

OFFICE OF CHIEF COMMISSIONER OF STATE TAX, GUJARAT

Model GST Audit Manual - 2022

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Prepared By : Audit Branch

RAJYA KAR BHAVAN, AHMEDABAD

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કનુભાઈ દેસાઈ



ક્રમાંક : નાંબિ/ ૨૫૦૨૬૦ - ૨૨
મંત્રી,
નાણાં, ઊર્જા અને પેટ્રોકેમિકલ્સ
ગુજરાત સરકાર
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શુભેચ્છા સંદેશ

કેન્દ્ર સરકાર અને રાજ્ય સરકાર હસ્તકના વિવિધ વેરાઓના બદલે માત્ર એક જ કર પ્રણાલી અમલમાં મૂકવાના મક્કમ નિર્ધાર સાથે જીએસટી કાયદાનો અમલ વર્ષ ૨૦૧૭ થી સમગ્ર ભારત વર્ષની સાથે ગુજરાત રાજ્યમાં પણ થઈ ગયેલ છે. જે One Nation, One Tax, One Market ના સૂત્રને અરિતાર્થ કરે છે

ગુજરાત રાજ્યના વિકાસમાં રાજ્યવેરા વિભાગનું યોગદાન ઘણું જ મહત્વનું છે. નોંધાયેલ કરદાતાઓ દ્વારા GST કાયદાના પાલનની જવાબદારી યોગ્ય રીતે થઈ રહી છે કે કેમ ? તેના માટે રાજ્ય વેરા ખાતુ સતત કાર્યશીલ રહે છે. આ પ્રક્રિયાના ભાગરૂપે GST Audit ની કામગીરી કરદાતાઓના Tax Compliance ને ચકાસવાનો એક પ્રયાસ હોય છે. GST Auditની આ કામગીરી સમગ્ર રાજ્યમાં સુચારુરૂપે અને એકસૂત્રતાથી થાય, તેવા ઉદ્દેશ સાથે આ "Model GST Audit Manual" રાજ્ય વેરા ખાતા દ્વારા તૈયાર કરવામાં આવેલ છે.

મને શ્રદ્ધા છે કે "Model GST Audit Manual" ખાતાના અધિકારીઓને ઘણું માર્ગદર્શક પુરવાર થશે તેવી શુભેચ્છા પાઠવું છું.

Kanu. M. Desai
(કનુભાઈ દેસાઈ)

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J. P. Gupta I.A.S.
Principal Secretary



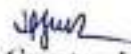
Finance Department
Government of Gujarat

The rollout of GST throughout the country has made One Nation-One Tax principle a reality. It was made successful with planning, in advance. Workshops, training programs, trade meets and other outreach programs were arranged at all levels for all the stakeholders to explain features of the law and its implementation modalities.

Implementation of GST provisions by tax officials brought into light certain aspects, where the department needs to initiate actions like preparation of SOPs and subject specific trainings to provide guidance to the departmental officials. Drafting of this "Model GST Audit Manual" is one such effort. This document will acquaint officers for conducting GST Audit effectively and efficiently, which ultimately will lead to better compliance by the tax payers.

My heart felt appreciation to all the persons involved in the preparation of the comprehensive "Model GST Audit Manual".

Gandhinagar
26th December, 2022


J P Gupta, IAS
Principal Secretary
Finance Department
Gujarat State, Gandhinagar

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Milind Torawane I.A.S.
Chief Commissioner




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Implementation of the Goods and Services Tax (GST) is a landmark legislation in indirect taxation system in India and it has replaced number of indirect taxes like VAT, Central Excise, Entertainment tax, Luxury tax and surcharges relating to supply of goods and services. The Goods and Services Tax is a trust-based regime wherein the taxpayer is required to self-assess tax liability and file returns. The concept of Audit has been incorporated in the GST Act to ensure whether the taxpayer has correctly self-assessed tax liability.

GST audit is new to the State authorities and a task of preparation of comprehensive "Model GST Audit Manual, Gujarat-2022" was well taken by the Audit Branch of the State Tax Department. In particular, Mrs. Sudiksha Rani IRS, Additional Commissioner of State Tax, Shri Mahesh Jani, Joint Commissioner, Shri Rakesh Shah, Deputy Commissioner and Smt. Bijal Bhavsar, State Tax Officer put sincere effort in preparing the audit manual.

GST Audit Manual is prepared to create an extensive and comprehensive document with the holistic approach of GST Audit which will not only facilitate the Audit Officers of the State, but will also create an impact in facilitating the Auditees during the exercise of Audit. I am sure that the guidelines provided in this manual will ensure that the audit of taxpayers is carried out in a uniform, efficient and comprehensive manner adhering to the stipulated principles, policies and best practices.

Ahmedabad
26th December, 2022


Milind Torawane, IAS
Chief Commissioner of State Tax
Gujarat State, Ahmedabad

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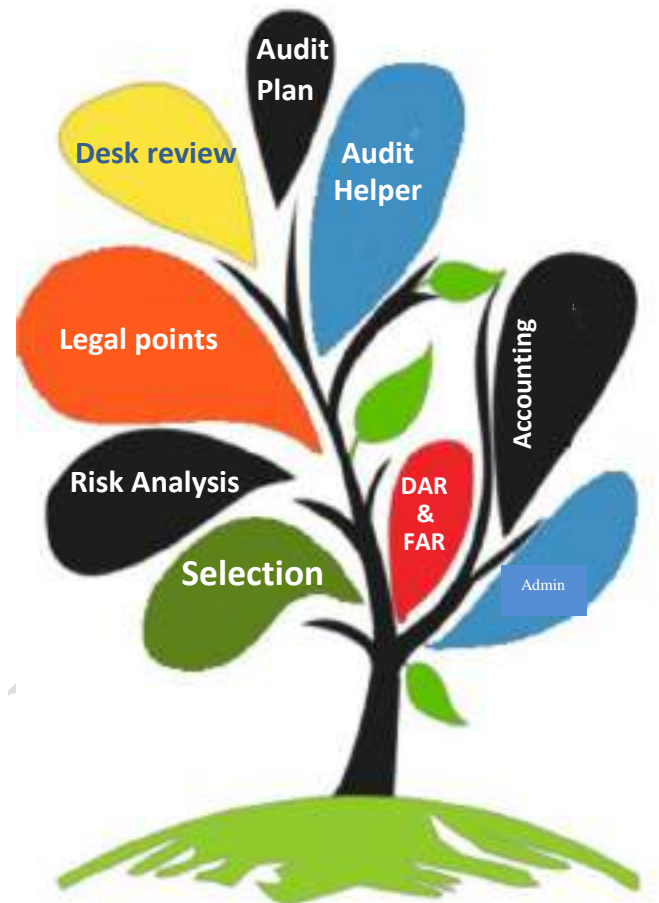
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1. INTRODUCTION:

1.1. Purpose of this Manual:

This model GST Audit Manual is intended to be developed as a comprehensive document which would be helpful for the audit officers of the Gujarat State throughout the entire process of selection of taxpayers for audit till the completion of audit in an efficient and effective manner.

Audit selection is a dynamic process where the experience of audit in each year plays a vital role in modifying the selection criteria. However, in GST, ascertaining a risk profile of the Auditees based on a scientific approach is vital for selection of audit. The aspects of such risk profile assessment are also discussed in this manual.



This manual discusses the (i) methods of looking into the aspects that demand meticulous attention, (ii) methods of preparation for an effective desk review before Audit actually commences and (iii) methods for conducting a quality audit under GST that would not only reflect the efficiency of an audit officer but would also successfully achieve the goal of monitoring compliance management and revenue augmentation. The manual has also focused in developing a structure for the vertical hierarchy so that audit officers can place their findings before the appropriate higher authority. This would definitely help the audit officer to prepare a proper audit plan.

Audit in GST would intend to evaluate the credibility of self-assessed tax liability of a taxpayer based on the twin test of accuracy of taxpayer's declarations and the accounts maintained by the taxpayer. Thus, Audit in GST would have the following twin effects:

- **Deterrent effect:**

Discovering the areas of deviation is expected to prevent a taxpayer in continuing with such deviations that result in erroneous declaration of self-assessed liability.

- **Preventive effect:**

Establishment of adverse observations in audit is expected to prevent a taxpayer to repeat any offence.

Audit in GST would intend to verify the correctness of the facts and figures declared in the returns vis-a-vis the books of accounts. It may happen that self-assessed declarations would contain hidden deviations. These deviations may be of the nature of omission, error or deliberate deceptions by a taxpayer. This Audit Manual in GST would surely play a vital role in detection of non-compliances, if any, in the self-assessed declarations.

However, such deviations may also be mere technical in nature without having any real revenue impact. The approach to be adopted in such cases would also be dealt with in this manual.

Finally, audit in GST is desired to be a Audit officer's work, he/she would conduct the audit and prepare the audit report with the assistance of sub-ordinates. This entire work process would involve a series of activities including preparing desk review to identify the high-risk areas, preparation of a sound audit plan, to accord sanction to the audit plan and conducting of audit within the prescribed time limit.

So, for conducting an effective audit of a selected taxpayer, the audit officer has to be ready with:

1	Ready with a well-drafted pre-plan for Identifying the areas of concern.	<ul style="list-style-type: none"> • What to examine? • How to examine?
2	Well aware of the procedural aspects.	<ul style="list-style-type: none"> • Is the Officer well aware of the online/offline Audit modules? • Is the Officer aware of the departmental guidelines? • Have all the points noted in the audit plan been covered?
3	Legal provisions, Law changes, notifications, circulars, rates.	<ul style="list-style-type: none"> • Whether the officer is well aware of the legal provisions and changes thereof? • Is there any specific guideline in any circular? • Are there any court judgements/Advance Ruling applicable?
4	Final computation to calculate dues.	<ul style="list-style-type: none"> • If the Auditee is willing to deposit the dues, what to do? • If the Auditee is not willing to deposit the dues complying the audit report, what are the next steps?

Attempt has been made to address the aforesaid issues in this Manual.

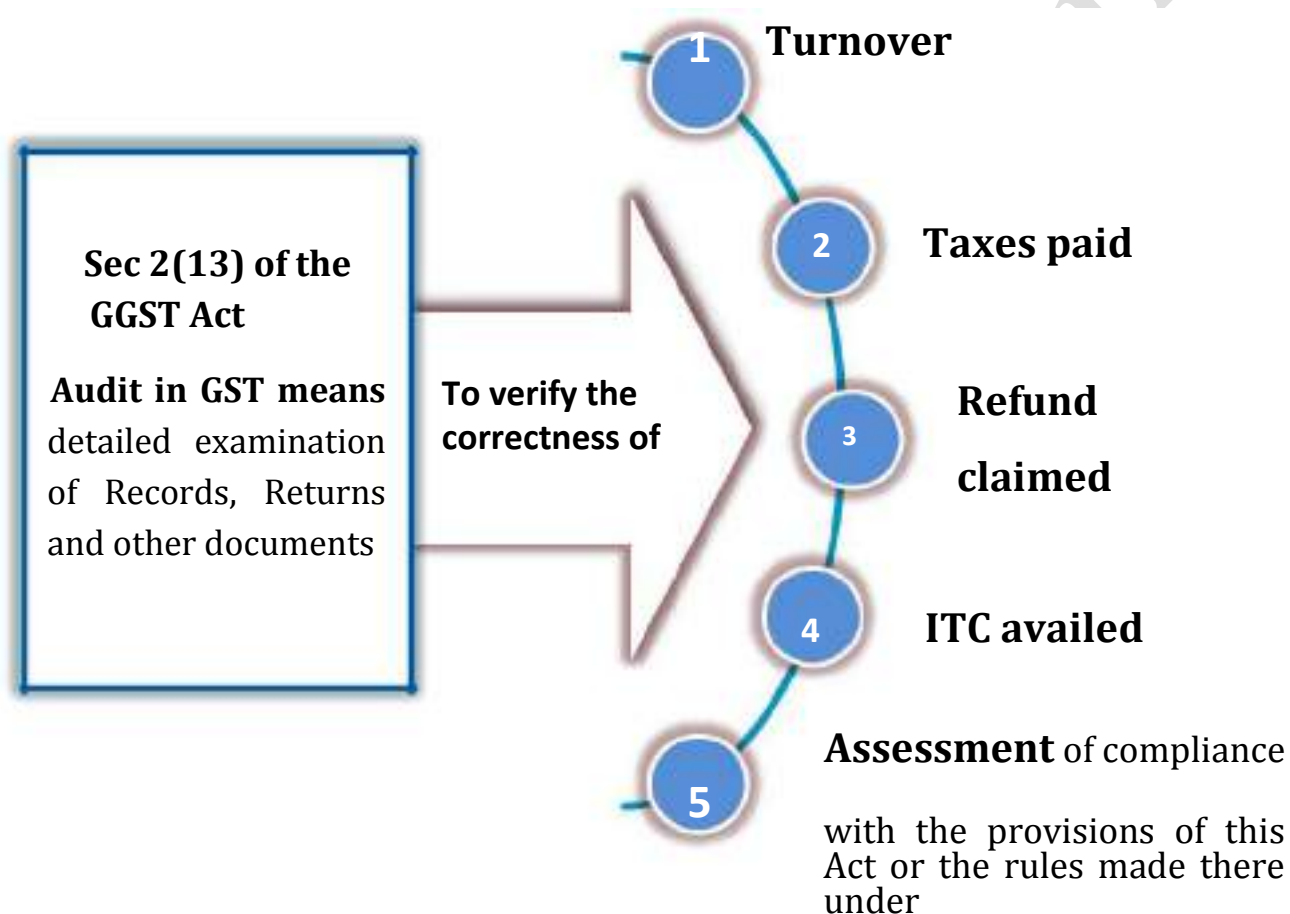
However, it is needless to say that there cannot be a uniform approach of audit of every taxpayer. Occasion may arise that a fact or figure apparent on the documents may need an examination with reference to some other sets of documents or even other sources.

Therefore, in a nutshell, audit in GST would have a much-widened perspective. These issues have all been discussed in detail in this document.

1.2. Definition of audit under GGST Act, 2017:

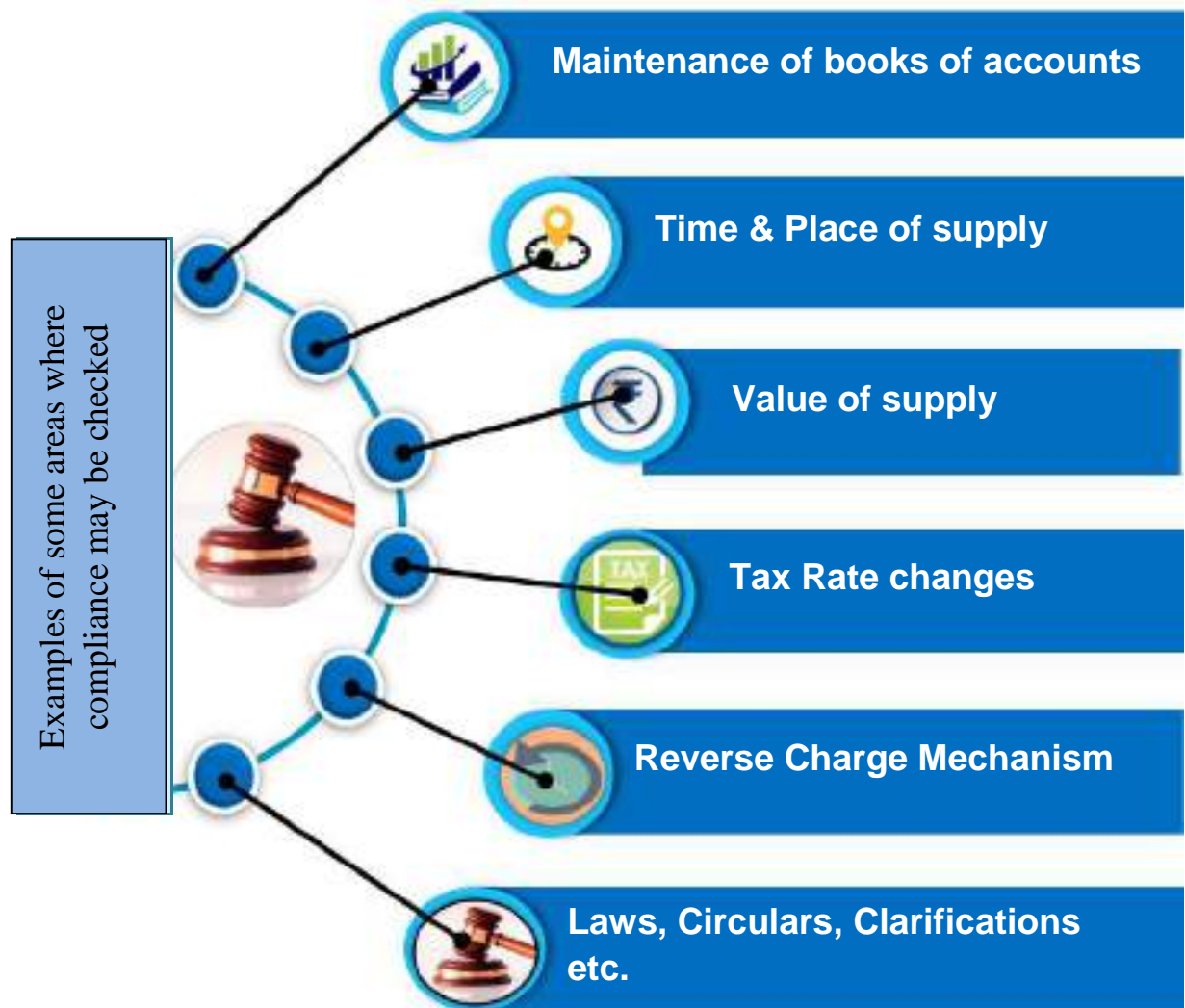
Audit is defined in sub-sec 13 of sec 2 of the GGST Act, 2017 as –

“detailed examination of records, returns and other documents maintained or furnished by the taxable person under this Act or Rules made thereunder or under any other law for the time being in force to verify, inter alia, the correctness of turnover declared, taxes paid, refund claimed and input tax credit availed, and to assess his compliance with the provisions of this Act or rules made thereunder”.



Hence, GST audit is not restricted to the reconciliation of the tax liability & payment of tax by a taxable person only, but its scope is also extended to assess the compliances with the provisions of the GST laws.

Question may arise in the mind of the Audit Officer as to how much scope is there to assess the compliances with the provisions of the GST laws? What are the provisions where compliance checking is required? There are some illustrative examples as follows:



- The approach towards a particular Auditee may vary depending upon the study on that Auditee. The main objective here is to identify the areas where non-compliance or wrong interpretation of the law may have occurred resulting less payment or non-payment of taxes, interest, late fees, etc. Identification of such areas will prevent the Auditee in continuing with such deviations which result in erroneous declaration of self-assessed liability.

2. Types of Audit in GST:

Three types of Audit are prescribed in GST:

- 1** **Audit by Tax Authorities:** As per provision of section 65 of the GGST Act, 2017 and as prescribed in rule 101 of the GGST Rules, 2017. This audit is to be conducted by an authorized officer; the power being delegated by the chief commissioner.
- 2** **Special Audit:** Special Audit by a chartered / cost accountant, on the order of an officer (not below the rank of Assistant Commissioner), upon prior approval of the Commissioner and appointed by the Commissioner, under section 66 of the GGST Act, 2017 read with rule 102 of the GGST Rules, 2017.
- 3** **Turnover based Audit:** Turnover based Audit u/s 35(5) of the GGST Act, 2017 read with rule 80(3) of the GGST Rules, 2017, by a chartered / cost accountant appointed by the RTP, when Aggregate Turnover exceeds prescribed quantum.

Note: This GST Audit Manual is focused towards audit by Tax Authorities only. The audited books of accounts and audit report submitted by the taxpayer in prescribed Form(s) are also subject to audit u/s 65.

3. Legal Provisions of Audit by Tax Authorities

(Legal Provisions under Section 65 of the GGST Acts, 2017 read with the Rules made there-under)

3.1. Provisions under Section 65:

Sub-sec	Provisions of the Act
(1)	<i>The Commissioner or any officer authorized by him/her, by way of a general or a specific order, may undertake audit of any registered person for such period, at such frequency and in such manner as may be prescribed.</i>

(2) The officers referred to in sub-section (1) may conduct audit at the place of business of the registered person or in their office.

