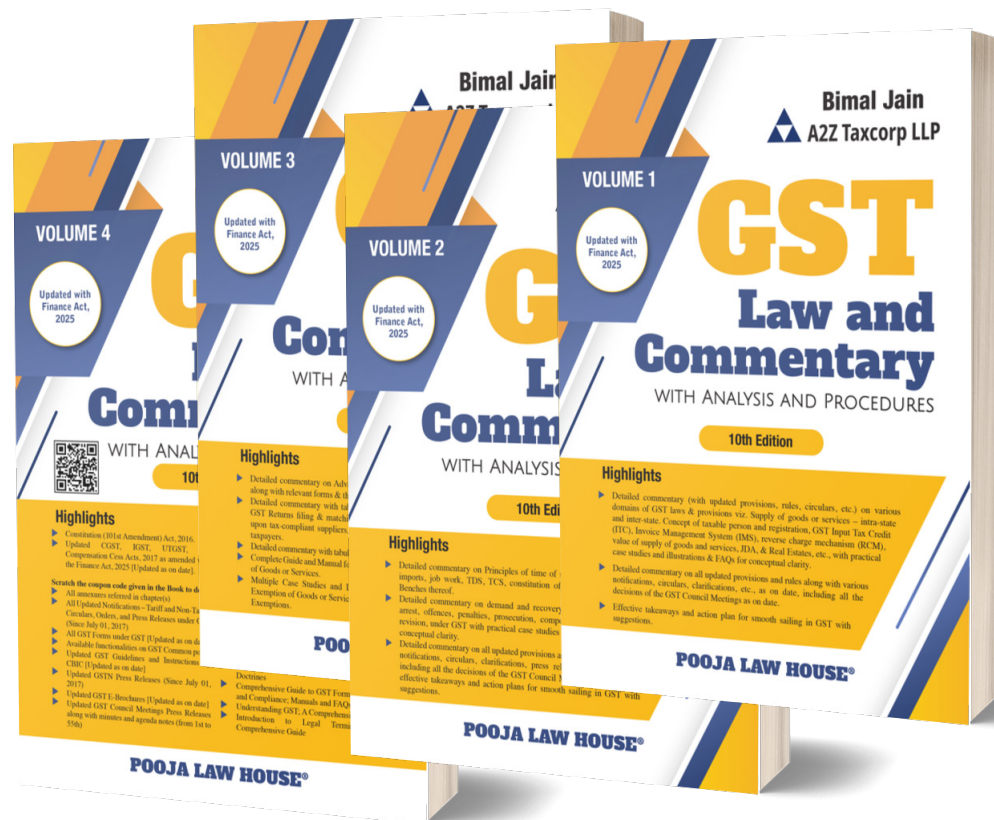




Walk-through of **GST** Law and Commentary with Analysis and Procedures

by **Bimal Jain and A2Z Taxcorp LLP**

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Set of 4 Volumes



A2Z TAXCORP LLP
Tax and Law Practitioners



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Complete Bare Act updated with Finance Act, 2025, for easy and quick reference



► **Judicial outlook:**

There should be direct link between supply and consideration

The phrase “in respect of, in response to, or for the inducement of” used in the above definition of ‘consideration’ as given in sec 2(31)(a) of the CGST Act, means there must be a direct link between the supply of the service and the consideration received- AAAR, Karnataka in *Re: Midcon Polymers Pvt. Ltd.* [2021 (46) G.S.T.L. 97].

Consideration received by a charitable organisation from a third party to fulfil CSR obligation is not grant and hence taxable

A charitable organization, supplying services such as installation of solar pumps and lights and construction of toilets directly to villages, on behalf of a Corporate entity to fulfil its CSR obligation is taxable supply as there is a direct link between money received and specific services provided in lieu thereof – AAR Delhi in *Re: Indian Institute of Corporate Affairs* [2019 (29) G.S.T.L. 78 (A.A.R. - GST)]. This case is affirmed by AAAR, Delhi in [2023 (74) G.S.T.L. 293 (Del.)].

Supply of services by a charitable trust to orphan children and destitute women is not liable to pay GST

The AAR, Maharashtra in *Re: Jayshankar Gramin Va Adivasi Vikas Sanstha* [2022 (57) G.S.T.L. 148 (A.A.R. - GST - Mah.)] held that the definition of “consideration” includes grants and excludes only “subsidy”. The profit motive is not important, if there is supply of goods and services, made for a consideration in furtherance of business, then it is liable for GST as the activities for which the grants are received are not charitable activities.

However, the AAAR, Maharashtra upon filing of appeal in *Re: Jayshankar Gramin Va Adivasi Vikas Sanstha* [2023 (69) G.S.T.L. 410 (App. AAR – GST – Mah)] reversed the order passed by the AAR and held that the Appellant being granted a fixed amount of money from the Government of Maharashtra under the “One stop crises Centre Scheme” for taking overall care of the destitute women who are litigating divorce, or homeless, or the victims of domestic violence is in the nature of subsidy as the said activities undertaken by the Appellant are clearly for the welfare of these destitute women, and thereby, serving the mankind in general. Hence the said transaction is not a supply and therefore the question of taxability does not arise.

Note: It is pertinent to note that the supply of goods/services by a government entity to Central Government, State Government, Union territory, local authority or any person specified by Central Government, State Government, Union territory or local authority, against consideration received from Central Government, State Government, Union territory or local authority in the form of grants is exempt vide SI. No. 150 of notification no. 02/2017 – central tax (rate) dated 28.06.2017 (as amended from time to time), and SI. No. 9C of notification no. 12/2017 – central tax (rate) dated 28.06.2017 (as amended from time to time).

Meaning of ‘in respect of’

In the taxation laws the phrase “in respect of” is synonymous with the expression “on”- Hon’ble SC in *State of Madras v. M/s Swastik Tobacco Factory* [1966] AIR 1000 (SC)].

► **Judicial outlook on term ‘Consideration’ – Pre-GST:**

Recovery of cost cannot be made liable for service tax

The Court noted that there is no service provider-service recipient relationship between the appellant and the developers, as regards the advance development cost, because common facilities developed belong to none (held in trust) and the benefit is derived by all the 13 developers, as well as the public. Hence the same is not liable to Service Tax. Further, in *Ahmedabad Management Association v. Commissioner of Service Tax, Ahmedabad - 2009 (14) S.T.R. 171 (Tri.-Ahmd.)*, CESTAT, Ahmedabad held that a **quid pro quo has to be established before levying Service Tax**. Thus, the **recovery of cost cannot be made liable to Service Tax** – CESTAT, Delhi in *Delhi International Airport Limited v. Commissioner of CGST, Delhi* [2019 (24) G.S.T.L. 403 (Tri. - Del.)]¹.

¹ This case is appealed to Hon’ble SC and still pending [Appeal Admitted in 2020 (33) GSTL J131 (SC)].



Topic-wise legal jurisprudence
and all Departmental
clarifications for one-point of
complete reference



Binding effect of Board's circular on Department was also discussed in *Collector of Central Excise, Vadodara v. Dhiren chemical Industries [2002 (139) E.L.T. 3 (S.C.)]* and *Union of India v. Arviva Industries (India) Ltd. [2008 (10) S.T.R. 534 (S.C.)]*.

► **Departmental clarification:**

Circular no. 245/02/2025-GST dated 28.01.2025 (relevant extract):

Applicability of GST on facility management services provided to Municipal Corporation of Delhi (MCD) Headquarters

6.4. However, in the instant case, MCD is receiving the services of facility management such as housekeeping, civil maintenance, furniture maintenance and horticulture agency for the upkeep of their office. These services are not supplied in relation to performing any functions entrusted to a Municipality under Article 243W of The Constitution of India. Such services are not covered under the scope of entry at sr. no. 3A of the notification no. 12/2017-CTR dated 28.06.2017.

6.5. Thus, as recommended by the 55th GST Council, it is hereby clarified that GST is applicable on the services provided by facility management agency to MCD, Delhi HQ for upkeep of its head quarter building at applicable rates as these services are not covered under the scope of entry at sr. no. 3A of the notification no. 12/2017-CTR dated 28.06.2017.

7.4.2 Printing contracts – whether supply of goods or services

► **Departmental clarification:**

Circular no. 11/11/2017-GST dated 20.10.2017 (relevant extract):

Nature of products	Principal supply	Classification in GST
Printing of books, pamphlets, brochures, annual reports, and the like, where only content is supplied by the publisher or the person who owns the usage rights to the intangible inputs while the physical inputs including paper used for printing belong to the printer	Supply of printing (of the content supplied by the recipient of supply) is the principal supply	Supply of service falling under SAC 9989
Supply of printed envelopes, letter cards, printed boxes, tissues, napkins, wall paper etc. falling under Chapter 48 or 49, printed with design, logo etc. supplied by the recipient of goods but made using physical inputs including paper belonging to the printer	Predominant supply is that of goods and the supply of printing of the content (supplied by the recipient of supply) is ancillary	Supply of goods falling under respective headings of Chapter 48 or 49 of the Customs Tariff

► **Judicial outlook:**

Printing of leaflet to convey message is a form of service

Leaflet manufactured from own raw materials with contents supplied by customer and supplied on sale account to customers on principal to principal basis - Primary nature of product (leaflets) being to convey the message which is a form of service, such supplies constitute supply of service - AAR, Daman, Diu & DNH in *Re: Temple Packaging (P.) Ltd. [2018 (17) G.S.T.L. 350 (A.A.R. - GST)]*. The case was affirmed on AAAR, Daman and Diu [Order No. 1/AAAR/TEMPLE/DMN/UTGST/20-21/17096-21 dated 05.10.2021].

