readiness.

In lieu of – Instead of.

Jus in personam – Right against a specific person (or party). Read under section 43 of the Indian Evidence Act.

Jus in rem – Right against the world at large. Read under section 43 of the Indian Evidence Act. Related: What Is Right in Rem and Right in Personam?

Jus naturale – Natural law. Or in other words, a system of law based on fundamental ideas of right and wrong that is natural law.

Jus Necessitatis – It means a person's right to do what is required, for which no threat of legal punishment is a dissuasion.

Mutatis Mutandis – With the necessary changes having been made. Or with the respective differences having been considered.

Obiter dictum – Things said by the way. It is generally used in law to refer to an opinion or non-necessary remark made by a judge. It does not act as a precedent.

In other words, Obiter dictum means "that which is said in passing," an incidental statement. Specifically, in law, it refers to a passage in a judicial opinion that is not necessary for the decision of the case before the court. Such statements lack the force of precedent but may nevertheless be significant.

Per curiam (decision or opinion) – By the court. In other words, the decision is made by the court (or at least, a majority of the court) acting collectively.

Persona non grata – A person who is unacceptable or unwelcome.

Opposite of *persona non grata* is **persona grata**.

Also, in diplomacy, a *persona non grata* is a foreign person whose entering or remaining in a particular country is prohibited by that country's government.

Quantum meruit – What one has earned. Or the amount he deserves.

In other words, A reasonable sum of money to be paid for services rendered or work done when the amount due is not stipulated (specified, written down) in a legally enforceable contract.

Ratio decidendi – Principle or reason underlying a court judgement. Or the rule of law on which a judicial decision is based.

Res Judicata – A matter already judged. In other words, it means *a matter finally decided by a competent court on the basis of merits*. Read under section 40 of the Indian Evidence Act

Sine qua non – “Without which nothing”. An essential condition. A thing that is absolutely necessary. Basically a component of an argument that, if debunked, causes the entire argument to crumble.

. In-camera proceedings– These are the proceedings where no third party is present or involved other than the parties concerned..

PRINCIPLE OF RESJUDICATA

Res judicata is a legal doctrine that prevents a court from re-examining a case that has already been decided. It's based on the principle that no person should be tried twice for the same cause.

PRINCIPLE OF CAUSA PROXIMA

Causa proxima is a Latin phrase that means "the immediate cause" or "the proximate cause". It's a key principle in insurance law and tort law that's used to determine the cause of an event that led to a loss or harm.

HEYDON'S RULE – IMP TOOL FOR INTERPRETATION OF LAW

Heydon's Rule, also known as the Mischief Rule, is a rule of statutory interpretation that helps judges determine the intent of a law. It was established in England in 1584 in the landmark case Heydon's Case.