(3) The registered person shall be informed by way of a notice not less than fifteen working days prior to the conduct of audit in such manner as may be prescribed.

The audit under sub-section (1) shall be completed within a period of three months from the date of commencement of the audit:

Provided that where the Commissioner is satisfied that audit in respect of such registered person cannot be completed within three months, he may, for the reasons to be recorded in writing, extend the period by a further period not exceeding six months.

Explanation. – For the purposes of this sub-section, the expression ‘commencement of audit’ shall mean the date on which the records and other documents, called for by the tax authorities, are made available by the registered person or the actual institution of audit at the place of business, whichever is later.

During the course of audit, the authorized officer may require the registered person,— (i) to afford him/her the necessary facility to verify the

(5) books of account or other documents as he/she may require; (ii) to furnish such information as he/she may require and render assistance for timely completion of the audit.

(6) On conclusion of audit, the proper officer shall, within thirty days, inform the registered person, whose records are audited, about the findings, his/her rights and obligations and the reasons for such findings.

(7) Where the audit conducted under sub-section (1) results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilized, the proper officer may initiate action under section 73 or section 74.

3.2. Provisions under rule 101:

Sub-rule	Provisions of the rule
(1)	<i>The period of audit to be conducted under sub-section (1) of section 65 shall be a financial year or part thereof or multiples thereof.</i>
(2)	<i>Where it is decided to undertake the audit of a registered person in accordance with the provisions of section 65, the proper officer shall issue a notice in FORM GST ADT-01 in accordance with the provisions of sub-section (3) of the said section.</i>
(3)	<i>The proper officer authorized to conduct audit of the records and books of account of the registered person shall, with the assistance of the team of officers and officials accompanying him/her, verify the documents on the basis of which the books of account are maintained and the returns and statements furnished under the provisions of the Act and the rules made thereunder, the correctness of the turnover, exemptions and deductions claimed, the rate of tax applied in respect of supply of goods or services or both, the input tax credit availed and utilized, refund claimed, and other relevant issues and record the observations in his audit notes.</i>
(4)	<i>The proper officer may inform the registered person of the discrepancies noticed, if any, as observed in the audit and the said person may file his/her reply and the proper officer shall finalize the findings of the audit after due consideration of the reply furnished.</i>
(5)	<i>On conclusion of the audit, the proper officer shall inform the findings of audit to the registered person in accordance with the provisions of sub-section (6) of section 65 in FORM GST ADT-02</i>

4. Some relevant provisions of GGST Act, 2017 directly or indirectly linked with Audit:

Sec	Section Heading	Rule / Notification	Heading
12	Time of Supply of Goods	N.N. 66/17 -CT dt,15.11.17	Delinking advance payment from time of supply in case of goods.
13	Time of Supply of Service		
14	Time in case of change in rate of tax.		
15	Value of Taxable Supply	27 to 35	Determination of Value of Supply
16,17,18, 19&20	Input Tax Credit	36 to 45	Rules related to ITC and ISD
31	Tax Invoice	46 to 55A	Tax Invoice, Credit and Debit Notes
34	Credit & Debit Notes		
35	Accounts and other records	56 to 58	Accounts and Records
44	Annual Return	80	Annual return and Reconciliation Statement (GSTR 9, 9A, 9B, 9C)
49	Payment of tax, interest, penalty and other amounts.	85 to 88A	Payment of Tax
50	Interest		
54	Refund of tax	89 to 97A & updated Circulars(125&129 of 2019)	Refund
71	Access to business premises		
73&74	Determination of tax not paid or short paid	Rule 142	Demand & Recovery
76	Tax collected but not paid to the Government		
77	Tax wrongly collected and paid to the Central /State Government		
125	General Penalty		

4.1. Access to business premises:

Section 71 –

“(1) Any officer under this Act, authorized by the proper officer not below the rank of Joint Commissioner, shall have access to any place of business of a registered person to inspect books of account, documents, computers, computer programmes, computer software whether installed in a computer or otherwise and such other things as he may require and which may be available at such place, for the purposes of carrying out any audit, scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.



(2) Every person in charge of place referred to in sub-section (1) shall, on demand, make available to the officer authorized under sub-section (1) or the audit party deputed by the proper officer or a cost accountant or chartered accountant nominated under section 66--

- (i) such records as prepared or maintained by the registered person and declared to the proper officer in such manner as may be prescribed;*
- (ii) trial balance or its equivalent;*
- (iii) statements of annual financial accounts, duly audited, wherever required;*
- (iv) cost audit report, if any, under section 148 of the Companies Act, 2013;*
- (v) the income-tax audit report, if any, under section 44AB of the Income Tax Act, 1961; and*
- (vi) any other relevant record,*

for the scrutiny by the officer or audit party or the chartered accountant or cost accountant within a period not exceeding fifteen working days from the day when such demand is made, or such further period as may be allowed by the said officer or the audit party or the chartered accountant or cost accountant.”

➤ Such access includes online access of books of accounts.

4.2. Officers to assist proper officers:

Section 72 –

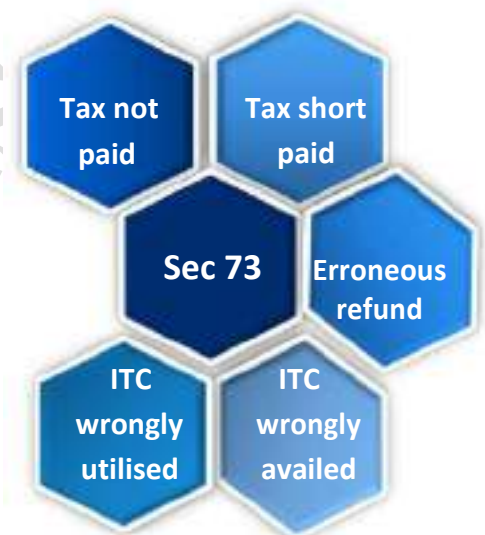
“(1) All officers of Police, Railways, Customs, and those officers engaged in the collection of land revenue, including village officers, officers of central tax and officers of the Union territory tax shall assist the proper officers in the implementation of this Act.

(2) The Government may, by notification, empower and require any other class of officers to assist the proper officers in the implementation of this Act when called upon to do so by the Commissioner.

4.3. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized for any reason other than fraud or any willful misstatement or suppression of facts:

Section 73 –

“(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilized for any reason, other than the reason of fraud or any willful misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilized input tax credit, requiring him/her to show cause as to why he/she should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty leviable under the provisions of this Act or the rules made thereunder.



Sec 73 is applicable when there are no reasons of fraud or any willful misstatement or suppression of facts to evade tax

(2) The proper officer shall issue the notice under sub-section (1) at least three months prior to the time limit specified in sub-section (10) for issuance of order.

(3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized for such periods other than those covered under sub-section (1), on the person chargeable with tax.

(4) The service of such statement shall be deemed to be service of notice on such person under sub-section (1), subject to the condition that the grounds relied upon for such tax periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.

(5) The person chargeable with tax may, before service of notice under sub-section (1) or, as the case may be, the statement under sub-section (3), pay the amount of tax along with interest payable thereon under section 50 on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

(6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1) or, as the case may be, the statement under sub-section (3), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.

(7) Where the proper officer is of the opinion that the amount paid under subsection (5) falls short of the amount actually payable, he/she shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.

(8) Where any person chargeable with tax under sub-section (1) or sub-section (3) pays the said tax along with interest payable under section 50 within thirty days of issue of show cause notice, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded.

(9) The proper officer shall, after considering the representation, if any, made by person chargeable with tax, determine the amount of tax, interest and a penalty equivalent to ten per cent. of tax or ten thousand rupees, whichever is higher, due from such person and issue an order.

(10) The proper officer shall issue the order under sub-section (9) within three years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilized relates to or within three years from the date of erroneous refund.

(11) Notwithstanding anything contained in sub-section (6) or sub-section (8), penalty under sub-section (9) shall be payable where any amount of self-assessed tax or any amount collected as tax has not been paid within a period of thirty days from the due date of payment of such tax.”

4.4. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reasons of fraud or any willful misstatement or suppression of facts:

Section 74 –

“(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilized by reason of fraud, or any willful misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilized input tax credit, requiring him/her to show cause as to why he/she should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.



Sec 74 is applicable when there are reasons of fraud or any willful misstatement or suppression of facts to evade tax

(2) The proper officer shall issue the notice under sub-section (1) at least six months prior to the time limit specified in sub-section (10) for issuance of order.

(3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized for such periods other than those covered under sub-section (1), on the person chargeable with tax.

(4) The service of statement under sub-section (3) shall be deemed to be service of notice under sub-section (1) of section 73, subject to the condition that the grounds relied upon in the said statement, except the ground of fraud, or any willful-misstatement or suppression of facts to evade tax, for periods other than those covered under subsection (1) are the same as are mentioned in the earlier notice.

(5) The person chargeable with tax may, before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 and a penalty equivalent to fifteen per cent. of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

(6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.

(7) Where the proper officer is of the opinion that the amount paid under subsection (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.

(8) Where any person chargeable with tax under sub-section (1) pays the said tax along with interest payable under section 50 and a penalty equivalent to twenty-five per cent. of such tax within thirty days of issue of the notice, all proceedings in respect of the said notice shall be deemed to be concluded.

(9) The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order.

(10) The proper officer shall issue the order under sub-section (9) within a period of five years from the due date for furnishing of annual return for the financial

year to which the tax not paid or short paid or input tax credit wrongly availed or utilized relates to or within five years from the date of erroneous refund. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any willful misstatement or suppression of facts.

(11) Where any person served with an order issued under sub-section (9) pays the tax along with interest payable thereon under section 50 and a penalty equivalent to fifty per cent. of such tax within thirty days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded.

Explanation 1.—For the purposes of section 73 and this section, —

- (i) the expression “all proceedings in respect of the said notice” shall not include proceedings under section 132;*
- (ii) where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against all the persons liable to pay penalty under sections 122, 125, 129 and 130 are deemed to be concluded.*

Explanation 2.—For the purposes of this Act, the expression “suppression” shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer.”

4.5. General provisions relating to determination of tax:

Section 75 –

“(1) Where the service of notice or issuance of order is stayed by an order of a court or Appellate Tribunal, the period of such stay shall be excluded in computing the period specified in sub-sections (2) and (10) of section 73 or sub-sections (2) and (10) of section 74, as the case may be.

(2) Where any Appellate Authority or Appellate Tribunal or court concludes that the notice issued under sub-section (1) of section 74 is not sustainable for the reason that the charges of fraud or any willful misstatement or suppression of

facts to evade tax has not been established against the person to whom the notice was issued, the proper officer shall determine the tax payable by such person, deeming as if the notice were issued under sub-section (1) of section 73.

(3) Where any order is required to be issued in pursuance of the direction of the Appellate Authority or Appellate Tribunal or a court, such order shall be issued within two years from the date of communication of the said direction.

(4) An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person.

(5) The proper officer shall, if sufficient cause is shown by the person chargeable with tax, grant time to the said person and adjourn the hearing for reasons to be recorded in writing: Provided that no such adjournment shall be granted for more than three times to a person during the proceedings.

(6) The proper officer, in his order, shall set out the relevant facts and the basis of his decision.

(7) The amount of tax, interest and penalty demanded in the order shall not be in excess of the amount specified in the notice and no demand shall be confirmed on the grounds other than the grounds specified in the notice.

(8) Where the Appellate Authority or Appellate Tribunal or court modifies the amount of tax determined by the proper officer, the amount of interest and penalty shall stand modified accordingly, taking into account the amount of tax so modified.

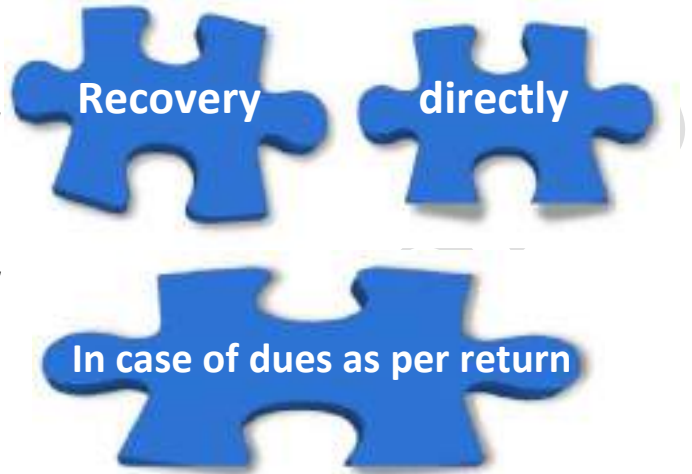
(9) The interest on the tax short paid or not paid shall be payable whether or not specified in the order determining the tax liability.

(10) The adjudication proceedings shall be deemed to be concluded, if the order is not issued within three years as provided for in sub-section (10) of section 73 or within five years as provided for in sub-section (10) of section 74.

(11) An issue on which the Appellate Authority or the Appellate Tribunal or the High Court has given its decision which is prejudicial to the interest of revenue in some other proceedings and an appeal to the Appellate Tribunal or the High Court or the Supreme Court against such decision of the Appellate Authority or the

Appellate Tribunal or the High Court is pending, the period spent between the date of the decision of the Appellate Authority and that of the Appellate Tribunal or the date of decision of the Appellate Tribunal and that of the High Court or the date of the decision of the High Court and that of the Supreme Court shall be excluded in computing the period referred to in sub-section (10) of section 73 or sub-section (10) of section 74 where proceedings are initiated by way of issue of a show cause notice under the said sections.

(12) Notwithstanding anything contained in section 73 or section 74, where any amount of self-assessed tax in accordance with a return furnished under section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of section 79.



(13) Where any penalty is imposed under section 73 or section 74, no penalty for the same act or omission shall be imposed on the same person under any other provision of this Act.”

4.6. Tax collected but not paid to the Government:

Section 76 –

“(1) Notwithstanding anything to the contrary contained in any order or direction of any Appellate Authority or Appellate Tribunal or court or in any other provisions of this Act or the rules made thereunder or any other law for the time being in force, every person who has collected from any other person any amount as representing the tax under this Act, and has not paid the said amount to the Government, shall forthwith pay the said amount to the Government, irrespective of whether the supplies in respect of which such amount was collected are taxable or not.

(2) Where any amount is required to be paid to the Government under sub-section (1), and which has not been so paid, the proper officer may serve on the person liable to pay such amount a notice requiring him/her to show cause as to why the said

amount as specified in the notice, should not be paid by him/her to the Government and why a penalty equivalent to the amount specified in the notice should not be imposed on him/her under the provisions of this Act.

(3) The proper officer shall, after considering the representation, if any, made by the person on whom the notice is served under sub-section (2), determine the amount due from such person and thereupon such person shall pay the amount so determined.

(4) The person referred to in sub-section (1) shall in addition to paying the amount referred to in sub-section (1) or sub-section (3) also be liable to pay interest thereon at the rate specified under section 50 from the date such amount was collected by him/her to the date such amount is paid by him/her to the Government.



TAX+ 100% Penalty
+ Interest

(5) An opportunity of hearing shall be granted where a request is received in writing from the person to whom the notice was issued to show cause.

(6) The proper officer shall issue an order within one year from the date of issue of the notice.

(7) Where the issuance of order is stayed by an order of the court or Appellate Tribunal, the period of such stay shall be excluded in computing the period of one year.

(8) The proper officer, in his order, shall set out the relevant facts and the basis of his decision.

(9) The amount paid to the Government under sub-section (1) or sub-section (3) shall be adjusted against the tax payable, if any, by the person in relation to the supplies referred to in sub-section (1).

(10) Where any surplus is left after the adjustment under sub-section (9), the amount of such surplus shall either be credited to the Fund or refunded to the person who has borne the incidence of such amount.

(11) The person who has borne the incidence of the amount, may apply for the refund of the same in accordance with the provisions of section 54.

4.7. Tax wrongfully collected and paid to the Central Government or State Government:

Section 77 –

(1) A registered person who has paid the central tax and State tax on a transaction considered by him/her to be an intra-State supply, but which

is subsequently held to be an inter-State supply, shall be refunded the amount of taxes so paid in such manner and subject to such conditions as may be prescribed.

(2) A registered person who has paid integrated tax on a transaction considered by him/her to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall not be required to pay any interest on the amount of State tax payable.



4.8. Initiations of recovery proceedings:

Section 78 –

“Any amount payable by a taxable person in pursuance of an order passed under this Act shall be paid by such person within a period of three months from the date of service of such order failing which recovery proceedings shall be initiated:



Provided that where the proper officer considers it expedient in the interest of revenue, he may, for reasons to be recorded in writing, require the said taxable person to make such payment within such period less than a period of three months as may be specified by him/her.”

4.9. Levy of late fee:

Section 47 –

“(1) Any registered person who fails to furnish the details of outward or inward supplies required under section 37 or section 38 or returns required under section

39 or section 45 by the due date shall pay a late fee of one hundred rupees for every day during which such failure continues subject to a maximum amount of five thousand rupees.

(2) Any registered person who fails to furnish the return required under section 44 by the due date shall be liable to pay a late fee of one hundred rupees for every day during which such failure continues subject to a maximum of an amount calculated at a quarter per cent. of his turnover in the State.”

4.10. Interest on delayed payment of tax:

Section 50 –

“(1) Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council.

Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger. **[Proviso inserted on 01.09.2020 w-e-f 01.07.2017]**

(2) The interest under sub-section (1) shall be calculated, in such manner as may be prescribed, from the day succeeding the day on which such tax was due to be paid.”

4.11. General penalty:

Section 125 –

“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.”

5. Obligation of the Auditee

During the course of audit, the authorized officer may ask the registered person, to provide the necessary facility to verify the books of account or other documents as he may require, and to furnish such information as he may require and render assistance for timely completion of audit. [Sec 65(5)].



6. Dealing with the Auditee:

The main objective of audit is to quantify shortfall of revenue in a cost effective and transparent manner. The attitude of the officer conducting audit should reflect this. He should be aware that he is the main channel of communication between the department and the Auditee.



The officer conducting audit should maintain a good professional relationship with the registered taxable person (herein after referred to as the RTP). He should recognize the rights of the RTP, such as, uniform and transparent application of law and his right to be treated with courtesy and consideration. He should explain that a tax compliant RTP may reap a number of benefits from an audit such as: -

- i). They will be better equipped to comply with the laws and the relevant procedures;
- ii). The preparation of prescribed returns and self-assessment of Goods and Services Tax will be better focused, correct and complete;

- iii). The scrutiny of business accounts and returns submitted to various authorities, made in the course of audit would help in removing any deficiency in their accounting and internal control systems;
- iv). Disputes and proceedings against them would be substantially reduced or even eliminated.

7. Principles of audit

The objective of audit is also to measure the level of compliance of the RTP in light of the provisions of the GST Act and the rules made there under. It should be consistent with the Notifications/Circulars/Orders issued.

The basic principles of audit

- i). Adherence to risk factors identified by the Commissioner.
- ii). Consistency with Departmental Circulars and using Professional methodology.
- iii). Chalking out a sound prior-audit plan/audit program and conducting the audit accordingly.
- iv). Emphasizing a systematic, flexible as well as penetrative audit.
- v). Regular review of the audit plan and progress and modification of the audit program whenever necessary.
- vi). Concentrating on scrutiny of records, the degree of which will depend on the identified risk areas.
- vii). Identification of the veracity of Turnover declared, Taxes paid, Refund claimed and received, Input Tax Credit availed, assessment of his compliances as per the provisions of the GST Act and the Rules made there-under.
- viii). Recording of the proceedings of audit and findings thereof.
- ix). Providing opportunity to the Auditee to be heard and to submit his contention.