Printing of trade advertising material constitutes 'composite supply' with 'printing' as 'principal supply'

Where the applicant is providing service of printing trade advertising material by loading the content in a digital image printer, prints the image on the PVC material, and supplies the printed material, constitutes 'composite supply' where service of printing constitutes principal supply and goods supplied, having no other use than displaying the printed material is ancillary supply – AAR, West Bengal in *Re: Macro Media Digital Imaging Pvt. Ltd. [2019 (29) G.S.T.L. 33 (A.A.R. - GST)]* - upheld by AAAR, West Bengal in [2020 (32) G.S.T.L. 657 (App. A.A.R. - GST - W.B.)] and further clarified that supply of printing trade advertising



All clarifications summarised
topic-wise



- **Where no reciprocal relationship exists**, and the plaintiff alleges violation of a legal right and seeks damages or compensation from a court to make good the said violation (in closest possible monetary terms) it **cannot be said that a ‘supply’ has taken place**.
- **The supply doctrine does not contemplate or encompass a wrongful unilateral act or any resulting in payment of damages**.
- It is the quality of the payment and not the method used to determine its measure that determines its character namely whether its ‘consideration’ or ‘damages’.
- **Payment of royalty as compensation for unauthorized occupation of the suit premises is to remedy the violation of a legal right, and not as payment of consideration for a supply**.
- No GST is payable on the payment of rent (royalty) which is in the nature of damages in the instant case.

Financial assistance received in lieu of services to be provided by Indian subsidiary company to holding company in Germany is a supply of service

The financial assistance to be received by the Indian subsidiary is a ‘consideration’ for supply and agreeing to do some acts under contract for the activity of imparting training to students, unskilled workers etc. by an Indian Subsidiary pursuant to financial-aid received under Germany’s economic programme for developing countries is ‘supply of service’ classifiable under SAC Heading 999792 vide *notification no. 11/2017 - central tax (rate) dated 28.06.2017* (services rate notification), which pertains to “Agreeing to do an Act”- AAR, Maharashtra in *Re: M/s Prettl Automotive India Private Limited [Order No. GST-ARA-20/2019-20/B-59 dated 15.12.2020]*.

No GST leviable on penalty ordered by District Magistrate as penalty amount does not satisfy definition of consideration

Penalty cannot be considered as consideration for any service, as penalty is paid for contravention of certain provision of law made for general public and the penalty imposing/collecting agency is not providing any service to person paying penalty. Penalty is not in nature of quid pro quo, which is an essential ingredient, therefore, penalty does not satisfy the definition of ‘consideration’ as contained in GST law and thus the penalty paid is not liable to GST - AAAR, Uttarakhand in *M/s Purewal Stone Crusher [Order no. 03/18-19/21.01.2019 dated 21.01.2019]*.

Out of the court settlement will not be leviable to GST

If there is no supply under the GST regime, then no GST shall be payable, and hence any additional payment received by way of compensation through any award/order is also not chargeable under GST, hence, a mutually settled amount, in the nature of compensation, by way of out of the court settlement payable to sub-contractor is not liable to be taxed under GST. – AAR, Tamil Nadu in *M/s TPSC (India) Pvt. Ltd. [TNAAR Order No. 10/2023 dated 08.07.2023]*.

No Service Tax on liquidated damages recovered for not adhering to time limits mentioned in contract

No service tax is to be imposed on liquidated damages recovered for not adhering to time limits mentioned in the contract as the same would not be covered in ‘Declared Services’ mentioned under sec 66E(e) of the Finance Act- CESTAT, Chennai in *Neyveli Lignite Corporation Ltd. v. Commissioner of Customs, Central Excise & Service Tax, Chennai [Final Order No. 41702-41706 of 2021 in ST Appeal Nos. 41666, 41747 of 2016 & Ors., dated 26.07.2021]*.

Author’s Note:

In our view, the levy of GST on recovery of compensation/penalty/damages depends upon the “test of supply” i.e., one has to satisfy that recovery of compensation/penalty/damages in itself is a supply, then only GST could be levied on it in terms of the insertion of sub-clause (1A) in sec 7 of the CGST Act read with omission of sub-sec (d) of sec 7(1) of the CGST Act (vide CGST Amendment Act, 2018).

The Schedule II of the CGST Act is confined to define as to what constitute supply of goods or supply of services and does not defines supply per se. Schedule II of the CGST Act has to be read along with sec



Topic wise discussion on pre-GST settled legal jurisprudence with Author’s Note on its implications and applicability in GST regime



double taxation, there cannot be a levy of IGST separately on the component of ocean freight paid by the foreign seller to the foreign shipping line.

► **Judicial outlook:**

Importer to pay IGST on ocean freight even if it is part of CIF value of imported goods

Importer liable to pay IGST on ocean freight paid on imported goods under reverse charge mechanism in terms of *notification no. 10/2017-integrated tax (rate)* and *notification no. 8/2017-integrated tax (rate)* irrespective of ocean freight component having been part of CIF value of imported goods. Authority for Advance Ruling does not have jurisdiction or authority to dwell into as to whether levy of IGST under RCM was without jurisdiction or on constitutional validity of Notifications issued – AAR, Madhya Pradesh in *Re: E-DP Marketing Private Limited [2019 (26) G.S.T.L. 436 (A.A.R. - GST)]*. Similar ruling was made by AAR, Andhra Pradesh in *Re: Indian Potash Ltd. [2020 (32) G.S.T.L. 553 (A.A.R. - GST - A.P.)]*.

RCM applicable on ocean freight even if importer has paid IGST on CIF value of imported goods

In terms of *notification no. 08/2017-integrated tax (rate)* and *notification no. 10/2017-integrated tax (rate)*, importer is required to pay IGST on ocean freight. Liability to pay exists even if importer had already paid IGST on CIF value imported goods. Credit of IGST paid can be taken on the basis of invoice/challan issued – AAR, Uttarakhand in *Re: Bahl Paper Mills Ltd. [2018 (14) G.S.T.L. 306 (A.A.R. - GST)]*.

Plea that levy of IGST on ocean freight amounts to double taxation not acceptable

Undisputedly levy of IGST on ocean freight is taxable under reverse charge under S. No. 10 of *notification no. 10/2017-integrated tax (rate)*. Plea that since value for the purpose of IGST on imported goods is inclusive of aforesaid freight, levy of IGST separately would amount to double taxation, not acceptable. There are two separate transactions, one in respect of imported goods and other in respect of aforesaid services. However, this ruling is subject to decision by Gujarat High Court where issue is sub judice – AAR, Karnataka in *Re: M.K. Agro Tech Pvt. Ltd. [2020 (32) G.S.T.L. 148 (A.A.R. - GST - Kar.)]*.

Gujarat HC strikes down notifications levying IGST on ocean freight:

The constitutional validity of levy of IGST on ocean freight was challenged in various petitions being filed with different high courts. This aspect was challenged before the Gujarat HC in *Mohit Minerals Pvt. Ltd. & ors. v. Union of India & ors. [C/SCA/726/2018 dated on 23.01.2020]*, wherein the HC in a batch of petitions has declared *notification no. 8/2017 – integrated tax (rate) dated 28.06.2017* and entry 10 of *notification no. 10/2017 – integrated tax (rate) dated 28.06.2017* as **ultra vires** the IGST Act, as the notifications lack legislative competence.

The above decision of Gujarat HC was relied by the Calcutta HC in *M/s Adani Wilmar Limited [W.P. 13330 of 2019 dated 12.03.2020]*. HC held that challenge in this petition is covered by the judgment of Division Bench of Gujarat HC in Mohit Minerals case, wherein view taken was that no tax is leviable under the IGST Act, on ocean freight for services provided by a person located in a non-taxable territory by way of transportation of goods on a vessel from a place outside India upto customs station of clearance in India. Notification impugned in this writ petition has been declared unconstitutional by the judgment. A point of law stands decided by a Division Bench of Gujarat HC and the challenge appears to be covered thereby.

Landmark Judgment of SC to end all such disputes:

No IGST under RCM on ocean freight paid for CIF import

Hon'ble SC, in the case of *Union of India v Mohit Minerals Pvt. Ltd. [2022 (61) G.S.T.L. 257 (S.C.)]*, held that:

- The importer of goods will be considered as the recipient as he is the ultimate beneficiary even though shipping service is provided by foreign shipping line to foreign exporter in CIF contract
- The supply of services provided by the foreign shipping line to the foreign exporter in a CIF contract, would necessarily be “made” to the Indian importer, who would then be considered as a “recipient” under the definition of sec 2(93)(c) of the CGST Act.
- The assessee is liable to pay IGST on the ‘composite supply’, comprising of supply of goods and supply of services of transportation, insurance, etc. in a CIF contract. If there is a separate levy on the



Complete coverage of all landmark judgments of pre-GST regime with their corresponding implications in GST regime



► **For the period 01.07.2017 to 31.12.2020:**

M/s ABC is eligible to opt composition scheme as inter-state supply of service is not barred, provided other conditions are fulfilled.

► **W.e.f. 01.01.2021:**

M/s ABC is ineligible to opt composition scheme as inter-state supply of goods as well as services are barred for opting composition scheme, even if other conditions are fulfilled.

10.4.4 Supplies through e-commerce operator

► **W.e.f. 01.10.2023:**

(d) who is engaged in making any **supply of goods or services through an electronic commerce operator** who is required to collect tax at source under sec 52 of the CGST Act.

► **For the period 01.01.2021 to 30.09.2023:**

(d) who is engaged in making any **supply of goods or services through an electronic commerce operator** who is required to collect tax at source under sec 52 of the CGST Act.

► **For the period 01.07.2017 to 31.12.2020:**

(d) who is engaged in making any supply of **goods** through an electronic commerce operator who is required to collect tax at source under sec 52 of the CGST Act.

The GST Council in its 47th meeting, recommended to facilitate e-commerce for micro enterprises, and to allow unregistered suppliers and composition taxpayers to make the intra-state supply of goods through e-commerce operators such as Amazon, Flipkart etc., subject to certain conditions.

In pursuance to the above recommendations, below amendments had been made vide the Finance Act, 2023:

► **W.e.f. 01.10.2023:**

It is pertinent to note that, the Finance Act, 2023 w.e.f. 01.10.2023, has removed the reference of 'goods' from sec 10(2)(d) of the CGST Act, so as to remove the restriction imposed on the registered persons engaged in supplying goods through electronic commerce operators from opting to pay tax under the Composition Levy.

In other words, w.e.f. 01.10.2023 the composition dealer engaged in the supply of goods would be able to make intra-state supply of such goods through e-commerce operator.

► **For the period 01.01.2021 to 30.09.2023:**

A registered person engaged in making any supply of goods or services through an electronic commerce operator who is required to collect tax at source under sec 52 of the CGST Act was barred from availing the benefit of composition scheme.

In terms of sec 52 of the CGST Act read with *notification no. 52/2018 – central tax dated 20.09.2018* and *notification no. 12/2018 – union territory tax dated 28.09.2018**, specified electronic commerce operator covered therein, has to collect tax at source (TCS) at the rate of 0.5% under CGST Act and 0.5% under SGST/UTGST Act on the net values of taxable supplies, while making payment to the supplier. If an inter-state transaction is being done through such e-commerce operator, he will collect TCS at 1% of tax under IGST Act read with *notification no. 02/2018 – integrated tax dated 20.09.2018*.

It means that any supplier who are supplying goods or services online through e-commerce platforms like Flipkart, Amazon, Urban Company etc., where payment is routed through such e-commerce operators, would get their payment after deduction of 1% (w.e.f. 10.07.2024 at the rate of 0.5%) tax by such operators. The provisions of TCS under sec 52 of the CGST Act were made effective only w.e.f. 01.10.2018 vide *notification no. 51/2018- central tax dated 13.09.2018*.

* In UTGST, additional notification has been issued vide *notification no. 13/2018 – union territory tax dated 28.09.2018* notifying rate of TCS as 1% in case of net value of inter-Union Territory (without legislature) transactions, which otherwise are covered by IGST notification.



Period-wise bifurcation of provisions for easy digest



11.3.1.3 Eligible amount of ITC shall be credited to electronic credit ledger

‘Electronic credit ledger’, in terms of sec 2(46) of the CGST Act, means the electronic credit ledger referred to in sec 49(2) thereof. Further, in this regard sec 49(2) of the CGST Act provides that the input tax credit as self-assessed in the return of a registered person shall be credited to his electronic credit ledger on provisional basis.

11.3.1.4 Multiple examples for utilization of credit: Pre vs. Post amendment**Example 1:****Pre-amendment: Prior to 01.02.2019**

Output liability		Input Tax Credit			To be paid in cash
		CGST	SGST	IGST	
		1,00,000	1,00,000	1,00,000	
IGST	1,20,000	(10,000)	(10,000)	(1,00,000)	NIL
CGST	90,000	(90,000)			NIL
SGST	90,000		(90,000)		NIL
Output liability		Input Tax Credit			To be paid in cash
		CGST	SGST	IGST	
		1,00,000	1,00,000	1,00,000	
ITC balance		NIL	NIL	NIL	

Notes:

- For payment of tax on account of IGST, CGST and SGST, firstly ITC on account of IGST, CGST and SGST respectively, shall be utilized.
- Remaining payment on account of IGST (INR 20,000) has been made by firstly utilizing leftover of CGST credit and then from leftover of SGST credit.

Post-amendment: W.e.f. 01.02.2019

Output liability		Input Tax Credit			To be paid in cash
		CGST	SGST	IGST	
		1,00,000	1,00,000	1,00,000	
IGST	1,20,000	(10,000)	(10,000)	(1,00,000)	NIL
CGST	90,000	(90,000)			NIL
SGST	90,000		(90,000)		NIL
ITC balance		NIL	NIL	NIL	

Note: There is no change in example 1 before and after amendment.

Example 2:**Pre-amendment: Prior to 01.02.2019**

Output liability		Input Tax Credit			To be paid in cash
		CGST	SGST	IGST	
		1,00,000	1,00,000	1,00,000	
IGST	80,000			(80,000)	NIL
CGST	60,000	(60,000)			NIL
SGST	60,000		(60,000)		NIL
ITC balance		40,000	40,000	20,000	



“ Practical examples on all important topics - Pre Vs. Post amendment to provide clarity while ensuring comparative analyses and its implications ”

Tax period	Eligible ITC as per the provisions of Chapter V of the CGST Act and the rules made thereunder, except rule 36(4)	ITC availed by the taxpayer (recipient) in GSTR – 3B of the respective months	Invoices on which ITC is eligible and uploaded by the suppliers till due date of Form GSTR-1 for the tax period of September, 2020	Effect of cumulative application of rule 36(4) on availability of ITC.
Feb, 2020	300	300	270	Maximum eligible ITC in terms of rule 36 (4) is 2450 + [10% of 2450] = 2695. Taxpayer had availed ITC of 2750. Therefore, ITC of 55 [2750-2695] would be required to be reversed as mentioned in para 3.4. above.
March, 2020	400	400	380	
April, 2020	500	500	450	
May, 2020	350	350	320	
June, 2020	450	450	400	
July, 2020	550	550	480	
August, 2020	200	200	150	
TOTAL	2750	2750	2450	
ITC Reversal required to the extent of 55				
September, 2020	500	385	350	10% Rule shall apply independently for September, 2020

In the Form GSTR-3B for the month of September, 2020, the taxpayer shall avail ITC of 385 under Table 4(A) and would reverse ITC of 55 under Table 4(B)(2)

Example 2: After insertion of capping limit (Assume October 2021 - 5%)

ABC Pvt. Ltd. has made certain purchases (say 1000 no. of purchase invoices) in the month of October 2021. Let us assume that corresponding GST paid on the purchases is INR 20 lakhs, out of which INR 2 lakh is ineligible credit u/s 17(5). Further, details w.r.t invoices appearing in GSTR-2A along with calculation of ITC that can be availed in October 2021 is given as under:

October 2021				
Particulars	Invoices (in nos.)	Eligible ITC (in INR)	Ineligible ITC (in INR)	ITC Claimable (in INR)
Invoices appearing in Form GSTR-2A (on 11.11.2021)	800	14,00,000	2,00,000	14,00,000
Invoices not appearing in GSTR-2A (on 11.11.2021)	200	4,00,000	-	70,000 (5% of 14,00,000 or 4,00,000 whichever is lower)
Actual ITC that can be claimed in the month of October 2021	1000	18,00,000	2,00,000	14,70,000
ITC carried forward to the subsequent tax period				3,30,000

Now, suppose, during the month of November 2021, ABC Pvt. Ltd. makes further purchases (say 1200 new invoices) and the corresponding GST paid on the same is assumed to be INR 24,00,000, out of which INR 1,00,000 is ineligible.

Further, details w.r.t invoices appearing in GSTR-2A (new as well as those pertaining to left over of October 2021) along with calculation of ITC that can be availed in November 2021 is given as under:



Numerical examples to explain computations of eligible and ineligible ITC



Meaning of immovable property

In the absence of any definition of immovable property in GST, we need to resort to the meaning as contained under any other laws of the land. Sec 3(26) of the General Clauses Act, 1897, defines the term immovable property to include the following:

- Land,
- Benefits to arise out of land, and
- Things attached to the earth or permanently fastened to anything attached to the earth.

While interpreting the expression 'attached to earth', sec 3 of the Transfer of Property Act, 1882, explains the same as including:

- Things rooted in the earth, as in the case of trees and shrubs;
- Things embedded in the earth, as in the case of walls or buildings; or
- Things attached to what is so embedded or the permanent beneficial enjoyment of that to which it is attached.

Combined reading of both the provisions, reveals that, broadly, anything which is permanently fastened/ attached to the earth or to the things embedded in the earth, constitutes immovable property.

ITC available on goods or services used for construction of plant and machinery on own account

Refer discussion made above while discussing sec 17(5)(c) of the CGST Act

ITC available if the value of goods or service is not capitalised

Refer discussion made above while discussing sec 17(5)(c) of the CGST Act

In nutshell, the situations in which credit of goods or services received by a taxable person for construction of an immovable property, is available can be summarised as under:

Situations where ITC of goods or services for construction of immovable property is available:
• When supplied for construction of plant and machinery
• When supplied for construction of immovable property but not on own account/ own use
• When the value of goods or services used for re-construction, repairs etc. of immovable property, is not capitalised in the books of account of the recipient

Various case studies on ITC of goods or services for construction of immovable property

To better understand implications of clause (d) of sec 17(5) of the CGST Act, let us apply the same in various business scenarios as under:

Business transaction	Availability of ITC	Remarks
M/s Ajay constructions received a big order for construction of mall in Mumbai. They procured various goods like cement, steel etc., on which GST is charged.	✓	M/s Ajay constructions can avail ITC of GST paid on goods as construction of immovable property is not on their own account.
XYZ Ltd. purchased tiles for constructing its registered office in Delhi. The supplier charged GST on invoice raised to XYZ Ltd.	✗	Blocked credit in GST as goods purchased for construction of immovable property on own account.
XYZ Ltd. purchased tiles for getting renovation of its registered office in Delhi. The supplier charged GST on invoice raised to XYZ Ltd. Value of tiles was shown as revenue expense in books of account of XYZ Ltd.	✓	ITC available as not capitalised in the books of accounts and only restriction lies for re-construction, renovation, additions or alterations or repairs to immovable property, to the extent of capitalisation.



“ Pre Vs. Post amendment case studies on each item of the blocked credit list - one of the crucial item while examining eligible GST ITC ”

Non-refundable deposits

- The proviso to the definition of consideration provides clarity on the treatment of deposits - Deposits, given in respect of the supply of goods or services shall not be considered as payment made for the supply unless the supplier applies the deposit as consideration for the supply.
- **Hence, refundable deposit will not be considered as consideration for supply of goods or services.**
- But it may be noted that forfeiture of deposit money (though decided to be refundable initially) on cancellation of agreement may not necessarily represent as consideration for “agreeing to.....tolerate an act or a situation, or to do an act”, unless the requisites of sec 7(1) are met.

Subsidies

- Any subsidy, whether given by the Central or State Government(s), will not be included in consideration.
- Therefore, any subsidies from any other persons i.e., private parties, etc. will form part of consideration if it is in relation to supply of goods or services or both.

Nexus with supply

- Consideration can also flow from any other person who is not the recipient of the goods/services. But, the phrase “in respect of, in response to, or for the inducement of” means there must be a direct link between the supply and the consideration.

Detailed explanation as to meaning and scope of term ‘consideration’ is discussed in chapter 5 dealing with taxable event – supply.