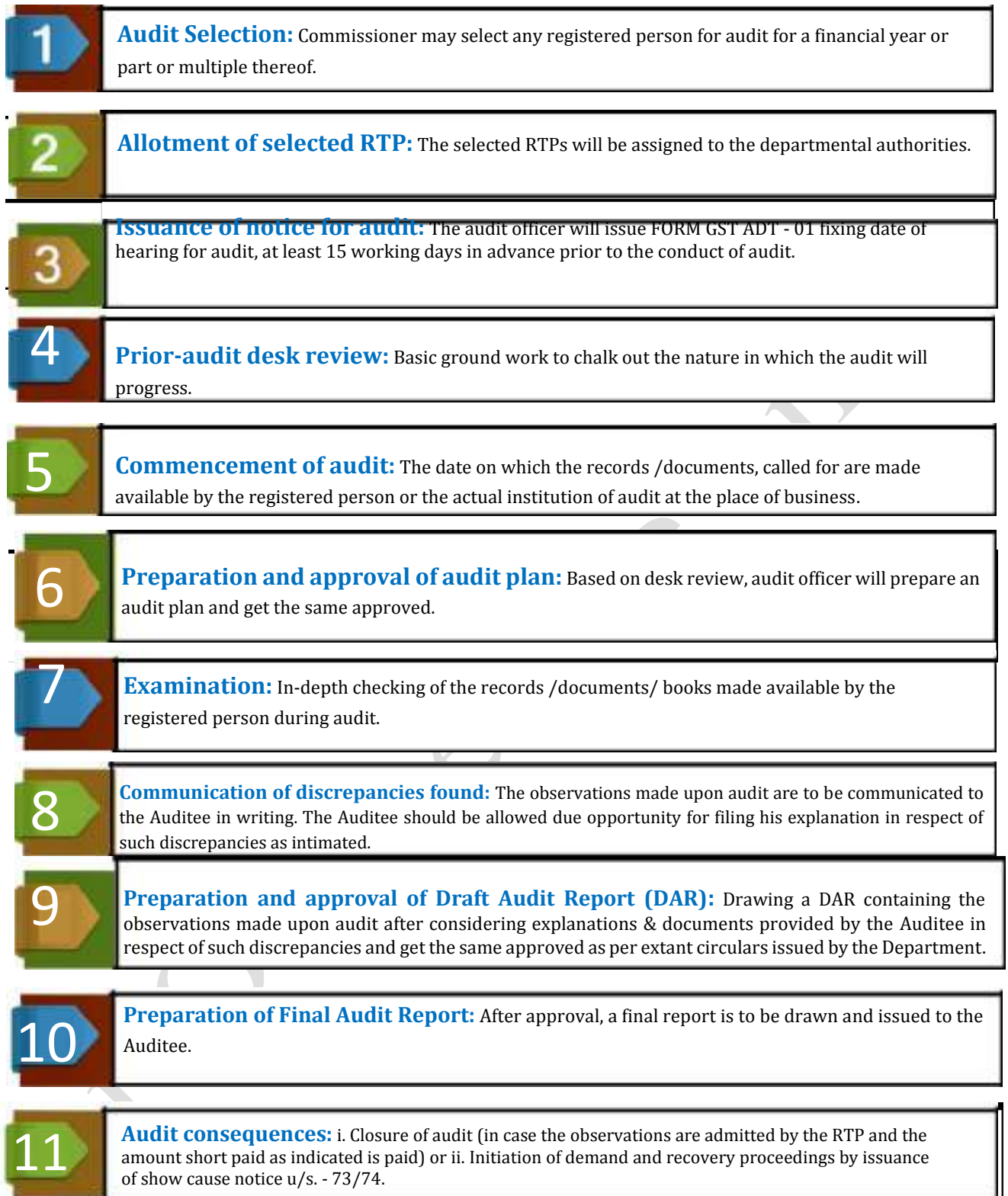


8. Pre-requisites of an audit officer conducting audit

- The officer should have a primary knowledge about the business & business pattern of the RTP with respect to the particular trade & industry.

- Officer should also be well aware of the existing trade practices, conventions and market trends.
- Section 133 of the Companies Act, 2013 read with Rule 7 of the Companies (Accounts) Rules, 2014 provides that the Final Accounts should comply with the Accounting Standards. The knowledge of the prevalent Indian Accounting Standards will help the audit officer in the examination of books of accounts.
- Officer should take an unbiased and judicious approach in the course of audit.
- An Audit Officer should be tactful to gain the goodwill and confidence of the RTP. He is expected to play the role of motivator ensuring voluntary compliance by the RTP.
- Technical lapses by the RTP which do not have any revenue implication, and have occurred due to oversight or ignorance, may be ignored on merit. However, any such incidence upon being detected should also be noted down in the course of audit.
- An Audit Officer should apprise the RTP of the provisions of the GST Acts and encourage him/her to make voluntary payment in the course of audit.
- An Audit Officer should be transparent in his actions. **Before drawing the Final Audit Report, the discrepancies found upon audit should be communicated to the Auditee. The Auditee should be allowed due opportunity for filing his explanation in respect of such discrepancies as intimated by the Audit Officer.** The Audit Officer should consider all the explanations and documents provided by the RTP, regarding the points of dispute, before drawing of the Final Audit Report.
- If necessary, Officer may consult Auditee's immediate functional head to resolve any issue in the course of the audit. Where there is lack of co-operation or deliberate failure to provide information and records by the RTP or in case of other exigency, the audit officer should inform RTP's immediate superior and follow it up by a written report, if necessary.
- Officer should preserve all the important documents submitted by the Auditee in the course of audit which is relevant to findings as office records preferably in electronic format.
- Confidentiality should be maintained in respect of sensitive and confidential information furnished, in the course of audit.

9. Audit flow chart:



10. Different Steps of audit:

10.1. Selection for audit -

As per the provisions of section 65(1) read with rule 101(1), the Commissioner or any officer authorized by him/her, by way of a general or a specific order, may undertake audit of any registered person for a financial year or part thereof or multiples thereof.

The principle of audit envisages selection of taxpayers for audit based on certain risk parameters. The Commissioner by a general or specific order may select any registered person for audit of his books of accounts for a specific period.

The Commissioner may fix the criteria of selection based on certain parameters as he may deem fit. Given the large number of registered taxpayers under GST, it is neither possible nor desirable to subject every taxpayer to audit each year with the available resources. Further, emphasis placed merely on coverage of more number of assesses and taxpayers would dilute the quality of audit and would be against the principles of GST, which is based on trust / voluntary compliance by the tax payers. Selection of taxpayers for audit in a scientific manner is extremely important as it permits the efficient use of audit resources viz. manpower and skills for achieving effective audit results. These taxpayers should be selected on the basis of assessment of the risk to revenue. This process, which is an essential feature of audit selection, is known as '**Risk Evaluation**'.

Certain representative selection criteria are stated as below:

- **Selection based on Return related Risk Parameters:** The list of potential high risk taxpayers may be prepared by selecting one or multiple criteria under different major risk heads from the available options, viz. :



Specific benchmarks may be fixed against the risk criteria for each of the above major heads such as:

- a) Normal taxpayers, i.e. the taxpayers who are required to file Form GSTR- 3B and Form GSTR-1, may be selected.

- b) Those tax-payers who have filed at least 06 (selection criteria for 2017-18) & 09 (selection criteria for each subsequent year) Form GSTR-3B in the financial year may be selected (department may select otherwise also).
 - c) The taxpayers' pool may be divided into 3 segments namely Large, Medium & Small based on turnover in the State.
 - d) All risk parameters are required to be identified and all probable aspects need to be considered to identify non-compliance and non-payment / short payment of tax, interest, late fee, penalty etc and evasion of tax.
 - e) To select the tax payers for audit in an effective manner, secondary data source (such as VAT/Service Tax/Central Excise/Custom data, Income Tax data etc.) may be considered along with the primary data source (i.e. GST data).
 - f) The weightage of each parameter may vary depending upon its importance in selection of taxpayers for audit.
 - g) Based on the average weight considering all the parameters, a final score may be calculated on the basis of which the final selection may be done.
- **Entity level risks** (e.g. Turnover, Tax, ITC, Refund, Commodity such as Iron & Steel, Paints & Chemicals, Textiles, Cement, Medicine, Footwear, Branded food grain, Automobiles etc., Service: Works contract, Real Estate, Information Technology, Consultancy service, Manpower service, Hospitality, Travel & Tourism, Leasing etc).
 - **Risks associated with compliance behavior** (e.g. late filer of return, non-submission of Form GSTR-1, Form GSTR-3B, Form GSTR-9 & Form GSTR-9C).
 - **Various ratios, e.g.**
 - Taxable turnover: Exempted turnover
 - Output tax : Input tax
 - Cash payment: Output tax
 - Set-of using e-credit ledger : Set-of using e-cash ledger
 - Inter-state supply: Intra-state supply etc.

- **Exceptional Reports e.g.**

- ITC claimed in Form GSTR-3B vs. ITC auto-populated in Form GSTR-2A/2B.

- Turnover declared in Form GSTR-3B vis-à-vis Form GSTR-1.

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- Claim of ITC from cancelled RTPs, aggregate turnover in GST return vis-à-vis Turnover disclosed in Income Tax return/Balance sheet.

- Turnover declared by RTP in Form GSTR-3B compared to turnover on which TDS deducted as reflected in Form GSTR-7 submitted by TDS deductor.



- Turnover declared by RTP in Form GSTR-3B compared to turnover on which TCS collected as reflected in Form GSTR-8 submitted by TCS collector.

- Refund claimed against purchase from taxpayer having no auto-population of ITC in Form GSTR-2A/2B.

- Purchases from non-existent/cancelled/ab-initio cancelled RTPs.

- RTPs having adverse reports in VAT/Service Tax/Central Excise who are operative in GST etc.).

(The selection parameters are indicative and general in nature and the same are subject to change)

h) A certain percent of the selection of the tax payer may be done on random basis as well as considering local parameters.

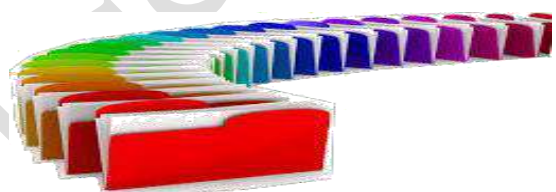
Theme based audits

Issue based audits at state level may also be conducted in a co-ordinated manner based on a systematic and methodical risk analysis of internal data of taxpayer, economic indicators, third party information from tax and other regulatory authorities and other relevant sources of data. The issue for the audit could be a sensitive commodity/Service or any transaction involved. Theme based audits or sectoral audits may also be conducted.

10.2.Suo-moto selection: If an officer comes across any specific information relating to a RTP and has specific reasons to believe that Audit of the said RTP's books of accounts is required to be done for one or more financial years, or, if any audit officer in the course of audit has specific reasons to believe that an observation made upon audit will have revenue impacts in other periods also, he may send a proposal in this regard to the Commissioner. Similarly, an audit officer or his/her higher authority can propose for any taxpayer to be selected by the Commissioner for audit upon mentioning adequate reasons. The proposal in all cases from field formations should have reasons/ justification for selection of case for audit along-with recommendation/comments of the supervisory/ Divisional Joint Commissioner of State tax. The Commissioner upon consideration of all such proposals may select some/all of such RTPs for audit.

10.3. Allotment of selected RTP -

As per provisions of sec 65(1) read with rule 101(1), any officer who is authorized by the Commissioner has the power to audit.



If the HQ feels that audit for a particular taxpayer need not to be carried out, the case can be dropped. In order to drop an audit case, proper and adequate reasons are required to be given along with any document in support of such reasons for dropping the same.

After the audit selection, the list of selected RTPs may be made available to the respective officers through the proper hierarchy.

10.4. Allocation of Taxpayer of Divisional Audit Head:

- The selected cases are required to be allocated to the audit officers.
- In case of already allocated Taxpayer(s), if the authority wants to modify the audit officer, he/she may do so after recording reasons for such change.

10.5. ASSIGNMENT OF CASES AND SUBORDINATES FOR AUDIT:

- After allocation, the next step is to assign the selected taxpayer to the Audit Officer, who will finally carry out the audit. Normally, such assignment will be done by the HQ officer. However, the same functionality has also been provided to the Divisional officer. So, the HQ officer, if he/she desires, can also assign the Audit Officer and subordinate staff on his/her own.
- The allocating officer can fetch a list of allocated taxpayers that are pending for assignment. The allocation process involves the following steps:-
 - **Assign Audit Officer**– The HQ/Divisional Officer, while assigning a Taxpayer for Audit to a particular ‘Audit officer’ can view the existing assignments i.e. category wise (large, medium & small) number of audit cases assigned to that particular Audit officer. This will help them to assign taxpayers keeping in view the existing workload on an audit officer and thereby maintain uniformity in workload on the audit officers in his/her jurisdiction. At any stage, if a need of change of Audit officer arises, the same can be done through the system by reassigning such role to another officer.
 - **Assign Audit Officer’s subordinates** – After assigning the Audit officer, the HQ/Divisional officer can go ahead with assigning the subordinate Members who may or may not be working directly under that Audit officer. The names of the available subordinates along with their designation and existing work allocation will also be viewed on system and maintaining uniformity in work allocation, subordinate staff can also be assigned. If needed, subordinates can also be changed with other available staff.

10.6. Issuance of Notice in FORM GST ADT-01:

Once the RTP is allotted to a particular Audit officer, a notice for commencement of audit is to be issued to the Auditee in **FORM GST ADT-01**.

Intimation of audit is to be issued to the taxable person at least 15 days in advance prior to the conduct of audit, by way of a notice, in **FORM GST ADT-01**. *[Sec 65(3), Rule 101(2)]*.

The format of Form GST ADT-01 is provided in this manual as **Annexure- 1**

Form GST ADT-01 preferably be issued within fifteen (15) working days of allotment of files to an Audit officer.

It has been observed from the past experience that asking for all the books of accounts and records from an Auditee with a large volume of business on the very first day of audit causes inconvenience for both the Auditee and the auditor. It is difficult for an audit officer to examine all the documents with equal importance on one single occasion by all practical purposes.

As a result, it would be prudent to ask a RTP to keep all his Books of Accounts and records ready to be made available for examination during the course of audit and to produce those in a staggered manner as decided by the audit officer. For example, the Audit Officer may ask for the first set of documents on the first day of hearing which is required for a thorough study of the annual business performances of the RTP, by issuing a separate letter along with the FORM GST ADT-01. This will help the Audit officer to chalk out an effective audit plan.

However, in cases, where the volume of business is not significant, the relevant documents and records may be asked to be produced on the first day of hearing as scheduled in FORM GST ADT-01.

Furthermore, the Audit Officer may send –

- a letter seeking mutual assistance to complete the audit in focused manner **(Annexure -2)**
- a questionnaire to the RTP for production of the same upon being filled up, before the audit Officer **(Annexure -3)**
- a list showing statements, summary, documents and records may be asked for on the date specified by the Audit Officer as per FORM GST ADT-01 **(Annexure -4).**

This questionnaire will help both the Auditee and auditor to complete the audit process in a focused and planned manner.

This is needless to say that the questionnaire will change according to the need of the concerned case. The questionnaire should be issued as attachment with ADT - 01.

The following set of documents and records pertaining to a financial year (or part of it) may be called for on the first date of Audit: -

- Annual report and Director's report for the FY
- Profit & Loss A/c, trial balance, cash flow statements for the year ended on 31st March...
- Balance Sheet with its notes as they stood on 31st March ...
- Auditor's Notes to the A/c for the FY
- If GSTR -9C is not submitted for the period under audit then Trial Balance (it is applicable where the RTP has multiple GSTIN)
- Consolidated statement (party-wise total for the period under audit) of inward & outward supplies including exempted and non-GST supply:

RTP to whom supply made	GSTIN	of invoice/debit not issued	Supply Value (Rs)	Tax (Rs)				Broad category of Goods/services
				CGST	SGST	IGST	Cess	

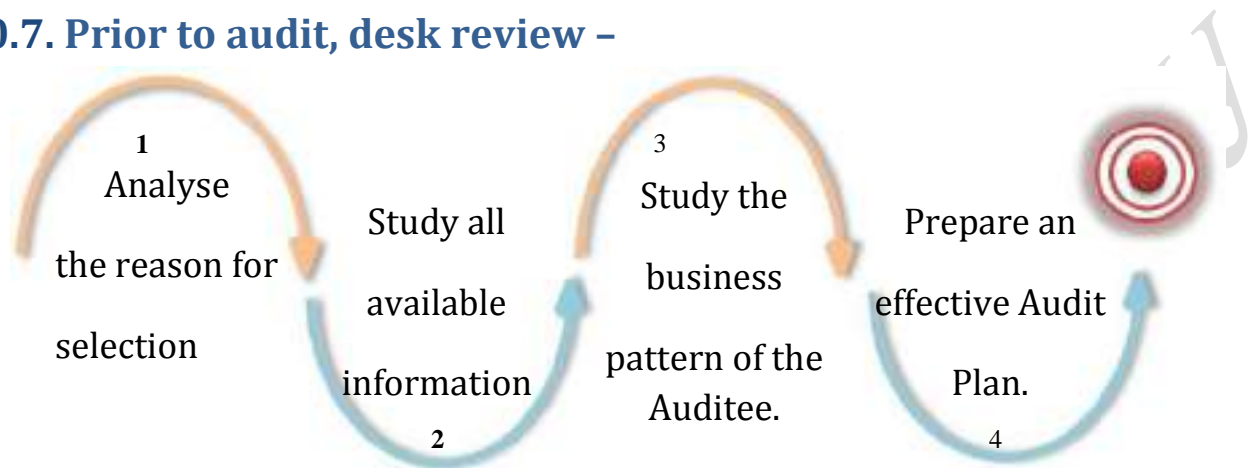
RTP from whom supply received	GSTIN	of invoice/debit not issued	Supply Value (Rs)	Tax (Rs)				Broad category of Goods/services
				CGST	SGST	IGST	Cess	

- List of HSN code of goods and SAC of services in respect of your supply.
- Reconciliation statement in respect of Turnover as disclosed in GSTR 3B and GSTR 1 and as per books of accounts.
- ITC as claimed in GSTR 3B and as auto populated in GSTR-2A/2B.

On production of such documents and records by the RTP on the first date of audit as per FORM GST ADT-01, audit will commence and the Audit officer will start chalking out his audit plan.

The remaining books of accounts, ledgers, statements, documents, records etc may be asked from time to time on the basis of the audit plan in the respective case. A letter may be attached/uploaded with the ADT – 01 along with the questionnaire.

10.7. Prior to audit, desk review –



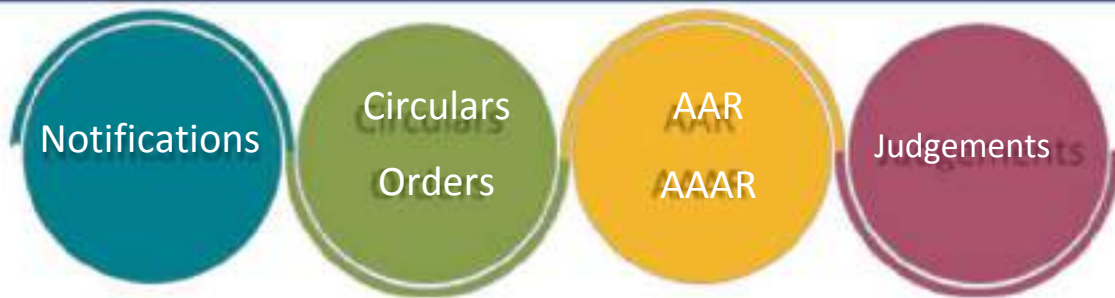
This is the first phase of the audit programme done in the office by the audit officer. This process needs to be completed by the Audit Officer on the first date of appearance of the Auditee as per FORM GST ADT-01. The idea behind this process is that the Audit Officer would get accustomed with the nature of business of the Auditee vis-a-vis the information available with him/her. In this context, the Department may provide certain information relating to the selected RTP in format named as “**Tax payer at a Glance (TAG)**”.

This TAG will contain the basic profiling of the selected RTP in respect of registration, return, ITC, payment of tax, EWB utilization and any other pertinent information (e.g. exceptional reports). The officer can also examine the GSTR 9 & GSTR 9C and Balance Sheet, if available.