Types of consideration

It is important to be noted that definition of ‘consideration’ is not just restricted to the amount paid in money form but extends also to cover consideration in-kind. Accordingly, types of consideration can be summarised as under:

Monetary consideration which includes currency, cheque, promissory note, letter of credit, draft, pay order, traveller’s cheque, money order, postal remittances, vouchers & coupon cards and other similar instruments but does not include currency which is held for its numismatic value.

Non-monetary consideration which includes goods or services supplied as payment, for example in a barter (including part exchange) and in the case of services, this may include giving up a right, refraining from doing something or agreeing to tolerate an act, etc.

12.3 BASIS OF VALUATION IN GST REGIME – TRANSACTION VALUE

Chargeable sec 9 of the CGST Act¹ states that “there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates.....”.

15. Value of taxable supply.

- (1) The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.
- (2) The value of supply shall include—
 - (a) 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;

¹ Similar provisions are also contained under sec 7 of the UTGST Act, sec 5 of the IGST Act and corresponding provisions under the respective states’ GST Act.



Detailed commentary on each sub-topics for complete clarity



12.8.2.1 Taxability in case of specified actionable claim which includes lottery, betting, gambling, horse racing, casino and online money gaming

While drawing reference from rate notifications to determine applicable rate of GST on specified actionable claim which includes chance to win in lottery, betting, gambling, horse racing, casino and online money gaming, for which valuation principles are contained in rule 31A, 31B and 31C of the CGST Rules, it can be observed that both 'goods' and 'services' rate notification covers these activities in the following manner:

- **Supply of goods** - Notification no. 01/2017 – central tax (rate) dated 28.06.2017/ notification no. 01/2017-integrated tax (rate) dated 28.06.2017.

Schedule IV (CGST+SGST/UTGST or IGST @28%		
S. No.	Chapter, Section or Heading	Description of goods
*[227A	Any Chapter	Specified actionable claim; Explanation: "specified actionable claim" as defined in section 2(102A) of the CGST Act, 2017 means 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;]
#[228.	**	**]
#[229.	**	**]

*Inserted vide notification no. 11/2023- central tax (rate) dated 29.09.2023 w.e.f. 01.10.2023

#Omitted vide notification no. 11/2023- central tax (rate) dated 29.09.2023 w.e.f. 01.10.2023 before it was read as,

"[228.	Any chapter	Lottery]
[229	Any Chapter	Actionable claim in the form of chance to win in betting, gambling, or horse racing in race club]"

- **Supply of services** - Notification no. 11/2017 – central tax (rate) dated 28.06.2017/ notification no. 08/2017-integrated tax (rate) dated 28.06.2017.

S. No.	Chapter, Section or Heading	Description of Service	Rate*
34	Heading 9996 (Recreational, cultural and sporting services)	(iv) Services provided by a race club by way of totalisator or a license to [®] [licensing a] bookmaker in such club.	28%
		[†] (v) Gambling .	28%]
		(vi) Recreational, cultural and sporting services other than (i), (ii), [(iii)]** (iii), [(iiia).]*** (iv) and (v) above.	18%

*Rates are total of CGST + SGST/UTGST or IGST

**Inserted vide notification no. 27/2018-central tax (rate) dated 31.12.2018 w.e.f. 01.01.2019

***Inserted vide notification no. 01/2018 – central tax (rate) dated 25.01.2018

[†] Omitted vide notification no. 12/2023- central tax (rate) dated 19.10.2023 w.e.f. 20.10.2023

[®] Substituted vide notification no. 12/2023- central tax (rate) dated 19.10.2023 w.e.f. 20.10.2023 before it was read as, "totalisator or a license to"



Complete coverage on Industry specific topics creating lot of hue and uproar in market



Multiple dates matrix for understanding time of supply of goods – reverse charge

Example:



Let's analyse and understand the provision for determination of time of supply in the hands of XYZ Ltd. with the following multiple dates matrix:

Case	Date of receipt of goods	Date of payment by recipient	Date of issue of invoice by supplier	Date immediately following 30 days from date of invoice	Time of supply
I	July 1	August 10	June 29	July 30	July 1
II	July 1	June 25	July 29	August 29	June 25
III	July 1	Part payment made on June 30 and balance amount on July 20	June 29	July 30	June 30 for part payment made and July 1 for balance amount
IV	July 1	Payment is entered in the books on June 28 and debited in recipient's bank account on June 30	June 1	July 2	June 28 (i.e. when payment is entered in the books of the recipient)
V	July 1	Payment is entered in the books on June 30 and debited in recipient's bank account on June 26	June 29	July 30	June 26 (i.e. when payment is debited in the recipient's bank account)
VI	July 1	June 25	May 20	June 20	June 20 (i.e. immediately following 30 days of invoice issued by the supplier)
VII	Nov 1	Nov 15	On or before 30.11.2024*	30.12.2024 (Presuming date of invoice issued is 30.11.2024)	November 1

* Note: Time period for issuance of invoice would be as per sec 31(3)(f) of the CGST Act r/w rule 47A of the CGST Rules is 30 days from the date of receipt of goods.

Impact on provisional entry passed in the recipient's books of account

As per proviso to sec 12(3) of the CGST Act, where it is not possible to determine the time of supply under clause (a) or clause (b) or clause (c) of sec 12(3), the time of supply shall be the date of entry in the books of account of the recipient of supply. This proviso will bear its impact on provisional entries passed in the books of the recipient on year end closing or month end as per the general accounting policies adopted i.e. provision of expenses made for those parties/vendors who do not submit their bills.

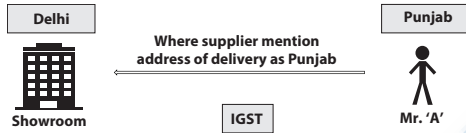


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Learn GST while enjoying these pictorial illustrations and multiple dates matrix to test your learning

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- The place of supply of goods may also be considered as 'Punjab', where supplier mention address for delivery in his invoice as 'Punjab' as the movement of goods, as enquired and checked by supplier, terminates for delivery to the recipient in 'Punjab'.



Note: In terms of clause (e) of rule 46 of the CGST Rules, a tax invoice issued by registered person is required to contain, name and address of the recipient and the address of delivery, along with the name of the state and its code, if such recipient is **unregistered** and where the value of the taxable supply is **INR 50,000 or more**.

So, place of supply in the above case would be 'Punjab' i.e. the address of buyer as mentioned in the invoice if value of laptop is INR 50,000/- or more.

Example 4:

Showroom supply to registered recipient – B2B transactions:

Registered dealer 'A' of Punjab, while his official visit to Delhi purchased a laptop from renowned electronic showroom in Delhi to be used for official purposes. The showroom person handed over the laptop to Dealer 'A' at the premises of showroom in Delhi and Dealer 'A' asked for billing to be made in the name of his company and also gave the GSTIN of 'Punjab'.

Here, following factors/parameters will be relevant for determining the place of supply of goods:

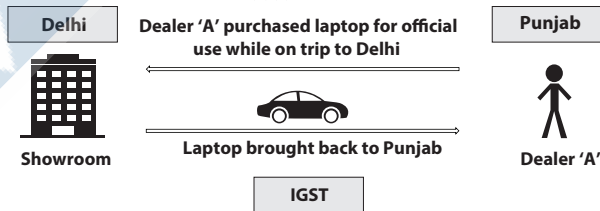
- Place where movement terminates for delivery** – In this case, movement of goods is caused by the recipient and such movement terminates at Punjab, which is also established by the GSTIN of recipient indicated in invoice.
- Particulars of tax invoice** - In terms of rule 46 of the CGST Rules, a tax invoice issued by a registered person is required to mention certain mandatory particulars as specified therein. Clause (n) and (o) of rule 46 requires mentioning the following on a tax invoice:

“(n) place of supply along with the name of the State, in the case of a supply in the course of inter-State trade or commerce;

(o) address of delivery where the same is different from the place of supply;”

Thus, place of supply with state code in the course of inter-state transaction or address of delivery where the same is different from the place of supply, are important parameters for raising invoice.

Based on the above discussion, it can be inferred that the place of supply in this case would be 'Punjab', where the movement caused by recipient of goods terminates for delivery at 'Punjab', irrespective of fact that supplier has handed over the goods in Delhi. In the given case, movement is caused by the recipient which is also covered under sec 10(1)(a) of the IGST Act.



Multiple examples on each topic in layman language for proper understanding of the concept



Court can send case back to Authorities to reconsider refund request

As per the *Circular no. 197/09/2023-GST dated 17.07.2023*, the value of the zero-rated supply of goods is required to be calculated as per the amended definition of “Turnover of zero-rated supply of goods” by taking into consideration the turnover in the State or Union territory and accordingly, adjusted total turnover for the purpose of Rule 89(4) of the CGST Rules. In view of such Clarification, numerator and denominator would be the same and the Petitioner would be entitled to get the entire refund of Rs. 56,14,652/- instead of Rs. 35,31,021.90/- as sanctioned by the Respondent. Hence, the matter was remanded back to reconsider the refund application made by the Petitioner so as to grant the refund by applying the Circular- Gujarat HC in *Kashi Exports v. Union of India [R/Special Civil Application No. 13480 of 2023 dated 04.12.2024]*.

Our comments and concerns:

- Timely refund mechanism is essential in tax administration, as it facilitates trade through release of blocked funds for working capital, expansion and modernization of existing business.
- Broadly, the refund procedure under GST have been drafted decently, keeping the procedure simple, integrated and tech based with minimal human interface between the taxpayer and tax authorities. Importantly, no separate application is required for refund of IGST paid on the export of goods as shipping bill itself will be treated as application for refund.
- For all other cases, till the time the refund module on the GSTN portal was operationalized, facility for manual filing of refund claims was provided in **Form GST RFD-01A**. But w.e.f. 26.09.2019, the facility of filing online application in **Form GST RFD-01** has also been enabled.
- The claim, if in order, has to be sanctioned within a period of 60 days from the date of receipt of the application of claim complete in all respects. If this mandatory period is exceeded, interest at the rate of 6% per annum (9% in case of refund made on order passed by an adjudicating authority or Appellate Tribunal or court which has attained finality) will become payable along with refund from the date of expiry of 60 days till the date of payment of refund.
- All the entities who have been issued UINs and are notified under sec 55 of the CGST Act, will be eligible for refund of inward supply of goods or services by filing **Form GST RFD-10** quarterly along with necessary certificates / undertaking etc., as prescribed.
- Refund to be paid/disbursed in a **validated bank account linked with the PAN & Aadhaar** of the registrant **w.e.f. 01.01.2021**.
- Additionally, the online procedure for seeking refund for CSD has been notified, earlier the CSD had to file manual refund application. However, as per the GSTN advisory the procedure will take some time, till then it has been advised to follow the manual route as before to seek a refund.
- *Circular no. 227/21/2024-GST dated 11.07.2024* outlines the revised procedure for processing refund applications filed by the Canteen Stores Department (CSD) under sec 55 of the CGST Act. It introduces a new electronic system on the GST portal, enabling CSD to file refund claims electronically using Form GST RFD-10A. The circular also details the requirements for filing, processing, and sanctioning the refund
- CBIC issued *instruction no. 04/2024-GST dated 04.10.2024*, addressing fraudulent refunds due to delayed de-mapping of officers from the GSTN portal. The Instruction mandates immediate de-mapping after officers are relieved, with monitoring by senior officers to ensure compliance and prevent fraud.
- In *M/S. Sance Laboratories Pvt. Ltd. vs. Union of India*, the court ruled that rule 96(10) of the CGST Rules was ultra vires to sec 16 of the IGST Act and manifestly arbitrary. The provision which restricted IGST refunds on exports, was declared unenforceable.
- *Notification no. 20/2024-central tax dated 08.10.2024*, omitted rule 96(10), rule 89(4A), and rule 89(4B) which were effective from 08.10.2024. These changes simplify the GST refund process for exporters who imported inputs under concessional notifications and later paid IGST and compensation cess.



Our detailed Comments and Concerns at the end of each chapter with suggestions to make GST - a Good and Simple Tax



Period of 60 days may further be extended on payment of additional late fee:

A new proviso has been inserted in sec 62(2) of the CGST Act vide the Finance Act, 2023 so as to give additional 60 days to the registered person for furnishing a valid return in response to the best judgment assessment order in **Form GST ASMT-13**.

In terms of the said proviso, if a registered person fails to furnish a valid return within 60 days of the service of the assessment order under sec 62(1) of the CGST Act, he may furnish the same within a further period of 60 days on payment of an additional late fee of INR 200 (CGST + SGST) for each day of delay beyond sixty days of the service of the said assessment order and in case, he furnishes valid return within such extended period, the said assessment order shall be deemed to have been withdrawn, but the liability to pay tax, interest u/s 50(1) or to late fees under sec 47 of the CGST Act will continue.

Example:

M/s XYZ Limited has not filed **Form GSTR-3B** for May 2023. The GST Department issued a notice on 01.07.2023, in **Form GSTR-3A** electronically to M/s XYZ Limited, requiring them to file GSTR-3B up to 16.07.2023. M/s XYZ Limited does not file GSTR-3B even after receiving the notice in **Form GSTR-3A** up to 16.07.2023. Now, the Revenue Department did the best judgement assessment of M/s XYZ Limited based on available relevant records and materials and issued an assessment order in **Form GST ASMT-13** along with summary of order in **Form GST DRC-07** electronically to M/s XYZ Limited on 25.10.2023. In such case, there may be two scenarios: -

Scenario 1: - M/s XYZ Limited files return within 60 days

M/s XYZ Limited files its GSTR-3B on 24.12.2023 (within 60 days). In terms of sec 62(2) of the CGST Act, the said best judgment assessment order shall be deemed to have been withdrawn, but M/s XYZ Limited will have to pay applicable tax, interest under sec 50 (1) and late fee under sec 47 of the CGST Act.

Scenario 2: - M/s XYZ Limited does not file return within 60 days:

In terms of a new proviso inserted to sec 62(2) of the CGST Act vide the Finance Act, 2023, M/s XYZ Limited may furnish its GSTR-3B within a further period of 60 days on payment of an additional late fee of INR 200 (CGST+SGST) for each day of delay beyond 60 days of the service of the said assessment order.

For example, if M/s XYZ Limited file its GSTR-3B on 31.12.2023 (delay of 7 days beyond 60 days of service of assessment order), then M/s XYZ Limited would be liable to pay the additional late fee of INR 1400(CGST+SGST) and the said assessment order shall be deemed to have been withdrawn. However, M/s XYZ Limited would be liable to pay applicable tax, interest under sec 50(1) of the CGST Act and late fees under sec 47(1) of the CGST Act, from the due date of filing of its GSTR-3B.

Amnesty provided for withdrawal of assessment orders against non-filers of GSTR 3B & GSTR-10:

The CBIC vide *notification no. 06/2023 – central tax dated 31.03.2023* has notified that the registered persons who failed to furnish a valid return under sec 39 (GSTR-3B) and sec 45 (GSTR-10 i.e Final Return) of the CGST Act within a period of 30 days from the service of the assessment order issued **on or before 28.02.2023** under sec 62(1) of the CGST Act i.e. best judgment assessment, shall be deemed to have been withdrawn, if such registered person furnishes the stated return on or before 30.06.2023* along with interest under sec 50(1) and late fee under sec 47 of the CGST Act.

Further, the withdrawal of such assessment order will be irrespective of whether or not an appeal had been filed under sec 107 of the CGST Act, against such assessment order or whether or not the appeal, if any, filed against such assessment order has been decided.

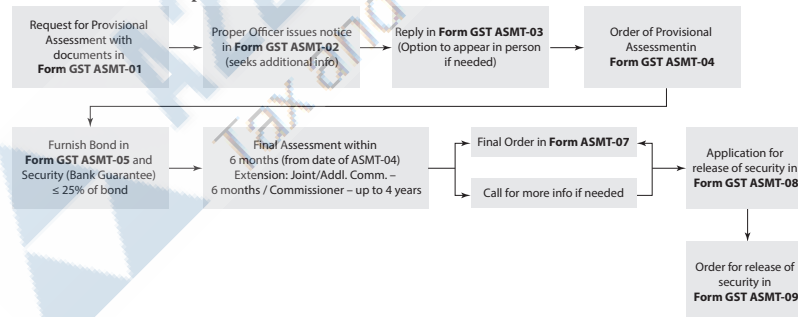
*Due date extended from 30.06.2023 to 31.08.2023 vide *notification no. 24/2023 – central tax dated 17.07.2023*



Comprehensive case studies
and multiple scenarios to
cover intricacies of all crucial
provisions



2	Application for provisional assessment	Form GST ASMT-01 electronically along with documents in support of request to proper officer.
3	Procedure for payment of tax on provisional basis	Order must be passed within 90 days of application in Form GST ASMT-04 to allow payment of tax on provisional basis. The taxable person shall execute a bond in Form GST ASMT-05 with security of amount not exceeding 25% of bond amount.
Final Assessment		
4	Who will pass the final assessment order	The proper officer shall pass the final assessment order in Form GST ASMT-07 . The proper officer can be any officer, empowered in this regard.
5	Time period for passing final assessment order	Final assessment order shall be passed within a period of 6 months from the date of the communication of the provisional order
6	Extension of time period for passing final assessment order	By joint/additional commissioner → upto 6 months, and By the commissioner → upto 4 years
7	Interest on differential amount- if payable	Differential amount shall be payable along with interest at 18% per annum, calculated from the first day after the due date of payment of tax till the date of actual payment, irrespective of fact whether such amount is paid before or after the issuance of order for final assessment.
8	Interest on differential amount- if refundable	Where the taxable person is entitled to a refund consequent to the order for final assessment, interest at 6% per annum shall be paid on such refund.
9	Release of security	Application for release of security can be made in Form GST ASMT-08 . If tax is paid, the proper officer shall release the security in Form GST ASMT-09 within 7 working days of receipt of application.

Process flow chart for provisional assessment:

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Process Flow Charts for quick understanding of the provisions and procedures

”

- for computation of period of limitation for filing refund application under sec 54 or 55 of the CGST Act.

However, CBIC vide *notification no. 09/2023-central tax dated 31.03.2023*, partially modified *notification no. 13/2022- central tax dated 05.07.2022* and extended the time limit specified under sec 73(10) of the CGST Act for issuance of order under sec 73(9) of the CGST Act, for recovery of tax not paid or short paid or of input tax credit wrongly availed or utilized for F.Y. 2017-18, 2018-19 and 2019-20 till 31.12.2023, 31.03.2024 and 30.06.2024 respectively.

Further, CBIC vide *notification no. 56/2023-central tax, dated 28.12.2023* as amended vide *notification no. 09/2023-central tax dated 31.03.2023*, partially modified *notification no. 13/2022- central tax dated 05.07.2022* further extended the time limit specified under sec 73(10) of the CGST Act for issuance of order under sec 73(9) of the CGST Act, for recovery of tax not paid or short paid or of input tax credit wrongly availed or utilized for F.Y. 2018-19 and 2019-20 till 30.04.2024 and 31.08.2024 respectively.

Example 2:

Particulars	When tax not paid or short paid or input tax credit wrongly availed or utilized relates to				
	2017-2018	2018-2019	2019-2020	2020-21	2021-2022
Financial Year for which adjudication order is to be passed					
Due date of filing of annual return	05.02.2020/ 07.02.2020*	31.12.2020**	31.03.2021***	28.02.2022^	31.12.2022
Limitation period for the issuance of order	3 years from the due date of filing of annual return	3 years from the due date of filing of annual return	3 years from the due date of filing of annual return	3 years from the due date of filing of annual return	3 years from the due date of filing of annual return
Last date upto which order can be issued	31.12.2023#	31.04.2024#	30.08.2024#	28.02.2025	31.12.2025
Last date upto which SCN to be issued (3 months prior to the expiry of time limit of issuance of order)	30.09.2023	31.01.2024	31.05.2024	30.11.2024	30.09.2025
Calculation of effective time period for issuing order					
Normal Limitation period (if not extended)	3 years i.e. till 05.02.2023/ 07.02.2023	3 years i.e. till 31.12.2023	3 years i.e. till 31.03.2024	3 years i.e. till 28.02.2025	3 years i.e. till 31.12.2025
Normal Limitation period (extended by way of Notifications)	31.12.2023#	30.04.2024#	31.08.2024#	28.02.2025	31.12.2025



Evaluation of provisions with dates to bring out clear picture of effective time period involved



23.1 INTRODUCTION

In any tax administration, the provisions for inspection, search, seizure and arrest are provided to protect the interest of revenue department as well as genuine taxpayers and as a restraint for tax evasion. These provisions are also required to unearth evidence that is otherwise not feasible to get easily & to safeguard Government's legitimate tax dues. Thus, these provisions act as a deterrent and by checking evasion, provide a level playing field to genuine taxpayers.