Upon studying this information as made available, the officer should be well accustomed with the following: -

- **Reason(s) for selection.**
- **Profile of the Auditee** with details of ownership, numbers of registered person under the same PAN within the State, principal and additional places of business, migration status (if any), business trend and compliance level of the RTP in the pre-GST period as well as in the GST regime, business trend of the RTP vis-a-vis the trends of the industry etc.
- **Broad types of supply involved** (i.e., resale, manufacturing, export, import, service, works contract, job work, ISD, etc).
- **Business pattern of the Auditee i.e. nature of goods and/or services dealt along with classification** (e.g. importer of medicine, exporter of leather goods, reseller of iron & steel, manufacturer of jute goods, restaurant service, manpower supply, travel agent, aviation, transport, etc).
- **Return filing & tax compliance pattern** of the Auditee in GST for the period under audit. If irregularity is found in case of submission of Return, **the Audit Officer should calculate the Late Fees & Interest payable at the desk-review stage itself.** Furthermore, there may be chances of mismatch of Turnover and Tax as disclosed in Form GSTR-3B vis-à-vis Form GSTR-1. Similarly, there may be a mismatch between ITC claimed in Form GSTR-3B vis-à-vis ITC auto-populated in Form GSTR-2A.
- **Analysis of business operations as declared by the Auditee in the GST Returns** in light of other data sources available in the GST portal itself. The Audit Officer should verify the turnover declared by the RTP in the GSTR Returns for the concerned period vis-à-vis footprint of payments made to the RTP as per GSTR-7 or GSTR-8 filed by TDS deductors or TCS collectors, as the case may be. The Audit Officer should also consult the various exceptional reports made available.
- **Analysis of business operations as declared by the Auditee in the GST Returns in light of secondary data sources**, e.g. turnover declared by the RTP in the GSTR Returns for the concerned period vis-à-vis the turnover declared in income tax return(s)/tax audit report or any other source, if available.



- **An audit officer is required to study each case from a holistic point of view** of applicability of statutory provisions and amendments thereof, notifications, circulars and orders, advance rulings and various court decisions relevant for the audit period. There are various instances where a specific transaction when looked from a wider perspective, yielded interesting conclusions. Many of these instances are covered by various clarificatory Circulars issued both by the Central Government and the State Government.
- An illustrative list of some of the specific transactions demanding a different look which are clarified by various Circulars is given below. This list is merely indicative and certainly not exhaustive.

So, it is desirable that an Audit Officer will be prudent enough to:

- Read the entire original document as available in various public domains,
- Understand the reasons and contexts of such clarifications,
- Cite any relevant portion of the clarification from such original document only and not from any truncated reference.

Some examples of interesting issues covered under various Circulars and orders passed by Advance Ruling Authorities:

1. **A reseller is returning time expired goods to his distributor.** Suppose, both the reseller and the distributor are registered as normal tax payers.

Whether Credit Note can be issued by the distributor under GST?	The distributor may issue credit note within the time limit of sec 34(2) and with the condition of credit reversal by the reseller.
Instead of the Credit Note whether the reseller can issue fresh invoice?	The reseller may issue fresh invoice to the distributor and the distributor is eligible to claim ITC on such invoice.

If, in the supply chain someone destroys the expired goods what will be the treatment in GST? If the reseller in above example is under composition scheme or unregistered person then what are the processes?

So, many questions may arise. **Circular No. 72/46/2018-GST dt.26.10.2018 clarifies some of these aspects.**

- 2. During audit the officer noticed that Mr. X is an independent director of the Auditee to whom the company paid Rs.1.5 Cr. as yearly remuneration. Whether this remuneration is leviable to GST?**

The services provided by the directors who are not the employees of the company are outside the scope of Schedule III of the GGST Act and are therefore taxable. In terms of entry at Sl. No. 6 of the Table annexed to notification No. 13/2017 – CT (R) dated 28.06.2017, the recipient of the said services i.e. the Company, is liable to discharge the applicable GST on it on reverse charge basis. **Clarification in Circular No: 140/10/2020 – GST dt. 10.06.2020 is relevant for audit officers in this case.**

- 3. ABC Printers has made supplies against two different printing orders:**
- a. Printing of brochures of a real-estate company where only the content is provided by the real-estate company.**
 - b. Printing of envelopes and letter pads with the logo of the developer.**
- Whether the above supplies are supplies of goods or service?**

The first case is a composite supply of goods (paper, ink) as well as services (printing) where printing of the content supplied by the recipient of supply is the principal supply. Hence, tax in this case will be guided by the tax rate of printing services.



Clarification in Circular No:
11/11/2017-GST dated: 20.10.2017

In the second case too, the printing has been made as a part of composite supply, but the supply of printing of the content supplied by the recipient of supply is ancillary to the principal supply of goods. Therefore, in the second case, the tax rate of goods will prevail.

4. Fabrication of buses may involve the following two situations:

- a) Bus body builder builds a bus, working on the chassis owned by him and supplies the built-up bus to the customer.**
- b) Bus body builder builds body on chassis provided by the principal for body building.**

Whether the above supplies are supply of goods or service?

In the above context, for situation (a) above, the supply made is that of bus, and accordingly supply would attract GST@ 28%. In situation (b) above, fabrication of body on chassis provided by the principal (not on account of bodybuilder), the supply would be treated as service, and 18% GST as applicable will be charged accordingly.



[Circular No: 52/26/2018-GST dated 09.08.2018](#)

5. Popcorn is available in packets both as ready to eat and ready to fry. Whether GST rate is same in both the cases?

A packet of corn, which needs to be heated before eating would attract GST @5%. But, ready to eat popcorn bag or packet attracts 18% GST.

[Vide, AAR- Gujarat: Jay Jalaram Enterprises \[2020\]117.](#)



6. A manpower agency is extracting minerals from a mine owned by another person. Is it supply of goods or services?

Applicant is providing a support in extraction of mineral and therefore it is a kind of supplying support Service.

In view of the above, we find that the Applicant is providing supporting service related to mining. The said service is classifiable under HSN 998622. The rate of GST on the said service is 18% (CGST 9% + SGST 9%) as provided under the [Notification No. 11/2017-Central Tax \(Rate\) dated 28.06.2017.](#)

[AAR-Rajasthan \(KSC Buildcon \(P\) Ltd.\)](#)

7. As per sec 17(5)(d) ITC is blocked when an RTP procures goods and services for construction of any immovable property on his own account, which is capitalized, including when such goods or services or both are used in the course or furtherance of business.

Now, whether ITC is admissible on lease rent paid during pre-operative period for the leasehold land on which a resort is being constructed to be used for furtherance of business?

Input Tax Credit is not available for lease rent paid during pre-operative period for the leasehold land on which the resort is being constructed on his own account to be used for furtherance of business, when the same is being capitalized and treated as capital expenditure. [Vide, AAR, WB, GGL Hotel & Resort Company Limited, 30/WBAAR/2018-19 dated 08/01/2019](#)

8. If consumable inputs like furnace oil, zinc etc. are not returned to any principal from a job performing job of galvanizing within the specified time limit whether it will be treated as supply in GST?

The goods like furnace oil, zinc etc. consumed in the process of galvanizing are inseparable from the galvanized goods. If return of the galvanized goods to the principal satisfies the condition of receiving back the inputs in accordance with section 143(1)(a) of the GST Act and the goods like furnace oil, zinc etc. have been entirely used up in the process of galvanizing then question of returning of furnace oil, zinc etc. should not arise and not be treated as supply.

[\[Vide, AAR, WB, Ratan Projects & Engineering Co Private Limited, 49/WBAAR/2018-19 dated 28/03/2019\].](#)

9. Whether any sale done by the liquidator of the assets of a corporate debtor under the provisions of the Insolvency and Bankruptcy Code, 2016 is a “supply” under GST?

The sale of the assets of a corporate debtor is a supply of goods by the liquidator, who is required to take registration u/s 24 of the GST Act. If she is already registered as a distinct person of the corporate debtor in terms of Notification No. 11/2020 – Central Tax dated 21/03/2020, she should continue to remain registered till her liability ceases under section 29 (1) (c) of the GST Act.

[Vide, AAR, WB, M/s Mansi Oils and Grains Pvt Ltd, 02/WBAAR/2020-21 dt 29/06/2020.](#)

10. Whether medicines and surgical goods supplied by Hospitals and nursing homes to the inpatients and outpatients are exempted?

The supply of medicines & other surgical goods by the hospital from its pharmacy to inpatients are in the course of providing health care services which are bundled and are provided in conjunction with each other, would be considered as “Composite Supply” & eligible for exemption under ‘health care services’.



For **Inpatient**

The supply of medicines & other surgical goods by the hospital from its pharmacy to outpatients not a part of health care services is a taxable supply of goods and thereby GST is applicable. [[Vide, AAR, Kerala, M/s Baby Memorial Hospital Ltd, KER/57/2019 dt 05.09.2019](#)]



For **Outpatient**

11. Whether Input credit on Purchase of Lift would be available to Hotel as it has been used in the course or for the furtherance of business?

The input tax credit of tax paid on Lifts procured and installed in hotel building shall not be available to the applicant as the same is blocked in terms of Section 17(5)(d) of the CGST Act 2017, become an integral part of the building which is immovable property. [[Vide:- Jabalpur Hotels Pvt Ltd \(GST AAR Madhya Pradesh\), Order No. 10/2020, dt 08/06/2020](#)]

A representative list of such Circulars and order passed by Authority of Advance Ruling on different issues has been provided in [Annexure 16](#) and [Annexure 17](#) respectively.

- The idea of this desk review is that the officer(s) should gather relevant information about the RTP before actual commencement of audit enabling him/her to be fully prepared from the very first day of visiting the Auditee's place or examining the books produced by the Auditee for audit.

10.8. Commencement of Audit:

As per explanation to Section 65(4) of the GGST Act, 2017, ‘commencement of audit’ shall mean the date on which the records and other documents, called for by the tax authorities, are made available by the registered person or the actual institution of audit at the place of business, whichever is later.

Thus, audit will commence on the first date of hearing as per GST ADT-01 on provided the Auditee produces the requisite documents and records as have been asked for.

10.9. Preparation and approval of Audit plan–

The objective of preparing an audit plan is to outline a logical series of review and examination steps that would meet the goals and standards of an audit in an efficient and effective manner. **Audit Plan is the roadmap for the sound performance of audit and is most important stage before conduct of audit.** All the previous steps are actually aimed at preparation of a purposeful Audit Plan. By now, the Audit Officer is in a position to take a reasonable view regarding the vulnerable areas, the weak points in the systems, abnormal trends and unusual occurrences that warrant detailed verification. Certain unanswered or inadequately answered queries about the affairs of the taxpayer may also be added to this list. Audit plan should be a detailed plan of action. The audit plan should be consistent with the complexity of the audits.

10.9.1. How to make an effective audit plan?

An effective audit plan actually starts building up from the stage of desk review. But on the basis of scrutiny of the set of documents and records and the filled in questionnaire produced by the RTP on the first date of hearing as per the FORM GST ADT-01 new angles may emerge. Inclusion of these points in effect does a value addition to the audit plan.

Audit Plan is the most important stage before conducting of audit. Thus, each Audit Officer will prepare an Audit Plan for each individual. Auditee based on the information gathered from such documents, records, questionnaire in addition to the observations made upon prior-audit desk review and data analysis done by them in relation to the Auditee's business performance. The information available from the GST back-office portal, MIS available internally and various reports like BI Tool, BIFA, etc. (if available) should be analyzed to prepare an effective audit plan. Any other pertinent information (e.g. received from any enforcement unit) in respect of the said Auditee may also be taken into account.

The Audit plan should preferably be prepared within seven (07) working days of date mentioned in notice Form GST ADT-01 and under no circumstances, it should go beyond 15 working days.

An effective audit plan will be a guiding track for Audit conducted under both "Field Audit Method" (Audit at RTP's place) as well as "Desk Audit Method" (Audit at Audit Officer's place).

10.9.2. Approval of audit plan

The Audit Officer shall get each Audit plan approved as per the departmental guidelines issued from time to time. In case an Audit Officer finds it necessary to modify the audit plan in the course of the audit, details of the same with reasons thereof shall be placed for approval.

10.10. Examination of Books of Accounts and records–

Examination of Books of accounts and records involves verification of data and information and actual verification of documents submitted by the RTP in the course of audit and verification of the points mentioned in the audit plan. This is the most vital part of the audit process. The entire outcome of audit depends on examination of books of accounts systematically and in a planned manner.

- The officer should have a primary knowledge about the business pattern of the RTP with respect to the particular trade & industry.
- He should also be well aware of the existing trade practices, conventions and market trends.
- The Audit Officer should be well aware of the statutory provisions, rates of taxes, Circulars, Orders, Advance Rulings, Court Orders etc. as applicable for the particular period of audit.
- An Audit Officer should apprise the RTP of the provisions of the GST Acts in respect of maintenance of books.
- He/She should preserve all the documents submitted by the Auditee in the course of audit as office records preferably in electronic format.
- Physical copy duly authenticated or digitally signed copies wherever possible should be collected which are pertinent to the queries/audit para of the audit officer.
- He should take an unbiased and judicious approach in the course of audit.

- An Audit Officer should be tactful to gain the goodwill and confidence of the RTP.
- Technical lapses by the RTP which do not have any revenue implication, and has occurred out of oversight or ignorance, should be ignored. However, any such incidence upon being detected should be noted down in the course of audit.
- Confidentiality should be maintained in respect of sensitive and confidential information furnished, in the course of audit.
- Understanding of the Indian Accounting Standards and the impact of GST thereupon while examining the Books of Accounts will facilitate an Audit Officer while examining Books of Accounts.

Some illustrative examples for primary understanding of accounting standard vis-à-vis GST are given as **Annexure 22**. It is desirable that an Audit Officer would be inspired from the representative illustrations given in the aforesaid Annexure and may study such Accounting Standards.

Some indicative parameters of examination are discussed in this chapter. While carrying on examination in the practical field, the audit officer is expected to explore many more effective areas of concern. Registration/Migration Analysis, Return Analysis, Ratio analysis, Trend Analysis, Balance sheet study are some of the vital areas of Examination/Verification of Books of Accounts and records in the course of audit.

10.10.1.Registration/Migration analysis:

Previous registration details (if any) under earlier Acts are to be verified. If such is not disclosed there may be a tendency to hide earlier history of compliance behavior.

Up to date details of business promoters, additional place of business, bank accounts, and details of authorized signatory. If such is not provided, the Auditee should be asked to provide such numbers and information.

Furthermore, the Audit Officer shall analyze the trends and patterns of Turnover, Tax payment, nature of business etc. from the pre-GST registration data, if available.

10.10.2.Return Analysis:

This is the most vital area before commencement of the Audit program. A great deal of the groundwork can be done upon analysis of the available return figures and thereby having a prima-facie idea of the business trend of the Auditee.

Following illustrative steps may be considered for an effective Return Analysis:

- ✓ HSN code of the goods and/or SAC of the services dealt in by the RTP should be verified to ensure that such are in conformity with the schedules/notifications and it is to be checked that the proper rate of tax thereupon was applied on outward supplies as shown in Form GSTR-1 & Form GSTR-3B.
- ✓ Time of filing of returns should be noted and should be checked to confirm whether the returns were filed within the prescribed time.
- ✓ Outward supplies as declared in Form GSTR-1, Form GSTR-3B should be compared with the Books of Accounts as maintained and produced by the Auditee. The reconciliation statement, in case of any difference, is required to be examined with supporting documents and explanations along with Form GSTR-9/9A and Form GSTR-9C, if such have been submitted by the Auditee.
- ✓ Claim of the RTP under different heads like –Zero-rated, Nil rated, Exempted and non-GST outward supplies etc. as shown in Form GSTR-1, Form GSTR-3B. The reconciliation statement, in case of any difference, is required to be examined with supporting documents and explanations along with Form GSTR-9/9A and Form GSTR-9C, if such have been submitted by the Auditee.
- ✓ Amount appearing under the head “Advance received” needs to be reviewed carefully since GST is applicable on “Advance received” against future “supply of services”. As per Notification No.66/2017 - CT. dated 15.11.2017, payment has been delinked to determine time of supply in case of supply of goods.
- ✓ Transactions like import of services and transactions between related parties and activities specified in Schedule-I which are required to be considered as supply even without consideration are required to be examined thoroughly. There may or may not be any reflection of such transactions in the GST returns. These cases would require very cautious examination of the books

of accounts, final accounts, P/L account and balance sheet to determine whether there are any such transactions which are not reflected in the returns. Some illustrative examples are given in **Annexure 21** for understanding of the matter.

- ✓ Goods sent for approval and goods sent to job workers are required to be examined with the books of accounts.
- ✓ Data in respect of e-way bills, both inward and outward, should be verified with the books for compliance level analysis. It may happen that the total value of outward e-waybill grossly differs with the total outward supply. In that case one should go through the details into the accounts.
- ✓ Refund may be made to the Auditee on account of export with or without payment of tax. In such cases, the veracity of export claims need to be checked. For this, the shipping bill details should be checked with the ICEGATE portal; in case of high volume of export through non-EDI check posts where the shipping bill details cannot be verified through ICEGATE portal, extra caution should be exercised in scrutinizing the shipping bills in support of the export claims.
- ✓ In case of export with payment of tax, if the value of export is found to be significantly higher than similar products sold in the domestic market in depth scrutiny of the payment received in respect of the export is required since there may be a possibility of monetizing excess ITC.
- ✓ In respect of claim for refund of unutilized ITC on a/c of zero-rated supply, adequate caution is required to be taken so that, ITC on account of transitional credit, capital goods are not claimed for refund.
- ✓ Claim for refund of unutilized ITC may be made on account of inverted tax structure. In such cases, (i) verification of the classification of inputs and output supplies and the respective rates of taxes attracted by them is very crucial; (ii) Refund of unutilized ITC in accordance with section 54(3)(ii) of the GGST Act is provided where credit has accumulated on account of rate of tax on inputs being higher than rate of tax on output supplies. Hence, it would not be applicable in cases where the input and the output supplies are the same (i.e. in cases of trading activities). Therefore, adequate caution must be exercised to verify that “Turnover of Inverted-rated supply” does not

include any turnover related to trading activity. Similarly, “Net ITC” for the purpose of refund should not include any ITC relatable to trading activity; nor should it include ITC on account of capital goods or input services.

- ✓ The claim of ITC of an Auditee is subject to fulfillment of the conditions laid down in the Acts and Rules made thereunder.
- ✓ If usage of ITC for payment on account of export is significantly high, in depth scrutiny of the availment of ITC is warranted.
- ✓ In depth checking is needed in respect of goods and services on which credit is blocked.
- ✓ Query should be made to confirm whether any specific Advance Ruling/Appeal Order of Advance Ruling is applicable for any of the supplies made by the Auditee.
- ✓ Output tax payment is required to be examined to ascertain interest liability. Any output liability which has been discharged other than by Form GSTR 3B is required to be examined as to whether interest (if applicable) has also been paid for the same or not.
- ✓ Checking should be done in respect of interest and late fee payable as per notification(s).
- ✓ All possible areas related to compliance issue that may result in short payment or evasion of tax are also required to be checked.

Some illustrations in respect of the provisions of input tax credit is attached as **Annexure 15**.

The intention of these annexures is to create attention of Officers in the subject so that an Audit Officer looks into the statutory provisions in details. It may be mentioned in this regard that this Annexure is merely indicative in nature. However, it is desirable that Audit Officers will not confine themselves to these indicative illustrations and will be prudent enough to go through the provisions of law and rule, various clarifications issued in different circulars, judgments passed by various Courts of Law and Rulings passed by AAR & AAAR in this respect in detail.

10.10.3.Trend Analysis:

This analysis studies the existence of any abnormality that may have occurred in a particular financial year with respect to the previous financial years. For audit purposes, comparison of either absolute values or certain ratios over a period of time is absolutely necessary to see the trend and the extent of deviation from the average values during any particular period. The analysis of trends may indicate areas where short payment/evasion of taxes is involved. A representative example of such trend analysis is discussed in **Annexure 20**. The application of the various examples of trend analysis and ratio analysis as discussed here may vary from case to case. In this case, sector specific trend or the accounting principles followed by an Auditee may play a vital role. The trend of a supplier of a particular goods may not be pertinent for another type. Moreover, service sector may demand a different angle of analysis compared to the goods sector.

10.10.4. Areas of concern during examination-

Following points may be covered in the process of examination.