23.2 GLIMPSE OF RELEVANT PROVISIONS AND FORMS

For inspection, search, seizure and arrest, separate provisions have been prescribed from sec 67 to sec 72 under chapter XIV of the CGST Act. Reference of these provisions have been drawn in case of IGST vide sec 20 under chapter IX to the IGST Act and to UTGST vide sec 21 under chapter IX of the UTGST Act. Further, similar provisions are also provided in the respective states' GST Act.

In this regard, the inspection, search, seizure, arrest provisions along with specified forms have been prescribed vide 3 rules (from rule 139 to rule 141) along with 5 forms (**Form GST INS-01** to **Form GST INS-05**) under chapter XVII: 'Inspection, Search and Seizure' of the CGST Rules.

Chapter XIV of the CGST Act: Inspection, Search, Seizure and Arrest	
Sec	Particulars
Sec 67	Power of inspection, search and seizure
Sec 68	Inspection of goods in movement
Sec 69	Power to arrest
Sec 70	Power to summon persons to give evidence and produce documents
Sec 71	Access to business premises
Sec 72	Officers to assist proper officers

Chapter XVII of the CGST Rules: Inspection, Search and Seizure	
Rule	Particulars
Rule 139	Inspection, search and seizure
Rule 140	Bond and security for release of seized goods
Rule 141	Procedure in respect of seized goods

Forms under Chapter XVII of the CGST Rules: Inspection, Search and Seizure	
Form No.	Purpose
GST INS-01	Authorization for inspection or search
GST INS-02	Order of seizure
GST INS-03	Order of prohibition
GST INS-04	Bond for release of goods seized
GST INS-05	Order of release of goods/things of perishable or hazardous nature



All the provisions of Act, Rules and Forms summarised at one place at the beginning of each chapter



Sec	Offence	Nature of offence as specified under sec 132(1) of the CGST Act:
		<p>Analysis:</p> <p>The following 2 conditions must be satisfied cumulatively:</p> <ul style="list-style-type: none"> Any person issuing invoice/ bill without any supply of goods or services or both and Issuance of such invoices leads to wrongful availment or utilisation of input tax credit or refund of tax.
132(1)(c)	Wrongly avails ITC	<p>► From 01.07.2017 to 31.12.2020: Avails input tax credit using such invoice or bill referred to in clause (b)</p> <p>► W.e.f. 01.01.2021: 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</p> <p>Analysis:</p> <p>► From 01.07.2017 to 31.12.2020: This clause shall be applicable on the recipient of goods or services or both to whom invoice is issued without any supply by supplier of goods or services or both and he avails input tax credit using such invoice/ bill.</p> <p>► W.e.f. 01.01.2021: Amendment vide the Finance Act, 2020 dated 27.03.2020 w.e.f. 01.01.2021 as notified vide notification no. 92/2020-central tax dated 22.12.2020: This clause shall be applicable on the recipient of goods or services or both to whom invoice is issued without any supply by supplier of goods or services or both and he avails input tax credit using such invoice/ bill or fraudulently avails input tax credit without any invoice or bill.</p>
132(1)(d)	Tax collected but not paid	<p><i>collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due</i></p> <p>Analysis:</p> <p>Following 2 conditions must be satisfied cumulatively:</p> <ul style="list-style-type: none"> Collects any amount as tax and Such collected tax is not paid to the Government beyond a period of 3 months on which such amount is payable (and not from the date of collection of taxes). <p>Example:</p> <p>M/s Lal & Lal supplied goods on 05.08.2022 and issued a tax invoice accordingly, for which payment was also received in the same month. In this case, the due date for payment of tax on such supply of goods will be 20.09.2022 (i.e. the due date for filing return for the month of August 2022).</p>



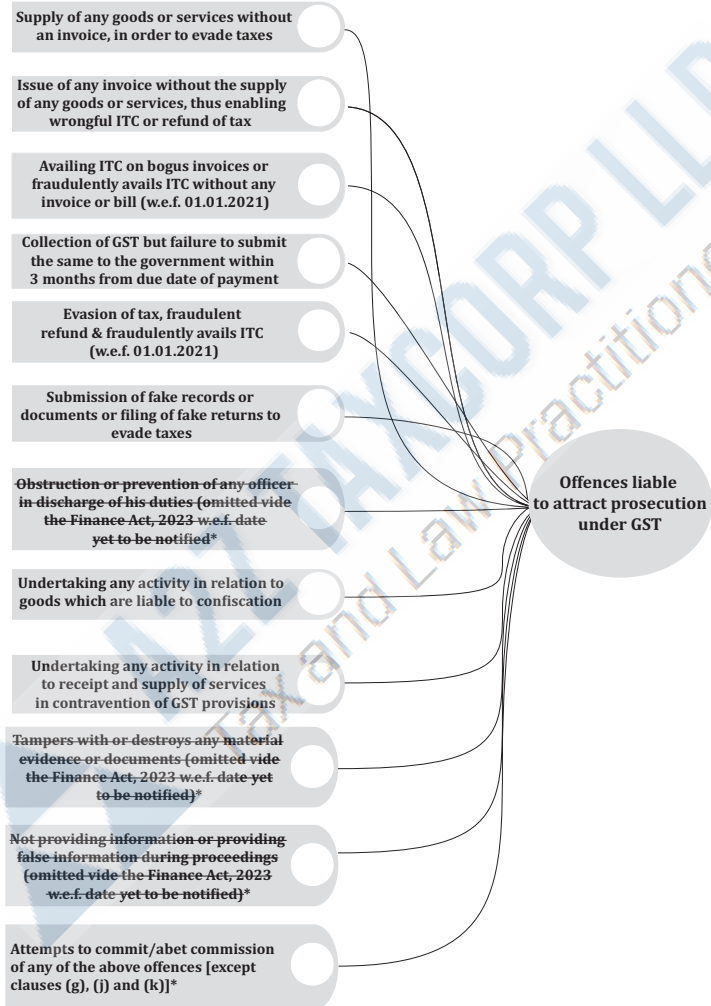
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Tabular analysis of each clause while discussing the provisions period-wise and the amendments

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Thus, while determining 'absence of special and adequate reason', the GST law may borrow the same provisions as was given under the service tax and other laws. But, appropriate clarity in this regard, in the statute itself, is more desirable.

The below flow chart inlists offences liable to attract prosecution under GST:



* Omitted vide the Finance Act, 2023 dated 31.03.2023 w.e.f. 01.10.2023



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Understanding Offences & Penalties through pictorial charts

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26.7.4 CBIC notified the Goods and Services Tax Appellate Tribunal (Procedure) Rules, 2025

The GSTAT (Procedure) Rules, 2025 have been notified on 24.04.2025 vide notification F. No. A-50050/264/2024-GSTAT-DoR. These rules, enacted under sec 111 of the CGST Act, establish the procedural framework for the functioning of the GSTAT. The rules contain 124 rules and 15 chapters. These rules shall come into force on the date of their publication in the Official Gazette.

Important Pointers for Regulating the Procedure and Functioning of GST Appellate Tribunal (GSTAT) – As per GSTAT (Procedure) Rules, 2025:**1. Organisational Framework**

- President's Authority:
 - Can issue rulings, directions, and assign or delegate duties.
 - Oversees the administrative functioning and constitution of Benches.
- Registrar's Role:
 - In charge of daily administration, managing case records, appeals, petitions, and scrutiny.
 - Maintains custody of records and issues certified copies.
- Benches and Sittings:
 - Benches are placed at notified locations by the Central Government.
 - Hearings conducted by Judicial and Technical Members.
 - The President may constitute a larger Bench in case of a difference of opinion.

2. Timings and Calendar

- Tribunal Sitting Hours:
 - Morning: 10:30 AM to 1:30 PM
 - Afternoon: 2:30 PM to 4:30 PM
- Office Working Hours:
 - 9:30 AM to 6:00 PM on all working days.
- Case Calendar:
 - Yearly calendar published by the President and Members.
- Listing of Matters:
 - Urgent matters filed before 12:00 PM are listed for the next working day.

3. Filing Procedure

Rule 115 states that every appeal or application to be filed before the Appellate Tribunal shall be uploaded electronically on the GSTAT portal.

- Mode of Filing:
 - Online through GSTAT Portal ("GSTAT Portal").
- Appeal Filing:
 - Filed in prescribed format with:
 - Details of all parties
 - Cause title mentioning the challenged order
 - Serially numbered paragraphs with facts and grounds
- Accompanied Documents:
 - Certified copy of the order being appealed.
 - Relevant annexures and supporting documents.
- Time Limitation:
 - As specified under the CGST Act or the GST Rules; can be extended by the Tribunal.

4. Hearing & Adjudication

- Open Court Proceedings:
 - Hearings are public unless ordered otherwise.
- Ex Parte Orders:



Important Pointers for Regulating the Procedure and Functioning of GST Appellate Tribunal (GSTAT) – As per GSTAT (Procedure) Rules, 2025



Table No.	Particulars
Table 9B of GSTR-1	Additional credit notes dated F.Y 2024-25 declared after FY within due date.
Table 9C of GSTR-1	Amendments to credit notes which have effect of decreasing total turnover.

39.12.1 Three Case Studies with respect to Table 10 & 11 of Form GSTR-9

Case Study 1: Outward Supplies of the F.Y 2024-25 but reported & Tax paid in 01.04.2025 to 30.11.2025

Particulars	Amount (INR)	GSTR-9
Total Outward Supplies as per Books of Accounts for F.Y 2024-25 (A)	1,50,000	-
Outward Supplies Reported in F.Y 2025-26 (May 2025) (B)	1,50,000	Table – 10
Taxes Paid in Form GSTR-3B w.r.t. Point B in May 2025 (C)	27,000	Table – 14

Case Study 2: Adjustments (+) in Outward Supplies of the F.Y 2024-25 but made and reported in 01.04.2025 to 30.11.2025

Particulars	Amount (INR)	GSTR-9
Total Outward Supplies as per Books of Accounts for F.Y 2024-25 (A)	1,50,000	-
Outward Supplies shown in Form GSTR-3B during F.Y 2024-25 (B)	1,20,000	Table – 4B
Amendment/ Debit Note raised in the F.Y 2025-26 (May 2025) (C)	30,000	Table – 10
Taxes Paid in Form GSTR-3B w.r.t. Point B in F.Y 2024-25 (D)	21,600	Table – 9
Taxes Paid in Form GSTR-3B w.r.t. Point C in May 2025 (E)	5,400	Table – 14

Case Study 3: Adjustments (-) in Outward Supplies of the F.Y 2024-25 but made and reported in 01.04.2025 to 30.11.2025

Particulars	Amount (INR)	GSTR-9
Total Outward Supplies as per Books of Accounts for F.Y 2024-25 (A)	1,50,000	-
Outward Supplies in Form GSTR-3B during F.Y 2024-25 (B)	1,70,000	Table – 4B
Amendment/ Credit Note issued in the F.Y 2025-26 (May 2025) (C)	20,000	Table – 11
Taxes Paid in Form GSTR-3B w.r.t. Point B in F.Y 2024-25 (D)	30,600	Table – 9
Taxes Adjusted in Form GSTR-3B w.r.t. Point C in May 2025 (E)	3,600	Table – 14

Case Studies of Outward Taxable Supplies to be reported in table 4,9,10,11 & 14 of Annual Return

Sr. No	Outward Supplies Scenarios and Effect of Transactions	Table to be referred in GSTR-9
1	Outward Supplies made during the F.Y 2024-25	Table – 4, 9
2	Outward Supplies of the F.Y 2024-25 but reported & Tax paid in in April 2025 to October 2025, upto 30th November 2025	Table – 10, 14
3	Adjustments (+) in Outward Supplies of the F.Y 2024-25 but made and reported in April 2025 to October 2025, upto 30th November 2025	Table – 10, 14
4	Adjustments (-) in Outward Supplies of the F.Y 2024-25 but made and reported in April 2025 to October 2025, upto 30th November 2025	Table – 11, 14



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Multiple case studies on filing of GSTR-9 and GSTR-9C

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service for the President and Members of the GSTAT. The CBIC vide *notification S.O. 3048(E) dated 31.07.2024*, provided Constitution of Principal and States benches of GSTAT w.e.f. 01.09.2023.

The GST council, in its 53rd meeting, recommended an amendment in sec 109 of the CGST Act to empower the Government to notify types of cases, including Anti-profiteering cases that shall be heard by the principal bench of the GSTAT. Thus, vide section 142 of the Finance (No. 2) Act, 2024, the Central government seeks to amend sec 109(1) and sec 109(6) and insertion of second and third proviso to sec 109(5) of the CGST Act. The amendment in sec 109(1) is amended to empower the GST Appellate Tribunal to act as authority for conducting an examination or adjudicating the Anti-Profiteering cases and second proviso to sec 109(5) of the CGST Act, provides that the matters of Anti-profiteering as referred to in sec 171(2) shall be examined or adjudicated only by the Principal Bench. The third proviso to sec 109(5) empowers the Government to notify other cases or classes of cases that shall be heard only by the Principal Bench.

Where an appeal filed with the GSTAT has both disputes on Place of Supply and other matters, the mechanism for the same needs to be thought through so as to not allow undue advantage to either a set of litigants, types of disputes, or the Revenue authorities from a time period for resolution perspective.

In case there turn out to be a substantial number of disputes with place of supply as one of the questions, the Principal Bench would be unduly burdened and consequently would impact resource allocation across GSTAT. The GST Council may have to enable state benches also to hear such matters in such a scenario.

The GSTAT (Procedure) Rules, 2025 have been notified on 24.04.2025. These rules, enacted under sec 111 of the CGST Act, establish the procedural framework for the functioning of the GSTAT. The rules contain 124 rules and 15 chapters. These rules shall come into force on the date of their publication in the Official Gazette.

Annexure		
S. No.	Circular No. and date	Subject
1.	<i>Circular No. 224/18/2024-GST dated 11.07.2024</i>	Guidelines for recovery of outstanding dues, in cases wherein first appeal has been disposed of, till Appellate Tribunal comes into operation
2.	<i>Circular No. 207/11/2024-GST dated 26.06.2024</i>	Reduction of Government Litigation - fixing monetary limits for filing appeals or applications by the Department before GSTAT, High Courts and Supreme Court
3.	<i>Circular No. 157/13/2021-GST dated 20.07.2021</i>	SC order is not applicable to any proceedings under GST laws other than appeals, revision and rectification
4.	<i>Circular No. 132/02/2020 - GST dated 18.03.2020</i>	Clarification in respect of appeal in regard to non-constitution of Appellate Tribunal
5.	<i>Removal of difficulty Order No. 9/2019-central tax dated 03.12.2019</i>	Relevant date for calculation of 3 months

For access to the complete circulars in the Annexure table and all notifications related to this Chapter, please refer to the QR folder.



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Annexure of circulars of every respective chapter for quick reference

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Author's Note:

While the aforesaid decision discussed in detail the tendering process and recognizes the independence of bidder for applying HS classification and rate of tax at the time of bidding process, it also emphasized the importance of determining appropriate classification and tax on the product at the time of bidding by mandating the tendering authority to share a copy of the contract with the jurisdictional GST officer of the successful bidder. Although the observation made by Supreme Court in relation to DLW, the principle laid down by it would have far reaching impact on other Government tenders.

Chemical composition does not indicate whether goods 'off grade' or 'prime'

Where the test report had simply given an opinion on composition of goods, CESTAT Ahmedabad held that even if chemical composition is same of both quality of goods, off grade material cannot be construed as prime material. Allowing assessee's appeal, the CESTAT held that in such circumstances, it is not correct to allege mis-declaration of goods in question on part of the assessee. In this case where the test report was the only evidence to say that the goods were of prime grade, the Tribunal also noted that the assessee had objected to said test reports right from investigation on various grounds and that the assessee was not granted opportunity to cross examine the Chemical Examiner. CESTAT, Ahmedabad in the case of *M/s Surya Exim Ltd. v. C.C., Ahmedabad [Order No. A/12174-12176/2022 dated 12.12.2022]*.

Classification done by the Revenue department on the general definition given in dictionaries/encyclopedia is not correct

Hon'ble SC in the case of *M/s HP India Sales Pvt. Ltd v. Commissioner Of Customs (Import) Nhava Sheva [CIVIL APPEAL NO 5373 OF 2019 dated 17.01.2023]* while deciding the correct classification of imported Automatic Data Processing Machines held that the word 'portable' should be interpreted in the context of computers and not by the meaning provided in dictionary or encyclopedia.

Issue of classification of goods need opinion of scientific and technical experts; High Court could not exercise writ jurisdiction

While deciding the correct classification of PPSB bed sheet the stated that HC should not act as an expertise to scrutinize the composition and mode of manufacture of a product like of this nature and do the job of classifying a product as to under which classification list of the Customs Tariff Act such product falls since it requires scientific and technical analysis to be conducted by expertise in such scientific and technical field. Only scientific and technical expertise can give any opinion as to the nature of the material used and method of manufacturing involved in production of the articles in question and after taking into consideration the aforesaid scientific and technical aspect, appropriate Authority under the law can come to a conclusion and make a declaration as to under which heading of the classification list product in question will fall

Further added, Court should not scrutinize an adjudicating authority's decision itself, by acting as an appellate authority over such order of the authority and substitute the findings of an authority by reappreciating the evidence and material and more particularly the nature of a case like this - Calcutta HC in *M/s Harsh Polyfabric Pvt Ltd. v. Union of India [2023 (71) G.S.T.L. 244]*.

41.6 LEGAL JURISPRUDENCE ON VARIOUS ISSUES IN CLASSIFICATION OF GOODS**41.6.1 Classification of food items****41.6.1.1 Supply of foods items from sweet shop-cum-restaurant – Goods v. Services and applicable GST rates**

Since the implementation of GST from 01.07.2017, sweet makers have found GST a tough nut to crack when it comes to classification. For example, plain barfi, which is a 'sweet', is taxed at the lowest rate of 5%, but chocolate barfi with a chocolate flavoured layer on top, risks being bundled with chocolates and taxed at higher rate.

Similarly, another combative issue giving nightmares to sweet shop-cum-restaurant owners was regarding classification of supply of pure food items such as sweetmeats, namkeens, cold drink and other edible items from a sweetshop which also runs a restaurant. Whether the same shall be treated as a transaction of supply of goods or a supply of service? For example, a glass of lassi when supplied from a counter shop, attracts



Detailed coverage of classification issues going on with comments as to way forward



Chapter 41 Classification and Rates in GST

Annexure I

VARIOUS CIRCULARS ON CLASSIFICATION OF GOODS AND SERVICES

Clarification regarding applicability of GST on various goods and services as per recommendations made in 55th GST Council Meeting

Circular no. 245/02/2025-GST dated 28.01.2025 (relevant extract):

Based on the recommendations made in the 54th GST Council Meeting, various clarifications were issued vide circular no. 245/02/2025-GST dated 28.01.2025

2. Applicability of GST on penal charges being levied by the Regulated Entities (REs) in view of RBI instructions dated 18.08.2023 directing such Regulated Entities (REs) to levy penal charges in place of penal interest.

2.1 Representations have been received seeking clarification on the applicability of GST on penal charges being levied by the Regulated Entities (REs) in view of RBI instructions dated 18.08.2023 directing such Regulated Entities (REs) to levy penal charges in place of penal interest.