Part A -1: (Migration/Registration compliance)

Probable area of detection / examination	Areas of concern	Action to be taken
Previous registration details under earlier Acts and up to date details of information of registration.	If not disclosed there may be a tendency to hide earlier history of turnover and compliance (liabilities of taxes).	Asking to provide such numbers and information. VAT related details from DWH
	Up to date details of business promoters, additional place of business, bank accounts, details of authorized signatory.	

Why examination of the above compliance is important?

Disclosing of the previous registration details is optional both in case of registration and migration. However, knowing of previous registration details would help an audit officer to know the pre-GST compliance pattern of an Auditee. In many cases it may appear that the RTP failed to amend his registration and is continuing with the old information. So, the audit officer should encourage

the taxpayer to amend his registration with up to date information which would help both the audit officer and the Auditee. VAT related DWH details of Assessment, Recovery and Registration can be of help.

A few illustrative examples, as stated below, may help the Audit Officers in this regard. However, the intention of these examples is to provide a glimpse of the matter so that an Audit Officer can look into these aspects in detail.

Illustrations of some interesting issues in this regard:

Example 1: Suppose there is huge amount of exempted supply in the period under audit. Before entering into the details of the exempted supply the audit officer may first examine nature of supply in pre-GST regime. So, knowing Pre-GST registration numbers are important. May be there was no such exempted supply. May be sales in pre-GST regime was much higher than in GST.

Example 2: The Auditee fails to deposit the dues as reflected in the audit report after submission of the audit report. The Proper officer raises demand as per provisions of sec 73 / sec 74 of GGST Act, 2017. The RTP again failed to comply. The officer initiates recovery proceeding by attaching bank account of the Auditee, debtor's account etc. But, if up to date bank accounts details are not amended, the efforts of the officer may not be fulfilled.

Example 3: Incorrect information in registration may lead to suppression of taxable turnover and less payment / evasion of tax. Date of commencement of business and date of liability for registration are two important aspects manipulating which an Auditee may hide his pre-registration liability.

Part A -2: (Invoicing compliance)

Probable area of detection / examination	Areas of concern	Action to be taken
Tax Invoice/ Debit Note/ Credit Note/ Bill of Supply etc.	Whether as per Sec. 31/34 of the GGST Act and Rules made there-under?	In case of any discrepancies, clarification may be sought for
	Continuity of the Sl. No. of such Tax Invoice/Debit Note/Credit Note/ Bill of Supply etc.	

Compliance in relation to issue of Invoice, Bill of supply, debit notes and Credit notes:

A tax invoice is an important document. It not only evidences the supply of goods or services, but is also an essential document for the recipient to avail Input Tax Credit (ITC). Similarly, debit notes and credit notes are also vital documents. A supplier of goods or services or both is mandatorily required to issue a tax invoice. However, various situations may arise in a business, after issuance of an invoice. Possible situations are listed as follows:

- The supplier has erroneously declared a value which is more than the actual value of the goods or services provided.
- The supplier has erroneously declared a higher tax rate than what is applicable for the kind of the goods or services or both supplied.
- The quantity received by the recipient is less than what has been declared in the tax invoice.
- The quality of the goods or services or both supplied is found to be deficient.

In the aforesaid cases, the supplier **may issue credit note to the recipient**. But, output tax reduction on that credit note is conditional. It's dependent on reversal of ITC of the recipient. Credit notes with tax implication in GST can be issued within the time limit as specified u/s 34(2) of the [GGST Act, 2017](#).

Similarly, following situations may also arise in a business after an invoice is issued:

- The supplier has erroneously declared a value which is less than the actual value of the goods or services provided.
- The supplier has erroneously declared a lower tax rate than what is applicable for the kind of the goods or services or both supplied.

In such a case, the supplier **shall issue debit note to the recipient**.

Compliance of invoice, debit notes and credit notes related provisions are directly linked with revenue in GST.

A few illustrations as given below, may help the Audit Officers in this regard. However, these illustrations are merely indicative in nature:

Example 1: The audit officer may notice that there is discontinuity in serial numbers of the invoices issued. A number of reasons may be adduced by the Auditee for the same. But, his/her explanations should be supported with evidences / correspondences. Otherwise, these explanations may be far from reality.

Example 2: An Auditee has set up an exclusive brand kiosk to sell products of X company.

X Co. pays a consideration for setting up such kiosk by issuing a commercial Credit Note to the Auditee of Rs.10,000 p.m. Is there any revenue implication in GST?

Consideration is received in the form of a Cr. Note in respect of supply of service by the Auditee to X Co. So, GST is applicable @ 18%.

Example 3: The Auditee being an importer / manufacturer of medicine received some expired medicine from a distributor and issued credit notes for the same for an amount of 50 Lakh. The tax component in the credit note was Rs.3 Lakh CGST and Rs.3 Lakh SGST. The Auditee reduced his liability of output tax to such extent and the recipient also reversed his ITC to that extent. Is it correct?

Since, the Auditee being an importer / manufacturer has received medicine from his distributor which are expired, he/she has to destroy such medicines. Therefore, the Auditee must also reverse the ITC availed on such destroyed medicine.

Part B (Maintenance of books of accounts)

Areas of concern	Action to be taken	Probable area of detection / examination
To ensure compliance of maintaining books of Accounts. To examine cash flow, valuation, input and output ratio, etc.	To examine correctness of tax compliance made in returns.	RTP will be asked to produce following books of accounts: <ul style="list-style-type: none"> • Annual report and Directors report (if any) • Profit & Loss A/C • Balance Sheet • Tax Audit Report • Statement of income tax TDS. • List of HSN /SAC of the goods /or services in respect of the business. • Reconciliation statement in respect of Form GSTR 9 , GSTR-1 AND GSTR 3B • Suppliers list with GSTIN (where applicable) • Ledger accounts of the suppliers • Statement of sales party wise and POS wise. • Supply for which tax paid in RCM. • Bank Statement for the period under audit • Stock register • Other documents and records as applicable as provided in section 35 of the Act

The basic objective of audit stands on the principle of examination of books of accounts. The GST laws have prescribed the nature of books of accounts required

to be maintained by an RTP. The officer in this case should be well aware of such provisions and ask the Auditee to produce such books of accounts.

Further, the Officer should be well acquainted with the accounting policies which form the basis of any books of Accounts. Apparently, an entry may not appear to be related with GST revenue but, upon thorough examination in the course of audit such may turn out to be a valuable information.

A few illustrations are given herein below, which may help the Audit Officers in this regard. However, these illustrations are merely indicative in nature with the sole purpose to alert the audit officers in this regard who are also required to go through the statutory provisions in this regard in detail:

Example 1: In order to have an idea of the quantum of supply of an Auditee, an officer generally examines the Debtors list. But there may be a case, where a Debtor (i.e. customer), say A is also a creditor (i.e. supplier). In such case, it is required to examine whether A's Ledger A/c (as a Debtor) correctly reflects only the credit supply made by the RTP to A or it is rather a set-off account where the balancing figure reflects the net figure of Amount receivable less amount payable.

Example 2: It is a normal business practice to get advances from the customers. In this case, advances played a role in determining the time of supply for goods till 14.11.2017. However, tax liability on advances received is still there in case of services. Now, as per the provisions of Rule 56(3), every RTP is required to maintain a separate account of advances received, paid and adjustments made thereto. An advance for which service is not provided or not adjusted in any invoice, the RTP is required to show such amount as Current Liabilities in the Final Accounts. So, the Audit Officer should only examine such Liability Accounts to verify whether such tax on such advances are actually paid or not.

Part C (Return submission compliance)

- There has been various extensions of the due dates and conditional extensions of due dates for the return periods of different financial years. To facilitate an audit officer in this regard, an exclusive annexure is prepared which is attached as **Annexure 19**.
- The months of Return filing as shown in the Tables below are based on all months of any FY. However, the audit officer should consider the months applicable for the period under audit.

a. Statement- GSTR 3B

Period (Month / Quarter)	Due date	Submitted on	Days of delay	Late fee payable
Apr				
May				
Jun				
Jul				
Aug				
Sep				
Oct				
Nov				
Dec				
Jan				
Feb				
Mar				
Total late fee payable				
Total late fee paid				
Late fee due				

Notes: For the return periods of different FYs various extensions of due dates and conditional extensions of due date were allowed. To facilitate the audit officer in this regard **Annexure 19 is attached.**

b. Return type - GSTR 1

Period (Month / Quarter)	Due date	Submitted on	Days of delay	Late fee payable
Apr				
May				
Jun				
Jul				
Aug				
Sep				
Oct				
Nov				
Dec				
Jan				

Feb				
Mar				
Total late fee payable				
Total late fee paid				
Late fee due				

c. Return type – GSTR 9 / 9A

Period	Due date	Submitted on	Days of delay	Late fee payable
2017-18				
Total late fee payable				
Total late fee paid				
Late fee due				

Part D [Correctness of turnover in State (monthly statement)]

Turnover disclosed in GSTR 3B (Rs.)	Turnover disclosed in GSTR 1 (Rs.)	Turnover disclosed in GSTR 9 / 9A (Rs.)	Turnover as in P/L account (Rs.)	Difference (Rs.)
Reconciliation statement with supporting documents needs to be examined.				
Any other supply which is not disclosed in any of the above fields but disclosed at the time of audit.				

Additional information from the books / other sources to examine correctness of the turnover disclosed finally at the time of audit (monthly statement):

Areas of concern	Examination	Value of supply		Disclosed in return (Y/N)	Additional tax liability (if any)			
		Intra-State (S)	Inter-State (I) with POS *(StateCode)		State tax	Central tax	Integrated tax	Cess
Other/Misc. income [Ref: Annexure 21]								

Whether in the pre-GST or in the GST regime, “Other Income” ledger has always been an important ledger to examine. It is important to go through every transaction reflected in this ledger to confirm as to whether GST is applicable on any of transaction for which tax compliance has not been made. For example, penal interest, penalty / damages recovered etc.

e.g1: Recovery from employees towards transport charges, mobile expenses, notice pay, canteen expenses etc. is treated as outward supply though such are not in the main course of business.

e.g.2: Any amount recovered from vendor on account of penalty is treated as outward supply though which is normally accounted in ‘other income’ head (check subsequent amendments with respect to the above examples).

Stock transfer to other State(s)/UT (s)

Stock transfer to distinct persons in the State and other State never form part of turnover in P/L account in consolidated books of accounts. In the erstwhile VAT regime, stock transfer to branches and consignment agents in other States were nil rated subject to production of declarations in Form F under the CST Act, 1956. In GST stock transfer to distinct persons are taxable. Therefore, it is very important to check the stock transfer value (both inwards and outwards) to ascertain the compliance. There is a specific rule for valuation in this regard. If, any Auditee takes the benefit of the 2nd proviso of Rule 28 then the audit officer should check whether such has been taken properly or not.

An example is given below for proper understanding of the Audit Officers:

e.g: A banking company purchases 4 cars and dispatched those to 4 branches in 4 States (1 car / branch) by raising tax invoice where value of each car is shown at a nominal price of Rs.10,000/-. On being asked, the Auditee bank may reply that valuation has been done as per rule 28 of GGST Act, 2017. Is it a correct valuation done by the bank?

As per the 2nd proviso of rule 28, the value declared in the invoice shall be deemed to be the open market value where the recipient is eligible for full input tax credit. In the instant case the recipient is not eligible to avail of ITC and therefore, the value declared cannot be accepted as open market value.

Sale of assets

Sale of assets is always taxable in GST. Moreover, permanent transfer or disposal of business assets on which input tax credit has been availed is also considered as supply even if no consideration is received (Sch. I of Sec 7).

Donation of business assets or scrapping or disposal in any other manner (other than as a sale – i.e., for a consideration) would also qualify as 'supply', where input tax credit has been claimed.

Goods sent on approval basis

Goods Sent on approval basis before 1st July, 2017 (but not more than six months earlier from 1.7.2017) if returned within 6 months (2 months more in case of sufficient cause) from GST implementation, then no tax is payable by the person returning the goods. If it is returned after the time limit, then GST is payable by the person who returned the goods [sec 142 (12)]. If the goods are not returned within above time limit, the person who sent the goods is liable to pay GST.

In GST regime: The invoice with respect of goods sent on approval basis has to be issued at the earliest of – (i) Before or at the time of supply, (ii) 6 months from the date of removal of goods from factory / godown etc. If the goods are not approved within 6 months, it will be deemed that sales of the said goods has taken place by the person who has sent the goods for approval. [S. 31(7) read with S. 12(2)]

Goods sent to job workers

Inputs sent for job work are not received back by the principal after completion of job work or otherwise not received within 01 year of their being sent out, it shall be deemed that such inputs had been supplied by the principal to the job worker on the day when the said inputs were sent out [sec 143(3)].

Capital goods, other than molds and dies, jigs and fixtures, or tools, sent for job work are not received back by the principal after completion of job work or otherwise not received within 03 years of their being sent out, it shall be deemed that such capital goods had been supplied by the principal to the job worker on the day when the said capital goods were sent out [sec 143(4)].

Any waste and scrap generated during the job work may be supplied by the job worker directly from his place of business on payment of tax, if such job worker is registered, or by the principal, if the job worker is not registered [sec 143(5)].

Disposal of assets without any consideration [Entry 1 of Sch – I].

There is no doubt that disposal of business assets against consideration is a supply. But, if ITC on any business asset is taken then disposal of such business assets even made without consideration is also to be treated as supply.

Suppose XYZ Ltd., is in the business of Hotel. He purchased AC for business purpose and availed ITC and a car for which no ITC has been claimed. After 2 years, he permanently transfers the AC to one director and the car to another director without any consideration. Though there is no consideration in case of transfer of AC machine still it shall be a supply as per schedule I and supplier have to pay an amount determined according to sec 18(6). In case of permanent transfer of car, it will not be treated as supply since no ITC has been claimed on the same. Some representative examples are narrated in **Annexure 15**.

Supply of goods or services

to related person or to distinct person (with or without consideration)

[Entry 2 of Schedule – I]

Note: When the related persons are employee and employer then the next row is applicable.

Distinct person is defined in Sec 25(4) and related person is defined in Explanation to sec 15.

This issue needs careful examination because in most of the cases there may not be any reflection of transactions with related or distinct persons in P/L account or in any ledger. In case of goods there may be an audit trail of transactions among the distinct or related person without any consideration. But in case of services, such trails may not be found in the books of accounts. The auditor needs to study the particular business pattern of the Auditee and should try to find out probable areas. Valuation of such supply needs examination. For better understanding, some illustrations are given in **Annexure 14**.

Expenses accounts to ascertain if there are any expenses for free gift or facility (free holiday package, etc.) to any employee for value exceeding Rs. 50,000/- in a year.

This is another important area where the Auditee may fail to comply with the provisions [entry no.2 of Sch I of sec 7]. Most of such supplies may be found in different expense ledgers like misc. expenses / other expenses, wages-salary-allowances, benefits to the employees, directors' remunerations, etc.

For better understanding some illustrations are given in **Annexure 11**.

Commission agent of goods (both the commission and the supply value of goods on behalf of the principal will form part of supply value) [Entry 3 of Sch – I].

As per the provisions of the GST Laws, in case of supply through agent both the principal and the agent are liable to pay tax. So, the value of supply of goods made or received through an agent as prescribed in Rule – 29 needs proper examination.

For better understanding illustrations are given in **Annexure 14**.

Income from land and building

Many transactions are linked with Land; e.g. sale of land and building subject to entry no.5 of sch. III, rent, lease, easement, license to occupy land, development, transfer of tenancy right, transfer of development right, and building apart from sale of **under construction** real estate property etc.

For better understanding some illustrations are given in **Annexure 11**.

Agreeing to the obligation -

- i. to refrain from an act
- ii. to tolerate an act or a situation
- iii. to do an act

Section 7(1) of the GST Act, 2017, includes activities referred to in Schedule II in the scope of supply. Clause 5(e) to Schedule II provides that 'agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act' shall be treated as supply of service. For better understanding some illustrations are given in **Annexure 11**.

Any other areas of concern

The above Tables may not be exhaustive for an audit officer in respect of particular Auditee and there may be other areas of concern. The audit officer should mention his detection in this table.

Total undisclosed supply value

Tax involvement on undisclosed supply

*Refer to next table for list of State Codes

LIST OF STATE CODES: For noting Places of supply

STATE/UNION TERRITORY	CODE	STATE/UNION TERRITORY	CODE
Jammu and Kashmir	1	Jharkhand	20
Himachal Pradesh	2	Odisha	21
Punjab	3	Chhattisgarh	22
Chandigarh	4	Madhya Pradesh	23
Uttarakhand	5	Gujarat	24
Haryana	6	Daman and Diu	25

Delhi	7	Dadra and Nagar Haveli	26
Rajasthan	8	Maharashtra	27
Uttar Pradesh	9	Andhra Pradesh(before division)	28
Bihar	10	Karnataka	29
Sikkim	11	Goa	30
Arunachal Pradesh	12	Lakshadweep	31
Nagaland	13	Kerala	32
Manipur	14	Tamil Nadu	33
Mizoram	15	Puducherry	34
Tripura	16	Andaman and Nicobar Islands	35
Meghalaya	17	Telangana	36
Assam	18	Andhra Pradesh (new)	37
West Bengal	19		

Part E (Correctness of purchase / procurement for which tax is payable u/s 9(3) & 9(4) of the GGST Act and u/s 5(3) & 5(4) of the IGST Act)

As disclosed in GSTR 3B (Rs.)	As disclosed in GSTR 9/9A (Rs.)	As disclosed in P/L (Rs.)	Difference (Rs.)
Reconciliation statement with supporting documents needs to be examined.			
Any other supply which is not disclosed in any of the above fields but disclosed at the time of audit.			

Additional information from the books / other sources to examine correctness of the finally disclosed liability to pay tax u/s 9(3) & 9(4) of the GGST Act and u/s 5(3) and 5(4) of the IGST Act (month wise statement):

Relevant section	Areas of concern	Examination	Taxable value (Rs.)			Disclosed in return (Y/N)	Additional tax liability (if any)		
			Intra-State (\$)	Inter-State (I) with POS(StateCode)			State tax	Central tax	Integrated tax Cess
9(3) of GGST Act	Goods under Notification no.4/2017 (R) dt.28.6.2017.								

5(3) of IGST Act	Goods under Notification no. 4/17-IT(R) dt.28.6.17.								
9(3) of GGST Act	Services under Notification no.13/17 (R) dt.28.6.17								
5(3) of IGST Act	Services under Notification no.10/17-IT(R) dt.28.6.17.								
7(1)(c) of GGST Act and sec 20 of IGST Act [Entry 4 of sch – I]	Import of services (with or without consideration) from related person in the course or furtherance of business.								
7(1)(b) of GGST Act	Import of services for a consideration.								
Proviso of Sec 5(1) of IGST Act	Import of goods								
9(4) of GGST Act	Intra-state procurement of goods and services from unregistered person where daily amount of such purchase is more than Rs.5000/- [applicable for 01.07.17 to 12.10.17]								
5(4) of IGST Act	Inter-state procurement of goods and services from unregistered person where such purchase is more than Rs.5000/- per day [applicable for 01.07.17 to 12.10.17].								
Residual	Any other areas of concern								
Total undisclosed supply value									
Tax involvement on undisclosed supply									

Normally a supplier collects tax from the buyer and deposits the same after adjustment of the output tax liability with the input tax credit available. Liability to pay tax shifts from supplier to recipient under reverse charge mechanism (RCM), Apart from this, in case of import of goods and/or services also, the recipient is liable to pay tax except in some specific cases like OIDAR services from outside the territory of India to non -taxable person in India. Details of such mechanism to pay tax in RCM with some FAQ is annexed hereto as **Annexure 12.**

*Refer to previous page for list of State Codes

Part F (Correctness of claim of Input Tax Credit)

Details of ITC	Integrated Tax	Central Tax	State Tax	Cess
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[month-wise]		As per 3B	As per audit	As per 3B	As per audit	As per 3B	As per audit	As per 3B	As per audit
(1)		(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
a. Import of goods									
b. Import of Services									
c. Inward supplies liable to Reverse Charge (except a, b above)									
d. Inward supplies from ISD									
e. All other ITC including ITC on TRAN									
A. ITC available (a+b+c+d+e)									
f. ITC required to be reversed as per Rule 42 & 43									
g. Other ITC required to be reversed									
B. ITC required to be Reversed (f+g)									
C. Net ITC Available [A-B]									
h. Ineligible ITC as per Sec. 17(5)									
i. Other ineligible ITC									
D. Ineligible ITC									
E. Net eligible ITC [C-D]									

In IGST ITC can be availed by every registered taxable person on all inputs, input services, capital goods used or intended to be used in the course of or the furtherance of business with a few exceptions. However, there are conditions to avail such ITC. The situation becomes more complex when there are common credit for use in business and non-business use, in taxable supply and in exempt supply. Details of such provisions with some practical examples are annexed here to as **Annexure 15**.