2.2 Regulated Entities (REs) such as banks and non-banking financial companies (NBFCs) have been instructed, vide RBI instructions dated 18.08.2023, to discontinue the use of penal interest for non-compliance with loan terms. As per the instructions, instead of penal interest, REs are to levy penal charges for non-compliance with loan terms. The intent of levying penal charges is essentially to inculcate a sense of credit discipline. These instructions are effective from 01.01.2024, and do not apply to credit cards, external commercial borrowings, trade credits and structured obligations which are covered under product specific directions.

2.3 It is being viewed by certain field formations that penal charges so levied are in the nature of payment/consideration for tolerating an act or situation. Similar issues were examined in Circular No. 178/10/2022-GST dated 03.08.2022, wherein it has already been clarified that certain payments such as liquidated damages for breach of contract are not a consideration for tolerating an act or situation. They are rather amounts recovered to deter such acts; such amounts are for preventing breach of contract or non-performance and are thus mere 'events' in a contract. It has been further clarified that the essence of a contract is its 'performance' and not its 'breach', meaning thereby that parties enter into a contract for execution and not for its breach.

2.4 Penal charges levied by REs, in compliance with RBI directions dated 18.08.2023, are essentially in the nature of charges for breach of terms of contract and hence, fall within the ambit of the above clarification.

2.5 Thus, as recommended by the 55th GST Council, it is hereby clarified that no GST is payable on the penal charges levied by Regulated Entities, in compliance with RBI directions dated 18.08.2023, for non-compliance with material terms and conditions of loan contract by the borrower.

3. Whether GST exemption under Sl. No. 34 of notification No. 12/2017-CTR dated 28.06.2017 is available to payment aggregators in relation to settlement of an amount, up to two thousand rupees in a single transaction, transacted through credit card, debit card, charge card or other payment card services?

3.1 Representations have been received seeking clarity on the applicability of GST exemption under Sl. No. 34 of notification No. 12/2017-CTR dated 28.06.2017 to Payment Aggregators (PAs) in relation to settlement of an amount, up to two thousand rupees in a single transaction, transacted through credit card, debit card, charge card or other payment card services.

41.1



Complete circulars and press releases issued so far on classification and exemption issues



Annexure IV
GST RATE Notification No. 11/2017 -CENTRAL TAX (RATE) DATED 28.06.2017 -
FOR SERVICES (updated as on date)²
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

New Delhi: 28.06.2017

Notification No. 11/2017 - Central Tax (Rate)

In exercise of the powers conferred by sub-section (1), ⁵⁰[sub-section (3) and sub-section (4)] of section 9, sub-section (1) of section 11, sub-section (5) of section 15, sub-section (1) of section 16 ⁵⁰[and section 148] of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, and on being satisfied that it is necessary in the public interest so to do, hereby notifies that the central tax, on the intra-State supply of services of description as specified in column (3) of the Table below, falling under Chapter, Section or Heading of scheme of classification of services as specified in column (2), shall be levied at the rate as specified in the corresponding entry in column (4), subject to the conditions as specified in the corresponding entry in column (5) of the said Table:-

Table

Sl. No.	Chapter, Section or Heading	Description of Service	Rate (per cent.)	Condition
(1)	(2)	(3)	(4)	(5)
1	Chapter 99	All Services		
2	Section 5	Construction Services		
3	Heading 9954 (Construction services)	⁵¹ (i) Construction of affordable residential apartments by a promoter in a Residential Real Estate Project (herein after referred to as RREP) which commences on or after 1st April, 2019 or in an ongoing RREP in respect of which the promoter has not exercised option to pay central tax on construction of apartments at the rates as specified for item (ie) or (if) below, as the case may be, in the manner prescribed therein, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier. (Provisions of paragraph 2 of this notification shall apply for valuation of this service)	0.75	Provided that the central tax at the rate specified in column (4) shall be paid in cash, that is, by debiting the electronic cash ledger only; Provided also that credit of input tax charged on goods and services used in supplying the service has not been taken except to the extent as prescribed in Annexure I in the

² Updated as on date



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- (a) the penalty so imposed is paid; and
- (b) the registration of such machine is made in accordance with the special procedure within three days of the receipt of communication of the order of penalty.]

271[122B. Penalty for failure to comply with track and trace mechanism.

Notwithstanding anything contained in this Act, where any person referred to in clause (b) of sub-section (1) of section 148A acts in contravention of the provisions of the said section, he shall, in addition to any penalty under Chapter XV or the provisions of this Chapter, be liable to pay a penalty equal to an amount of one lakh rupees or ten per cent. of the tax payable on such goods, whichever is higher.]

123. Penalty for failure to furnish information return.

If a person who is required to furnish an information return under section 150 fails to do so within the period specified in the notice issued under sub-section (3) thereof, the proper officer may direct that such person shall be liable to pay a penalty of one hundred rupees for each day of the period during which the failure to furnish such return continues:

Provided that the penalty imposed under this section shall not exceed five thousand rupees.

124. Fine for failure to furnish statistics.

If any person required to furnish any information or return under section 151,-

- (a) without reasonable cause fails to furnish such information or return as may be required under that section, or
- (b) wilfully furnishes or causes to furnish any information or return which he knows to be false,

he shall be punishable with a fine which may extend to ten thousand rupees and in case of a continuing offence to a further fine which may extend to one hundred rupees for each day after the first day during which the offence continues subject to a maximum limit of twenty-five thousand rupees.

125. General penalty.

Any person, who contravenes any of the provisions of this Act or any rules made thereunder for which no penalty is separately provided for in this Act, shall be liable to a penalty which may extend to twenty-five thousand rupees.

126. General disciplines related to penalty.

- (1) No officer under this Act shall impose any penalty for minor breaches of tax regulations or procedural requirements and in particular, any omission or mistake in documentation which is easily rectifiable and made without fraudulent intent or gross negligence.

Explanation.—For the purpose of this sub-section,—

- (a) a breach shall be considered a ‘minor breach’ if the amount of tax involved is less than five thousand rupees;
 - (b) an omission or mistake in documentation shall be considered to be easily rectifiable if the same is an error apparent on the face of record.
- (2) The penalty imposed under this Act shall depend on the facts and circumstances of each case and shall be commensurate with the degree and severity of the breach.
 - (3) No penalty shall be imposed on any person without giving him an opportunity of being heard.
 - (4) The officer under this Act shall while imposing penalty in an order for a breach of any law, regulation or procedural requirement, specify the nature of the breach and the applicable law, regulation or procedure under which the amount of penalty for the breach has been specified.
 - (5) When a person voluntarily discloses to an officer under this Act the circumstances of a breach of the tax law, regulation or procedural requirement prior to the discovery of the breach by the officer

271 Inserted vide Section 131 of the Finance Act, 2025 dated 29-03-2025 w.e.f.



Updated Bare Act with all amendments at one place



Chapter 12 List of Non-Tariff Notifications

Central Tax Notifications

Notification No.	Date	Subject
01/2017-CT	19-06-2017	Seeks to bring certain sections of the CGST Act 2017 into force w.e.f. 22.06.2017
02/2017-CT	19-06-2017	Notifying jurisdiction of Central Tax Officers
03/2017-CT	19-06-2017	Central Goods and Services Tax Rules, 2017.
04/2017-CT	19-06-2017	Notifying www.gst.gov.in as the Common Goods and Services Tax Electronic Portal
05/2017-CT	19-06-2017	Seeks to exempt persons only engaged in making taxable supplies total tax on which is liable to be paid on reverse charge basis
06/2017-CT	19-06-2017	Modes of verification under CGST Rules 2017
07/2017-CT	27-06-2017	Central Goods and Services Tax (Amendment) Rules, 2017
08/2017-CT	27-06-2017	Seeks to notify the turnover limit for Composition Levy for CGST
09/2017-CT	28-06-2017	Seeks to bring into force certain sections of the CGST Act 2017 w.e.f 01.07.2017
10/2017-CT	28-06-2017	Central Goods and Services Tax (Second Amendment) Rules, 2017
11/2017-CT	28-06-2017	Seeks to amend Notification no 6/2017-Central Tax dt 19.06.2017
12/2017-CT	28-06-2017	Seeks to notify the number of HSN digits required on tax invoice
13/2017-CT	28-06-2017	*Seeks to prescribe rate of interest under CGST Act 2017 * Amended vide Section 116 of the Finance Act, 2022 to be effective from the date of enactment of the Finance Act, 2022
14/2017-CT	01-07-2017	Assigning jurisdiction and power to officers of various directorates
15/2017-CT	01-07-2017	Central Goods and Services Tax (Third Amendment) Rules, 2017
16/2017-CT	07-07-2017	Notification No. 16/2017-CT (conditions and safeguards for furnishing a Letter of Undertaking in place of a bond for export without payment of integrated tax)
17/2017-CT	27-07-2017	Central Goods and Services Tax (Fourth Amendment) Rules, 2017
18/2017-CT	08-08-2017	Seeks to extend time period for filing of details of outward supplies in Form GSTR-1 for months of July and August.
19/2017-CT	08-08-2017	Seeks to extend time period for filing of details of inward supplies in Form GSTR-2 for months of July and August.
20/2017-CT	08-08-2017	Seeks to extend time period for filing of details in Form GSTR-3 for months of July and August.
21/2017-CT	08-08-2017	Seeks to introduce date for filing of GSTR-3B for months of July and August.
22/2017-CT	17-08-2017	Central Goods and Services Tax (Fifth Amendment) Rules, 2017

12.1



Updated Gist of all Notifications, Circulars, Orders, Press Releases, Forms etc. for quick reference

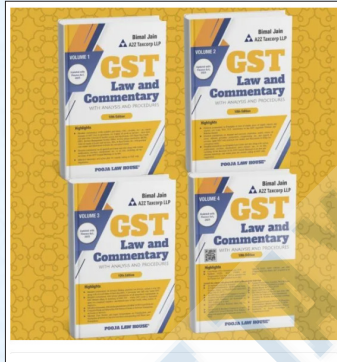




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