Part G (Payment of Tax)

Month	Type	Apr	May	Jun	July	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Total
Tax paid upon setting off ITC	IGST													
	CGST													
	SGST													
	Cess													
Tax paid in cash	IGST													
	CGST													
	SGST													
	Cess													
Total tax paid as per GSTR-3B	IGST													
	CGST													
	SGST													
	Cess													
Total														

Month	Tax paid as per GSTR-3B or otherwise*				Tax payable as per Audit				Balance Tax payable			
	CGST	SGST	IGST	Cess	CGST	SGST	IGST	Cess	CGST	SGST	IGST	Cess
Apr												
May												

Jun													
Jul													
Aug													
Sep													
Oct													
Nov													
Dec													
Jan													
Feb													
Mar													
Total													

* payment made by any other instrument like DRC-03, payment against DRC-07 etc.

Part H (Correctness of Payment of Interest)

1. Interest payable due to late payment of tax

Particulars	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Total
Amount of tax paid													
Due Date of payment													
Date of payment													
Default period (days)													
Rate of Interest	18%	18%	18%	18%	18%	18%	18%	18%	18%	18%	18%	18%	18%
Interest payable													

2. Interest payable due to non/short payment of tax

Particulars	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Total
Amount of non/ short payment of tax													
Due Date of payment													
Date of FAR													
Default period (days upto the date of FAR)*													
Rate of Interest	18%	18%	18%	18%	18%	18%	18%	18%	18%	18%	18%	18%	18%
Interest payable													

*The actual interest payable shall be calculated till the date on which such interest is actually paid.

3. Interest payable due to excess ITC availed

Particulars	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Total
Amount of excess ITC availed													
Date of claim													
Date of FAR													
Default period (days upto the date of FAR)*													
Rate of Interest	18%	18%	18%	18%	18%	18%	18%	18%	18%	18%	18%	18%	18%
Interest payable													

*The actual interest payable shall be calculated till the date on which such interest is actually paid.

4. Interest payable due to excess amount Refunded

Particulars	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Total
Amount of excess refund													
Date of receipt of refund													
Date of FAR													
Default period (days upto the date of FAR)*													
Rate of Interest	18%	18%	18%	18%	18%	18%	18%	18%	18%	18%	18%	18%	18%
Interest payable													

*The actual interest payable shall be calculated till the date on which such interest is actually paid.

Particulars	Amount (Rs.)
Total Interest payable (as observed upon audit) [Sum of Interests payable under Tables 1 to 4 above]	
(-) Interest paid [as disclosed in GSTR-3B]	
(-) Interest paid [as voluntarily through DRC-03 or through GSTR-9 or in the course of audit, other than any payment made in compliance of Sec. 73 or 74]	
Interest Due	

*The actual interest due shall be calculated till the date on which such interest is actually paid.

Part I (Correctness of Any other amount due)

Particulars	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Total
Any other amount due													
Due date of payment of such amount													
Date of FAR													
Default period (days upto the date of FAR)*													
Rate of Interest	18%	18%	18%	18%	18%	18%	18%	18%	18%	18%	18%	18%	18%
Interest payable													

10.11. Communication of discrepancies noticed:

Upon examination of the books of accounts and records in the course of audit, the audit officer shall clearly note all his observations relating to the possible areas of lapses, as discussed above.

The grounds of any discrepancies against the disclosed parameters of the Auditee should be concise, to the point and self-contained. Different para(s) should be formed depending of nature of observations.

Where any discrepancy is based on any circular or clarification or notification issued by the State Government or the Central Government or by the

Commissioner or the Board, such must be mentioned clearly. Similarly, where findings are based on discussion or merit of any decision of any Hon'ble Court, decisions of Advance Ruling Authority, decisions of Appellate Authorities such should be clearly cited.

The findings of audit should be prepared and is required to be communicated to the RTP within 30 days of commencement of audit.

The Auditee, if he thinks fit, may submit a written explanation in reply to such findings upon adducing supporting documentary evidences and other facts & figures as may be necessary.

The Auditee shall be given a time of at least seven (07) days from the receipt of the draft report to submit his reply.

The Audit Officer should inform the Auditee about the observations made in the course of audit preferably in electronic format. The auditor should also apprise the Auditee of the provisions relating his voluntary compliance and at the same time encourage RTP to pay the dues **in Form GST DRC – 03 in the course of audit.**

10.12. Draft Audit Report and approval thereof:

The audit officer shall clearly mention in his working paper the reply of the Auditee in respect of the findings drawn and communicated to the Auditee. After careful consideration of the reply a **Draft Audit Report (DAR)** should be prepared by the audit officer for internal administrative purpose and not for the Auditee. The same is required to be approved as per guidelines and circulars issued by Department from time to time. Wherever any finding is based on any circulars or clarifications or notifications issued by the State Government or the Central Government or by the Commissioner or the Board, such must be mentioned clearly in the DAR. Similarly, where findings are based on discussion, merit of any decision of any Hon'ble Court, decisions of Advance Ruling Authority, decisions of Appellate Authorities, such should be clearly cited.

On points of difference, further consultations/examination may be required.

10.13. Final Audit Report (FAR):

The audit officer shall finalize the findings of the audit and draw **Final Audit Report in GST Form ADT-02** (herein after referred to as 'FAR') after due consideration of the reply furnished [Rule 101(4)]. After approval of the DAR, the FAR shall be issued to the Auditee, preferably through system/electronically within seven (07) working days of approval. Even in case of 'NIL' dues also FAR needs to be issued. **Format of GST FORM ADT-02 is annexed herewith as Annexure 8.**

10.14. Audit Consequences:

After receipt of the FAR, the Auditee may agree to the audit observations in full, or he may disagree in full or he may even agree to a part of the observations made.

In case of full or partial agreement, **the audit officer should encourage the Auditee to make voluntary payment of the dues in Form GST DRC - 03 as detected in the course of audit. Where the RTP agrees with the short levy as per the show cause notice, the auditor should explain the benefits available u/s 73(6)/74(6) of the GGST Act, as the case may be.** Now, the observations made in the FAR may be of 2 types:

- (i) Those of technical nature and not having any real revenue impact.
- (ii) Those having revenue impact, i.e. short payment of tax, interest, etc. by the Auditee.

Technical lapses by the RTP which do not have any revenue implication, and have occurred out of oversight or ignorance, should be allowed for correction (if required).

After issuing the FAR, the audit case will have to be closed. Such closure of case can be done in the following scenarios:

- a) The technical lapses (if any) are corrected, and the entire dues as per the FAR are paid by the Taxpayer **within 30 days** in Form GST DRC-03;
- b) FAR is issued with Nil Revenue implication;
- c) The tax, interest, penalty or any other amount payable by the RTP as have been ascertained as short paid or not paid is not deposited by the taxpayer **within 30 days** after the issuance of the FAR, and in such situation, the case is required to be referred to the respective jurisdiction for initiation of demand and recovery proceedings.

10.14a Duration of audit:

As per the proviso section 65(4) of the GGST Act 2017 where the Commissioner is satisfied that audit in respect of such registered person cannot be completed within three months, he may, for the reasons to be recorded in writing, extend the period by a further period not exceeding six months.

In this regard it is advised to the audit officers that the extension of time for completion of audit by the Commissioner **should not be taken in routine manner and only as exceptional measure and cogent reasons the same shall be sought**. Sincere efforts should be made to complete each audit within the following indicative duration for each category as under:

- (i) Large taxpayers – 6 to 8 working days
- (ii) Medium taxpayers – 4 to 6 working days.
- (iii) Small taxpayers – 2 to 4 working days.

The above duration for conduct of Audit that is inclusive of desk review, preparation and approval of audit plan, actual audit and preparation of audit report. Besides, the same is indicative and applicable for conduct of GST audit covering one year period. In case the audit coverage is for five years, the number of days may be increased to maximum of 16/12/8 days for Large, Medium and Small taxpayers respectively. In other words the number of days for conduct of audit may be increased proportionately, with an increase of 25% of working days for every additional year of coverage.

The duration, as above, covers the effective number of working days spent by the audit group for the audit of a particular registered person from desk review to preparation of audit report (i.e. days spent in office as well as at the premises of the registered person) and should be extended only in exceptional cases.

10.15. Demand & Recovery proceedings:

If the tax, interest, penalty or any other amount payable by the RTP as have been ascertained as short paid or not paid is not deposited by the taxpayer **within 30 days** after the issuance of the FAR, the case is required to refer to the respective jurisdiction as per the provisions of Section 65(7) of the GGST Act for initiation of demand and recovery proceedings. The proper officer having the assigned role of 'Demand & Recovery' shall initiate action under Section 73 or 74 of the said Acts, as the case may be, through the 'Assessment & Adjudication' module in back office of GST.

It is desirable that the audit officer/adjudicating officer carefully considers the findings as noted in the Final Audit Report and initiate actions.

However, repetition of points of examination (including documents thereof) should be avoided unless it is absolutely necessary.

In case, the audit officer/adjudicating officer comes upon any additional information (both from the documents /evidences/ submissions produced by the Auditee at the time of audit as well as from any other source including Enforcement units), he/she shall consider such points of examination independently and conclude the proceedings upon incorporating all the findings made in this case.

11. Monitoring Committee Meeting:

Every unit of audit should represent the status of audit once in every month in a pre-scheduled date in a format annexed hereto as **Annexure 9** before the Monitoring Committee in the

Monitoring Committee Meeting (MCM) under the chairmanship of the Commissioner/Special Commissioner/Additional Commissioner (Head of Audit functionality).

This Committee, besides monitoring the status of audit of every level, will also try to identify the important observations made upon audit by different units for better coherence among all the existing Audit Officers. At the same time, the Committee will also try to identify the areas of audit related to the unit that need special attention and make suggestions accordingly.

The Monitoring Committee shall invite the Audit head of all the units, Officers under the Special/Additional Commissioner (Audit), Nodal Officer (Audit) of Information System Division and representatives from GST-PPU of the State to offer their views to maintain the progress and ensure uniformity in audit and subsequent demand and recovery proceedings. The Committee may invite any Audit Officer or Audit Officer of any unit if deemed fit.

The Committee in the MCM shall also decide whether the extension of time period for audit is required in specific cases or for all pending cases. Member and procedure of this committee may vary State to State.

12. Audit Annexures:

12.1. Annexure 1: Notice for conducting audit -

Form GST ADT - 01

[See rule 101(2)]

Reference No.:

Date:

To,

.....

GSTIN

Name

Address

Period - F.Y.(s) -

Notice for conducting audit

Whereas it has been decided to undertake audit of your books of account and records for the financial year(s) to in accordance with the provisions of section 65. I propose to conduct the said audit at my office/at your place of business on -----.

And whereas you are required to:-

(i) afford the undersigned the necessary facility to verify the books of account and records or other documents as may be required in this context, and

(ii) furnish such information as may be required and render assistance for timely completion of the audit.

You are hereby directed to attend in person or through an authorised representative on (date) at.....(place) before the undersigned and to produce your books of account and records for the aforesaid financial year(s) as required for audit.

In case of failure to comply with this notice, it would be presumed that you are not in possession of such books of account and proceedings as deemed fit may be initiated as per the provisions of the Act and the rules made thereunder against you without making any further correspondence in this regard.

Signature

Name

Designation

.....

12.2. Annexure 2: Letter seeking mutual assistance to complete the audit in focused manner.

GOVERNMENT OF

Office Name.....

Address.....

Memo No. ADT/AUDIT YEAR/Section/Audit Gr./case no.
[e.g.: Memo No. ADT/2017-18/Park Street/Team 1/5]

Date: 1st December, 2021
Date: 1st December, 2021]

To

.....

GSTIN :

Address :

Period :

You are aware by now that you have been selected by the Commissioner, State Tax/Central Tax, for audit of your books of accounts and records for the **period from.....to** in accordance with the provisions of section 65 of the GGST Act, 2017 read with section 20 of the IGST Act, 2017.

In accordance with the provisions of the Acts and Rules made there under, you are required to (i) provide the undersigned the necessary facility to verify the books of account and records or other documents as may be required in this context, and (ii) furnish such information as may be required and render assistance for timely completion of the audit.

To avoid any inconvenience from your part to produce the entire set of book of accounts and records on the first date of hearing as specified in Form GST ADT-01, it will be much more practical to produce such books of accounts in a staggered manner and to the extent of what actually will be required from time to time. This will help you and the audit authority to complete the audit process in a focused and planned manner. For such reasons **you are hereby asked to produce following statements and accounts (duly signed and stamped) before the undersigned on first date of hearing as specified in Form GST ADT-01 issued to you:**

- Annual report and Director's report for the FY
- Profit & Loss A/c for the year ended on 31stMarch,
- Balance Sheet as they stood on 31stMarch,
- Auditor's Notes to the A/c for the FY
- If GSTR -9C is not submitted for the period then Trial Balance for the RTP having above mentioned GSTIN (It is applicable where the RTP has multiple GSTIN),

- Consolidated statement (party-wise total for the period under audit) of inward & outward supplies including exempted and non-GST supply:

RTP to whom supply made	GSTIN	Total numbers of invoice/debit notes issued	Supply Value (Rs)	Tax (Rs)				Broad category of Goods/services
				CGST	SGST	IGST	Cess	

RTP from whom supply received	GSTIN	Total numbers of invoice/debit notes issued	Supply Value (Rs)	Tax (Rs)				Broad category of Goods/services
				CGST	SGST	IGST	Cess	

- List of HSN code of goods and SAC of services in respect of your supply.
- Reconciliation statement in respect of Turnover as disclosed in GSTR 3B and GSTR 1 and as per books of accounts.
- ITC as claimed in GSTR 3B and as auto populated in GSTR-2A.

You are requested to fill up the Questionnaire as annexed herewith and produce it (duly signed and stamped) before the undersigned on the first date of hearing as specified in Form GST ADT-01 issued to you. You are also requested to mail all these afore-stated statements and accounts at: well in advance.

The other accounts, statements, records and documents as and when will be required during the course of audit will be duly informed to you or your authorized representative.

Signature of the Audit Officer

Name :

Designation :

Full Address :

E-mail Address :

Phone Number :(Office),(M)

12.3. Annexure 3: Questionnaire for Auditee -

[Please fill up and attach separate sheets wherever necessary]

1. General Information about the RTP (Auditee):

a)	Legal Name & Trade Name (if any)											
b)	GSTIN											
c)	Address (Principal place)											
d)	Period of GST Audit											
e)	Name and contact number and e-mail address of the 'Authorized Person' for Audit and the person responsible for Accounts & Billing.											
f)	Total tax paid for supply of goods and/or services for the period under audit (Act wise).	Tax	From e-credit ledger			From e-cash ledger						
		SGST										
		CGST										
		IGST										
		CESS										
g)	Whether possesses GSTIN as ISD / TDS deductor / TCS collector in the State?	GSTIN as ISD										
		GSTIN as TDS deductor										
		GSTIN as TCS collector										
h)	Constitution of Business and names of the current business owners/promoters.											
i)	Details of transactions with related and distinct persons [Ref: Sch. I as appended in Sec 7]	Name with GSTIN, if any					Total tax involved (act wise)				Persons officers take up ply	Disclosed in return (Y/N)
							CGST	SGST	IGST	CESS		

k)	Types of goods and or services supplied [with HSN/SAC] other than those attracting tax under Reverse Charge	Name of the goods / services	HSN/SA C	Rate of Tax	
l)	Types of goods and or services received [with HSN/SAC] on which tax is payable under Reverse Charge	Name of the goods / services	HSN/SA C	Rate of tax	
m)	Whether any offence case is booked in respect of Tax for supply of goods/or services, by any Authority under any law in force. If so, details thereof.				
n)	Whether any amount payable/ paid to the Client has been adjusted against the receipt/ receivable and net income shown in the P&L Account. If yes, details thereof.				
o)	If the answer to question (n) above is yes, then, whether it has affected the Turnover as per GST Returns and whether due tax on the receipt/ receivable and net income shown in the P&L Account (relating to supply) has been paid?				
p)	Whether any advance payment is received towards providing services? If yes, whether Tax for supply of services was paid on such receipts?				
q)	Whether any advance payment is received towards supply of goods? If yes, whether Tax was paid on such transactions accordingly?				
r)	Details of any refund applied for the period concerned (please provide details of the status of the refund application: accepted/rejected, if rejected reasons thereof, amount of refund received etc.)				

2. Information on invoicing and accounting pattern:

a)	Is invoice issued in all transactions? If not, reasons for not issuing invoice.	
b)	How many series of invoices are being used?	
c)	If more than one series is used, give details of each such series.	
d)	If there are more than one series of invoices, is tax for supplies paid on all the series of invoices?	
e)	If the answer to question (d) is not, then the reasons for not paying tax for supplies on such series of invoices (e.g. exempted / zero rated without payment of tax / trading / nontaxable goods /services). Give details.	
f)	In case of provision of service, is the invoice issued on the date of provision of service or before or later?	
g)	List of the different account heads under which invoices issued for taxable supplies are recorded in the P/L account or in Trial Balance.	
h)	List of the different account heads under which invoices/bills issued for exempted and non-GST supplies are recorded in the P/L account or in Trial Balance.	
i)	Whether the Invoice Numbers are generated automatically or are fed manually. Give the name and designation of the person having the authority to cancel an invoice.	
j)	Whether any amount is recovered by issue of debit note and whether it is included in the gross value of supplies?	
k)	Are any goods or services provided free of cost or at subsidized price? If so, provide details of such goods / services.	
l)	Are any reimbursements received from the recipients? If so, quantum and reasons for such.	
m)	Is any expenditure that the supplier is liable to pay for a supply but is actually borne by the recipient? If so, details of such.	
n)	Whether the Accounts are maintained electronically? If yes, the name of accounting packages / computer software installed for maintaining accounts in the units like Tally, FAS etc	
o)	Are the accounts prepared on mercantile basis or cash basis?	
p)	Whether there has been any switching over of the accounting software during the audit period.	
q)	Have any changes been made in the accounting policies affecting GST liability relating to reimbursement of expenses, timing of payment of Tax for supply of services and treatment of payments in foreign currency?	

r)	Are the accounts audited by Statutory Auditor? If so, name, address, phone number and E-mail id of the auditor.	
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12.4. Annexure 4: List of documents/ statements and books of accounts to be produced for the purpose of audit -

- Annual report and Directors report (if any)
- Profit & Loss A/C
- Balance Sheet
- Tax Audit Report
- If GSTR -9C is not submitted for the period then Trial Balance for the RTP having above mentioned GSTIN (It is applicable where the RTP has multiple GSTIN),
- Statement of Income Tax TDS
- List of HSN /SAC of the goods /or services in respect of the business dealt in by the Auditee
- Reconciliation statement in respect of Form GSTR 9, GSTR-1 AND GSTR 3B
- Suppliers list with GSTIN (where applicable)
- Ledger accounts of the suppliers in respect of inward supplies
- Statement of outward supplies (party wise and POS wise).
- Statement of inward supplies for which tax paid/payable in RCM.
- Statement of outward supplies for which tax is payable in RCM by the recipient.
- Bank Statement for the period under audit
- Stock register
- Other documents and records as applicable as provided in section 35 of the Acts and the rules made thereunder and as may be required for the purpose of audit.

Note: On the first date of audit the Auditee is hereby asked to produce only the documents and statements as specified in the letter annexed with ADT -01.

12.5. Annexure 5: Audit Plan for supplier of services -

SAMPLE AUDIT PLAN

Note: This is only an illustrative Audit Plan for M/s Infrastructure Ltd who is a supplier of service. Plan for each Auditee should be prepared based on the specific requirement of audit of that Auditee.

A. Basic Information

1. Name of the Auditee	..... Infrastructure Limited				
2. GSTIN	.....			
3. Period of Audit	JULY 2017 TO MARCH 2018				
4. Nature of Business	4.1. Goods & Services:	.....	4.2. Manufacturing unit (if any), name of the State(s) only:	.....	4.3. Corporate office / ISD [Name of the State(s)]:
5. Risk score of selection	39.28 out of 80				
6. Major risk areas as per score	1) 2) 3) 4) 5) 6) 7)				
7. Audit Case No.	AD.....	Date of issuance of ADT – 01 with ref.no.		Reference No: ZD.....Date:	
8. Date of Commencement	.....	Normal date of completion by		.....
9. Name & designation of Officers in the Audit Officer.					
10. Audit Unit (Name)	.....			

B. Audit Plan drawn by Audit Officer/Audit Officer.

Sl. No.	Type of working paper (Ratio study, Trend analysis, Others)	Description (e.g.: Return filing pattern, Outward supply, inward supply, reverse charge, ITC, refund, etc)	Audit Risk (Low, Moderate, High)	Documents to be examined	Audit procedure (Check, Audit, Field visit)	Ratio Study/Trend study/ Other study in brief	Remarks
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
.....							

.....
[Signature of the Audit Officer Lead

Date.....

Name:

Designation:

C. Modifications suggested by Ratifying Officer

Comments

Placed before the Sanctioning Officer for final sanction.

.....

Date:.....

Signature

Name.....

Designation of Ratifying Officer.....

D. Modifications suggested by Sanctioning Officer:

Comments

Sanctioned / sanctioned as modified.

.....

Date:.....

Signature

Name

Designation of Sanctioning Officer.....

12.6. Annexure 6: Audit Plan for supplier of goods -

SAMPLE AUDIT PLAN

Note: This is only an illustrative Audit Plan for M/s ABC Ltd who is a manufacturer and reseller of goods.
Plan for each Auditee should be prepared based on the specific requirement of audit of that Auditee.

A. Basic Information

1. Name of the Auditee	ABC Limited					
2. GSTIN	.....				
3. Period of Audit	JULY 2017 TO MARCH 2018					
4. Nature of Business	4.1. Goods & Services:	.....	4.2. Manufacturing unit (if any), name of the State(s) only:	.....	4.3. Corporate office / ISD [Name of the State(s)]:	.....
5. Risk score of selection	39.28 out of 80					
6. Major risk areas as per score	1) 2) 3) 4) 5) 6) 7)					
7. Audit Case No.	AD.....			Date of issuance of ADT – 01 with ref.no.	Reference No: ZD.....Date:	
8. Date of Commencement	.....			Normal date of completion by	.....
9. Name & designation of Officers in the Audit Officer.						
10. Audit Unit (Name)	.....				

B. Audit Plan drawn by Audit Officer/Audit Officer.

Sl. No.	Type of working paper (Ratio study, Trend analysis, Others)	Description (e.g.: Return filing pattern, Outward supply, inward supply, reverse charge, ITC, refund, etc)	Audit Risk (Low, Moderate, High)	Documents to be examined	Audit procedure (Check, Audit, Field visit, etc)	Ratio Study/Trend study/ Other study in brief	Remarks
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
.....							

.....
[Signature of the Audit Officer Lead

Date.....

Name:

Designation:

C. Modifications suggested by Ratifying Officer

Comments

Placed before the Sanctioning Officer for final sanction.

.....

Date:.....

Signature

Name.....

Designation of Ratifying Officer.....

D. Modifications suggested by Sanctioning Officer:

Comments

Sanctioned / sanctioned as modified.

.....

Signature

Date:.....

Name

Designation of Sanctioning Officer

12.7. Annexure 7: Guidelines to prepare audit plan-

- **Reason(s) for selection** – Study the reason for selection and try to identify the focus area. There may be two sets of selection criteria – (i) as available in BO portal and (ii) as provided by the Department. Try to study both and identify major risk areas. In case, the volume of documents for verification is large, the auditor may adopt sample verification. In such a case, the sample selection techniques should be spelt out. The sample should be chosen in such a way that it represents the whole, uniformly.
- **Profile of the Auditee** with details of ownership, numbers of registered person under the same PAN within the State, principal and additional places of business, migration status (if any), business trend and compliance level of the RTP in the pre-GST period as well as in the GST regime, business trend of the RTP vis-a-vis the trends of the industry etc.
- **Broad types of supply involved** (i.e., resale, manufacturing, export, import, service, works contract, job work, ISD, etc).
- **Business pattern of the Auditee i.e. nature of goods and/or services dealt along with classification** (e.g. importer of medicine, exporter of leather goods, reseller of iron & steel, manufacturer of jute goods, restaurant service, manpower supply, travel agent, aviation, transport, etc).
- **Return filing & tax compliance pattern** of the Auditee in GST for the period under audit. If irregularity is found in case of submission of Return, **the Audit Officer should calculate the Late Fees & Interest payable at the desk-review stage itself**. Furthermore, there may be chances of mismatch of Turnover and Tax as disclosed in Form GSTR-3B vis-à-vis Form GSTR-1. Similarly, there may be a mismatch between ITC claimed in Form GSTR-3B vis-à-vis ITC auto-populated in Form GSTR-2A.
- **Analysis of business operations as declared by the Auditee in the GST Returns** in light of other data sources available in the GST portal itself. The Audit Officer should verify the turnover declared by the RTP in the GSTR Returns for the concerned period vis-à-vis footprint of payments made to the RTP as per GSTR-7 or GSTR-8 filed by TDS deductors or TCS collectors, as the case may be. The Audit Officer should also consult the various exceptional reports made available.

- **Analysis of business operations as declared by the Auditee in the GST Returns in light of secondary data sources**, e.g. turnover declared by the RTP in the GSTR Returns for the concerned period vis-à-vis the turnover declared in income tax return(s)/tax audit report or any other source, if available.
- **Analysis of business operations as declared by the Auditee in the Annual Financial Statement.**
- **An audit officer is required to study each case from a holistic point of view** of applicability of statutory provisions and amendments thereof, notifications, circulars and orders, advance rulings and various court decisions relevant for the audit period. There are various instances where a specific transaction when looked from a wider perspective, yielded interesting conclusions. Many of these instances are covered by various clarificatory Circulars issued both by the Central Government and the State Government.
- The auditor should mention the precise issue pertaining to the subject. For Example, Discounts passed on to the buyer, Utilization of inputs for repair/re-processing, etc.
- **Source Document/ Information to be verified:** documents/information reflecting or having a bearing on payment of GST, to be verified, if required. For example GST Invoice showing a particular discount.
- **Back-up Document:** The documents to be examined to check the correctness of the information contained in the source document, if required. The method of examination may also be specified in the plan. For example, Commercial invoice, party ledger, discount policy documents, price circulars, etc. reflecting the said discount.
- **Period of coverage:** Normally, the coverage will be for the whole of the audit period. However, the auditor may conduct test verification for specific periods each extending over a short duration, if required.

12.8. Annexure 8: Final Audit Report (FAR)- FORM GST ADT 02

Form GST ADT - 02

[See rule 101(5)]

Reference No.:

Date:

To,

.....

GSTIN

Name

Address

Audit Report No. dated

Audit Report under section 65(6)

Your books of account and records for the F.Y..... has been examined and this Audit Report is prepared on the basis of information available / documents furnished by you and the findings are as under:

Short payment of	Integrated tax	Central tax	State /UT tax	Cess
Tax				
Interest				
Any other amount				

[Upload pdf file containing audit observation]

You are directed to discharge your statutory liabilities in this regard as per the provisions of the Act and the rules made thereunder, failing which proceedings as deemed fit may be initiated against you under the provisions of the Act.

Signature

Name

Designation

12.9. Annexure 9: Format of status report to MCM

MCM REPORT (Format) **CONSOLIDATED**

1.	Period of Audit	
2.	Name of Team Leader (Audit Officer)	
3.	Other members of the Audit Officer	
4.	No. of cases allotted	
5.	No. of audit cases completed	
6.	No. of cases pending	
7.	Status of pending cases:	Pending at the stage of desk-review
		Pending for approval of audit plan
		Pending at the stage of examination of books
		Examination completed but DAR is pending
		Pending at the stage of preparation of FAR
8.	Notable findings in respect of cases where FAR is issued.	Findings in brief (case wise report may be placed in such cases only as per following format)

CASE-WISE REPORT

1.	Case No.	
2.	Legal Name and Trade Name	
3.	GSTIN	
4.	Period of Audit	
5.	Name of the Audit Officer(s) with designation	
6.	Name and designation of the officer sanctioned the Audit Plan	

7.	Important dates		Date of initiation	Date of sanction of Audit Plan	Date of FAR
8.	Date of first appearance				
9.	Name & other details (phone no, e-mail) of A/R appearing				
10.	Mode of Audit (specify)		Desk Audit	Field Audit	Both
11.	List of observations made upon audit [in brief]	Revenue implication (Rs.)	Whether admitted by Auditee (Yes/No)		If Yes, amount realized, act wise (Rs.)
	i) Rate difference (wrong HSN/SAC) Pl mention in brief.				
	ii) Supply not disclosed in returns. (Separate row may be used for each types of such non-disclosure)				
	iii) Tax was payable under RCM but not paid				
	iv) Wrong claim of ITC				
	v) Reversal of ITC not made (specify in brief).				
	vi) Excess refund claimed (specify brief findings)				
	vii) Similarly add rows, if required.				
12.	Particulars	Integrated Tax with POS	Central Tax	State Tax	Cess
	(a) Total amount of tax involved for the discrepancy found (in Rs.)				

	(b)Tax paid during audit or after getting FAR				
	Tax dues (12a – 12b)				
13	(a)Total interest payable				
	(b)Interest paid during audit or after getting FAR				
	Interest dues (13a-13b)				
14	(a)Late fees payable				
	(b)Late fees paid during audit or after getting FAR				
	Late fees dues (14a – 14b)				
15	(a)Penalty payable				
	(b)Penalty paid during audit or after getting FAR				
	Penalty dues (15a-15b)				
16	Total amount paid during audit or after getting FAR				
17	Total amount dues (Tax + Interest +Late fees +Penalty)				

12.10. Annexure 10: KEY POINTS FOR SUPPLY -

TABLE I: KEY POINTS FOR SUPPLY			
Sr. No.	Key issues	Reference Points from returns/law	Accounts
1	Whether the kind of outward supplies like Taxable supply, exempted supply, Zero-rated supply, NIL rated supply, Supplies to SEZ unit/ developers, Deemed Export etc. are appropriately classified under GST law?	<ul style="list-style-type: none"> ➤ Sr. No. 4 & 5 of GSTR 9 ➤ Taxable Supply: Sr. No. 5N of GSTR 9 ➤ Exempted: Sr. No. 5D of GSTR 9 ➤ Nil: Sr. No. 5E of GSTR 9 ➤ Non-GST Supply: Sr. No. 5F of GSTR 9 ➤ Zero Rated: Sr. No. 5A, 4C of GSTR 9 ➤ Supply to SEZ: Sr. No. 5B, 4D of GSTR 9 ➤ Deemed exports: Sr. No. 4E of GSTR 9 ➤ Section 7 of GGST Act ➤ Section 17(3) of GGST Act ➤ Section 147 of GGST Act ➤ Schedule I, II and III of GGST Act ➤ Section 16 of IGST Act 	<ul style="list-style-type: none"> ➤ Invoice/Bill of Supply ➤ Tax rate Notification ➤ Exemption Notification ➤ HSN/SAC ➤ Contract ➤ Shipping Bill/Bill of Export ➤ Bill of Lading ➤ Letter of Undertaking ➤ Duty drawback availed ➤ Payment received (Bank/Cash) ➤ Composite/Mixed Supply
2	Whether any activity or transaction which falls within the scope of supply has not been identified by the Registered Person?	<ul style="list-style-type: none"> ➤ Non-GST Supply: Sr. No. 5F of GSTR 9 ➤ Schedule III of GGST Act 	<ul style="list-style-type: none"> ➤ Invoice/Bill of Supply ➤ Contract ➤ Consideration received ➤ Business purpose
3	Whether supply has been correctly classified as Inter-State supply/Intra-State supply/asperSection7(5) & 8 of the IGST Act, 2017?	<ul style="list-style-type: none"> ➤ Sr. No. 3.1 & 3.2 of GSTR 3B ➤ Section 10,12,13 of IGST Act 	<ul style="list-style-type: none"> ➤ Invoice/Bill of Supply ➤ Contract ➤ Transportation document ➤ Whether B2B or B2C in case of supply of services

4	What is treatment of promotional item given free to end consumers by FMCG companies?	<ul style="list-style-type: none"> ➤ Sr. No. 5E & 5 F of GSTR-9 ➤ Sr. No. 14N, 14P, 14Q of GSTR-9C 	<ul style="list-style-type: none"> ➤ Sales promotion expenses ➤ Ledger account of Distributors/Franchise /Agents ➤ Stock Register
5	Whether the Zero - rated supply is verified as per the provisions of the law?	<ul style="list-style-type: none"> ➤ Sr. 5A & 4C of GSTR-9 ➤ Section 16 of IGST Act 	<ul style="list-style-type: none"> ➤ Contract ➤ Shipping Bill/Bill of Export ➤ Bill of Lading ➤ Payment received (Bank Statement) ➤ Letter of Credit / Telegraphic Transfer ➤ Letter of Undertaking ➤ Duty drawback availed
6	Whether supply of capital goods has been subjected to GST and as to whether the same has been included in the returns filed?	<ul style="list-style-type: none"> ➤ Section 18(6) of GGST Act 	<ul style="list-style-type: none"> ➤ Fixed Asset Schedule ➤ Contract ➤ Ledger account of fixed assets/plant and machinery ➤ Ledger account of scrap ➤ TCS under Income Tax Act ➤ Bank Statement (Payment received)
7	Whether the transactions are correctly classified as supply of goods or supply of services as per Schedule-II of the GGST Act, 2017?	<ul style="list-style-type: none"> ➤ Table 9 of GSTR 9C ➤ Sr. No. 17 & 18 of GSTR 9c ➤ Schedule II of GGST Act 	<ul style="list-style-type: none"> ➤ Invoice/Bill of Supply ➤ Contract ➤ Composite/Mixed Supply
8	Are there any transactions wherein goods sent for job-work are not received back within the specified period?	<ul style="list-style-type: none"> ➤ Form ITC -04 ➤ Section 143 of GGST Act 	<ul style="list-style-type: none"> ➤ Delivery Challan ➤ Gate outward register ➤ Gate Inward register ➤ Stock register ➤ Job work charges

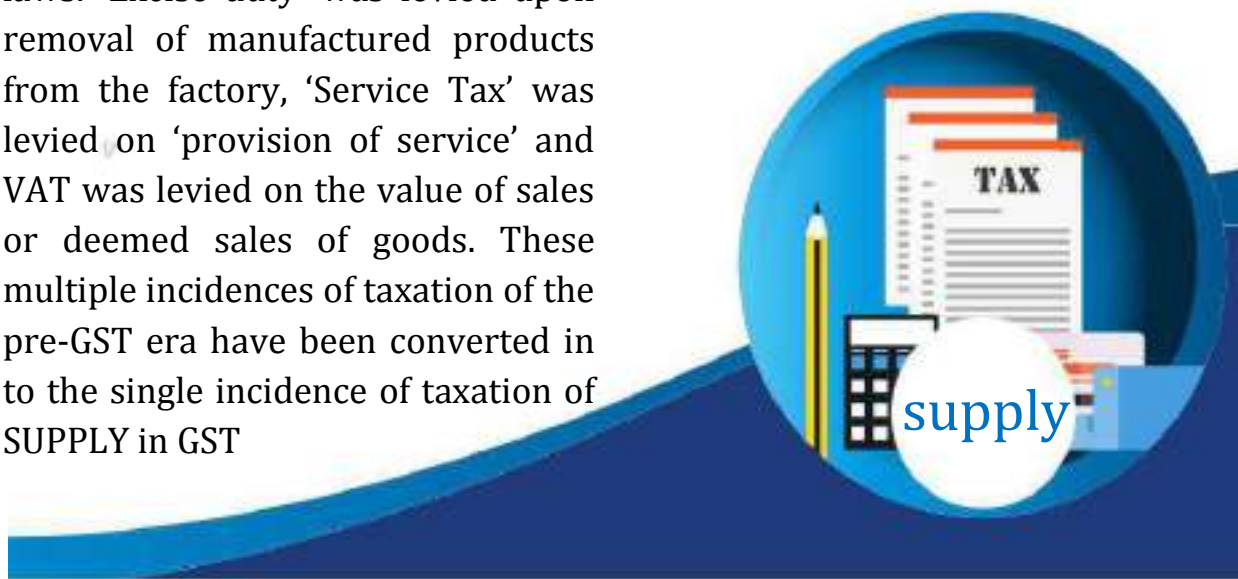
9	Whether any business asset has been permanently disposed off for which input tax credit had been availed?	<ul style="list-style-type: none"> ➤ Sr. No 6B of GSTR-9 ➤ Schedule I of GGST Act 	<ul style="list-style-type: none"> ➤ Fixed Asset Schedule ➤ Contract ➤ Ledger account of fixed assets/plant and machinery ➤ Ledger account of scrap ➤ Stock register ➤ Bank Statement (Payment received)
10	Whether "Related persons" or "Distinct persons" in relation to registered person have been identified and whether activities or transaction with them have been duly identified and accounted for as per law?	<ul style="list-style-type: none"> ➤ Section 15(4) of GGST Act 	<ul style="list-style-type: none"> ➤ Ledger account of Related persons ➤ Loans and advances ➤ Income tax Audit report ➤ Annual return under Companies Act
11	Whether any "Agent" has been appointed by registered person and whether transaction with such agent has been duly accounted for as per law?	<ul style="list-style-type: none"> ➤ Schedule I of GGST Act 	<ul style="list-style-type: none"> ➤ Commission expenses ➤ TDS/ Form 26AS ➤ Contract with franchisee/distributor ➤ Structure of business supply chain
12	Whether any foreign exchange has been remitted outside India for any import of services and whether tax on same has been paid as per law?	<ul style="list-style-type: none"> ➤ Sr. No. 6E and 6F of GSTR- 9 	<ul style="list-style-type: none"> ➤ Contract ➤ Bank Statement (payment made) ➤ Letter of credit/ telegraphic transfer ➤ Director report
13	Whether the goods for business use have been put to personal use?	<ul style="list-style-type: none"> ➤ Section 17 (1) of GGST Act ➤ Schedule II of GGST Act 	<ul style="list-style-type: none"> ➤ Stock register ➤ Drawings account ➤ Nature of expenses especially telephone, repair and maintenance, insurance etc.
14	Whether any goods or services are being supplied by employer to employee, with or without consideration,	<ul style="list-style-type: none"> ➤ Sr. No. 5F of GSTR- 9 ➤ Sr. No. 14H of GSTR-9C ➤ Schedule I of GGST Act 	<ul style="list-style-type: none"> ➤ Employee cost ➤ Welfare expenditure ➤ Stock register ➤ Drawings account

	and whether same has been accounted for as supply?		<ul style="list-style-type: none"> ➤ Nature of expenses especially telephone, repair and maintenance, insurance etc.
15.	Whether tax has been paid on RCM on inward supplies?	<ul style="list-style-type: none"> ➤ Section 9(3) and 9(4) of GGST Act 	<ul style="list-style-type: none"> ➤ Self- invoices issued ➤ Payment vouchers ➤ Examine the nature of expenses especially freight (inward and outward), legal charges, import of services etc. ➤ Bank Statement (payment made)
16.	Whether tax paid on advances received?	<ul style="list-style-type: none"> ➤ Sr. No. 4F of GSTR-9 ➤ Section 12 and 13 of GGST Act 	<ul style="list-style-type: none"> ➤ Bank Statement (Payment received) ➤ Cash book for any cash received ➤ Loans and advances in the Balance Sheet ➤ Ledger account of debtors
17.	Whether any credit note issued for supplies made?	<ul style="list-style-type: none"> ➤ Sr. No. 4I of GSTR-9 ➤ Section 34 of GGST Act 	<ul style="list-style-type: none"> ➤ Credit Note Vouchers ➤ Goods return register ➤ Ledger account of sale returns ➤ Weigh bill ➤ Gate Inward pass ➤ Transportation document ➤ ITC reversed by recipient ➤ Whether issued within timeline defined by section 34

12.11. Annexure 11: Supply of Goods or Services or both -

In the pre-GST era, incidence of taxation varied under different tax laws. 'Excise duty' was levied upon removal of manufactured products from the factory, 'Service Tax' was levied on 'provision of service' and VAT was levied on the value of sales or deemed sales of goods. These multiple incidences of taxation of the pre-GST era have been converted into the single incidence of taxation of SUPPLY in GST

Concept of supply in GST



- ❖ GST Law has defined 'supply' in an inclusive manner. Supply in GST comprises of all forms of supply of goods or services or both. It includes sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business [section 7(1)(a) of CGST & SGST Act].



Sale means transfer of ownership of any goods or service against consideration.



Lease signifies contract to allow right to use for a period without transfer of title.



Transfer means making over the possession of a property, a right, or a responsibility to another.



Barter is exchange of goods or services for other goods or services without using money.



Exchange is an act of giving one thing and receiving another (especially of the same kind) in return.



Rental means periodical payment for the use of someone else's property.



Disposal is to part with or alienate / the action or process of getting rid of something.



License is a permission to use something without transfer of possession.

- ❖ **Import of services** for a consideration whether or not in the course or furtherance of business is also **supply**.
- ❖ Some activities as specified in **Schedule I** of GGST Act, even if made or agreed to be made **without a consideration** are treated as supply.
- ❖ Further, activities or transactions specified in Sch III shall be treated neither as a supply of goods nor a supply of services in GST.

Thus, supply has following important characteristics –

1. Supply shall be **before a consideration** except transactions specified in Sch. I which shall be treated as supply even if made without consideration.
2. Supply is done **in course or furtherance of business** except import of service for a consideration which is considered as supply whether or not in course or furtherance of business.
3. There are certain activities specified in Sch. III which are not to be treated as supply of goods or services.

Conditions of 'Supply' in GST:

(a) for a **consideration** and (b) **in the course or furtherance of business**

Exceptions:

- (a) Activities in Schedule I to be treated as supply **even if made without consideration**
- (b) Import of Service to be treated as supply **even if it is not in course or furtherance of business**

The above conditions are discussed below with some examples

A. Consideration is a condition of supply -

Mr. Clean runs two coaching centre. One is for needy students which is absolutely free, whereas, the other is against fees. He is providing same services from both the coaching centres. But, the services provided from the free coaching centre does not qualify the first characteristic of supply (i.e. consideration) in GST. So, it is not a supply in GST. But, the services from the other coaching centre qualify all the characteristics of supply.



B. Supply should be “in the course or furtherance of” business - One of the characteristics of supply is that supply should be “in the course or furtherance of” business except a few. ‘In the course or furtherance’ is not defined in GST law, but is broad enough to cover any supply made in connection with the business and therefore the phrase needs to be analyzed in detail. The Australian Concise Oxford Dictionary (1997) defines the phrase ‘in the course of’ as ‘during’ and the word ‘furtherance’ as to mean ‘furthering or being furthered; the advancement of a scheme etc.’ The literal meaning of the said phrase ‘in the course or furtherance of business’ is “as part of doing regular business” or “anything done in relation to business”. For example:

- i. Purchases & Sales of goods by reseller.
- ii. Selling scrap generated in process of manufacturing is also in the course of business.
- iii. Activities done as part of CSR by a Company is also in the course of business.

Thus, the phrase widens the scope of supply to bring more activities in its ambit.

C. Import of services for a consideration is supply in GST even if not in course or furtherance of business. Suppose, a

person ‘P’ of West Bengal is constructing his own house for his personal use. He availed the services of an architect in USA and paid USD 10,000 for it. In this case, though it is not in the course of furtherance of business, still it would be treated as supply in GST and Mr. P would be liable for payment of GST under RCM.



It is also relevant to mention in this respect that, services are considered to be imported when three conditions are fulfilled- (i) Supplier of services is located outside India, (ii) Recipient of services is located in India and (iii) Place of supply of services is located in India [sec 2(11) of the IGST Act, 2017].

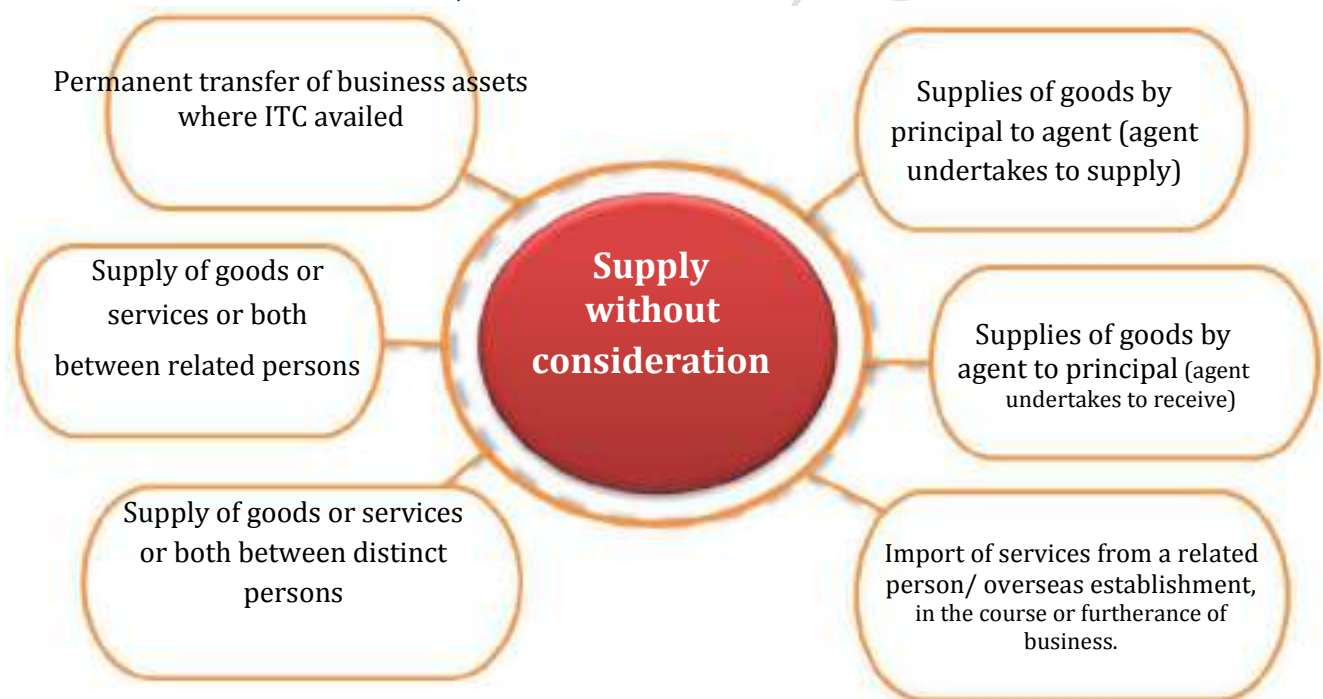
D. Exceptions in respect of ‘Consideration’ being an essential condition for Supply in GST –

There are some exceptions where activities are treated as ‘Supply’ under GST

even if such are made without consideration. These are specified in Schedule- I under section 7 of the Act.

Schedule I: Following activities to be treated as supply even if made without consideration:

1. Permanent transfer or disposal of business assets where ITC has been availed on such assets.
2. Supply of goods or services or both between related persons (such as officers or directors of one another's business, employer & employee, members of the same family, legally recognized partners in business etc.) or between distinct persons as specified in sec 25, when made in the course or furtherance of business. But gifts not exceeding rupees fifty thousand in value in a financial year by an employer to an employee shall not be treated as supply.
3. Supplies of goods by principal to his agent where the agent undertakes to supply such goods on behalf of the principal.
Supplies of goods by an agent to his principal where agent undertakes to receive such goods on behalf of his principal.
4. Import of services by a **person** from a related person or from any of his other establishments outside India, in the course or furtherance of business.



- 1. Permanent transfer or disposal of business assets without consideration:**
There is no doubt that disposal of business assets against consideration is a supply. However, if ITC on any business asset has been availed, then disposal of such business assets even if made without consideration should also be treated as supply. Examples –

a. **Permanent transfer: Example No. 1** - Suppose XYZ Ltd., is in the business of

hospitality. He purchases an air conditioner and a car for his hotel business and avails ITC on the air-conditioner but no ITC is availed in respect of the car. After 2 years, he permanently transfers the AC to one director and the car to another director, both without any consideration. Though no consideration is taken in case of transfer of the air conditioner still, it would be treated as a supply as per schedule I and supplier shall have to pay an amount determined according to section 18(6) of the GGST Act. In case of permanent transfer of car, it will not be treated as supply since no ITC has been availed on the same.

Example No. 2 - Woodwork, being a sole proprietorship firm is in the business of selling furniture. However, if the owner takes a set of furniture from its inventory to furnish his bedroom, the transfer of the furniture by the owner, is a supply as per Schedule I and would be subject to GST.

Whether temporary transfer of business assets would be considered as supply in GST?

Temporary transfer of business assets with consideration is a supply in GST. However, temporary transfer of business assets without consideration has not been covered under Sch. I. So, it will not be treated as supply. But, for that limited period for which such assets are not used for the purpose of business, ITC shall have to be reversed as per provisions of section 17(1) read with rule 42 and 43.

Disposal of business assets: There are various reasons of disposal of business assets without any consideration. Most common reasons for such disposal are following: Assets are not in usable condition, Assets donated etc.

e.g. – A company disposes of his old fans to a nearby rural health Centre as donation during renovation of its office. The company availed ITC on such fans. So, even if there no consideration is involved in this disposal it will still be treated as supply in GST.

Supplies between related persons:

- a. Transactions between related persons is considered a supply in GST even if made without any consideration. Related persons are defined u/s 2(84) of the GGST Act. Persons shall be deemed to be related if they fall under any of the following categories:

- Officer/ director of one business is the officer/ director of another business,

- Businesses are legally recognized as partners,
- An employer and an employee,
- Any person holds at least 25% of shares in another company either directly or indirectly,
- One of them controls the other directly or indirectly,
- They are under common control or management,
- The entities together control another entity,
- They are members of the same family.

However, in accordance with the provision in entry no. 2 of Schedule I, gifts not exceeding fifty thousand rupees in value in a financial year by an employer to an employee shall not be treated as supply.

Example: Company X gives a mobile phone worth Rs. 25000/- to each member of its sales team as a gift in 2017-18. The same Company X gives a high-end laptop worth Rs. 60,000/- to the head of the sales team for his performance.

Here, gift of mobile phone to a sales person as stated above, would not be treated as supply since value of such gift to an employee does not exceed Rs.50,000/- in that FY. However, say, the company over and above the above, also gifts family tour package to that employee which is worth Rs.30,000/- in the same FY. In this case since the value of gift exceeds Rs.50,000/-, the entire amount of Rs.55, 000/- (=Rs.25, 000/- + Rs.30, 000/-) would be treated as a supply by the employer. In the second case also, gift of laptop worth Rs.60, 000/- to the sales head would be treated as a supply since value of gift exceeds Rs.50,000/-.

Sometimes companies' gift to non-related persons without any consideration. The same may be illustrated as follows -

- Gifts provided by pharmaceutical companies to the Doctors** – Gifts are given by the pharmaceutical companies to the doctors shall not be treated as supply since in this case, both are not related persons or distinct persons as specified in section 25 and is the activity (of giving gift) is made without consideration. However, the pharmaceutical company in this case, is not entitled to claim ITC on purchase of such gift items in accordance with section 17 (5) of GGST Act.
- Diwali gift / New Year gift to business Clients** – The activity of giving Diwali Gifts or New Year gifts to business clients would also not qualify as supply since the activity is not between related parties and is without consideration.

However, ITC on purchase of the same needs to be reversed, if already availed, in accordance with S.17 (5) of GGST Act.

Supply between distinct persons:

Stock transfer from one branch to another branch or from the manufacturing unit to different sales units within or outside the state is a very common practice in business. In the pre-GST regime this type of inter-state transaction was exempted subject to fulfillment of certain conditions. However, this stock transfer is supply between distinct persons in GST. Following persons are distinct person –

- a. All registered persons (whether in the same state or different states) under a single PAN are distinct persons (section 25(4) of the GGST Act).
- b. Where registration has been obtained by a person in respect of an establishment in a State (or a union territory) another establishment of the same person in another State (or union territory) are treated as establishments of distinct persons (section 25(5) of the GGST Act).

Example: A registered manufacturer in Delhi, transfers finished goods worth Rs.5,00,000/- to its depot located in Kolkata, WB. This would be treated as supply in GST.

Supply of principal and agent: In pre-GST regime consignment transfer to consignment agents in VAT and CST Acts was exempted subject to fulfillment of certain conditions. However, Supply of goods by a principal to his agent where the agent undertakes to supply such goods on behalf of his principal is treated as supply by principal to agent even if such is made without consideration. Similarly, Supply of goods by an agent to his principal where the agent undertakes to receive goods on behalf of the principal is treated as supply by the agent to his principal even if such is made without consideration.

The same is illustrated below–

A manufacturer of hosiery products in Kolkata engages an agent in Siliguri to sell his products as an agent. When the manufacturer transfers his stock to the agent it would be treated as supply by the principal to the agent and subsequently when the agent sells the same to the customer such would be treated as supply by the agent.

This manufacturer further, engages an agent in Nadia to receive cotton yarns from vendors of Nadia. When the agent transfers cotton yarn to the manufacturer the same would be treated as supply by the agent to the principle.

Import of services from a related person or from overseas establishment:

Import of services is a supply if it is made for a consideration.

However, Import of Service without consideration would also be treated as supply if such is made **in the course or furtherance of business** and is made from any related person or from any establishment outside India to him/her in India. **Example** – A multinational company engaged in engineering services provides engineering drawing from his unit at France to a unit in Kolkata free of cost.

This import of service would be treated as supply even if it is without any consideration.

However, in this case it is very difficult to identify such services., if there is no self-compliance made by the RTP If we examine the books of accounts carefully, we may find some areas where an audit trail of such supply may be identified.

For example, a company asks engineers from his foreign establishment to supply engineering services to a client in West Bengal. The foreign establishment charges nothing for the services but travel expenses and all other expenses of such engineers are borne by the registered company in West Bengal. So, audit trail of such services can be found in the relevant head of expenses. Therefore, it is very important to know the business pattern of the Auditee to identify probable areas where reflection of such type of transaction may be identified.

E. Activities neither to be treated as supply of Goods nor as supply of service:

Before going into the detail discussion on activities or transactions which shall neither be treated as supply of goods nor supply of service as provided in Schedule III, it is important to know the context of Schedule-III. In GST law services is defined in the widest form – ‘anything other than goods’ is defined as services. So, the service provided by an employee to their employer also becomes supply of services. Functions performed by MLAs and MPs also get in

to the ambit of services as far as the definition of services is concerned. But it was never the intention of the GST law to bring services by employees or MLAs or MPs and similar other activities in to the scope of supply.

Accordingly, the following activities or transactions which are enlisted in Sch. III, shall neither be treated as a supply of goods nor a supply of services:

- i) Services by an employee to the employer in the course of or in relation to his employment.
- ii) Services by any court or Tribunal.
- iii) Functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities;
- iv) The duties performed by any person who holds post in pursuance of the provisions of the Constitution in that capacity;
- v) The duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central/ State Govt. or a local authority and who is not deemed as an employee before the commencement of this cause.
- vi) Services of funeral, burial, crematorium or mortuary including transportation of the deceased.
- vii) Sale of land, sale of building (other than specified in Para. 5(b) of schedule II of the Acts.
- viii) Actionable claim, other than lottery, betting and gambling.
- ix) Supply of goods from one non-taxable territory to another without entering into India.
- x) (a) Supply of warehoused goods to any person before clearance for home consumption.

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

i) Services by an employee to the employer in the course of or in relation to his employment:

In case of supply of services by an employee, fulfillment of the following three broad conditions is required for the levy of GST -

- i. presence of service
- ii. existence of consideration and

iii. the supply is in the course or furtherance of business of the employee. But, as per entry no.1 in Schedule III, services rendered by an employee to employer in the course of or in relation to his employment, shall neither be treated as supply of goods nor as supply of services.

It is important to note that the exclusion is applicable only in circumstances **where the services are rendered in the course of or in relation to his employment and not otherwise**. Any service rendered by an employee to his employer beyond the normal course of employment can be subject to GST unless otherwise exempted. Therefore, employee employer agreement should have comprehensive details about the roles and responsibilities of the employee and remuneration against those services. These are also important areas to examine.

For example –

- a. There is a condition in the employment clause of a pharma company that an Area Sales Manager is required to fulfill his target during a year otherwise, it would affect his increment and next promotion. An Area Sales Manager who is highly efficient exceeded the target prior to end of the financial year. The company being pleased gifted him/her a personal car. This is nothing but gift by the employer to the employee but the same would be treated as supply in accordance with entry 2 of Schedule I

ii) Actionable claim, other than lottery, betting and gambling: Except lottery, betting and gambling, all other actionable claim is neither to be treated as supply of goods nor as supply of services.

Section 3 of Transfer of Property Act, 1882 defines Actionable Claim. It is a claim of –

1. any debt which is not secured by:
 - a. Mortgage of immovable property,
or
 - b. Hypothecation, or pledge of
movable property,
2. any beneficial interest in movable property, which is not in possession of the claimant. The possession can be actual or constructive.

Examples of Actionable Claims -

- Lottery ticket
- Betting & gambling
- Right to credit in a provident fund
- Dividends on shares, debentures, negotiable instruments such as bills of exchange etc.
- Rights shares or option to purchase shares
- Bank guarantee

Examples of Non-Actionable Claims

- Copyright
- Right to claim damage in the event of breach of contract
- Right to use
- Coupons and Vouchers

There are several examples of actionable claim. But, only lottery, betting and gambling are leviable to GST.

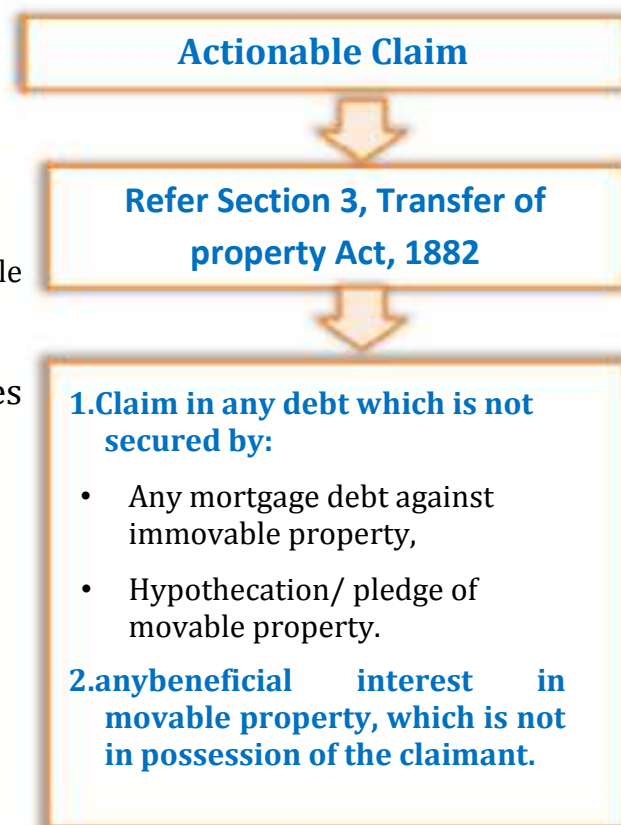
iii) Sale of land, sale of building (other than specified in Para. 5(b) of schedule II of the GGST Act):

Sale of land is outside the ambit of GST. But there may be many activities and transactions related to land which can be taxable in GST. Some of these activities are mentioned in Sch. II.

Schedule II: Activities or transactions to be treated as supply of goods or supply of services -

1. TRANSFER

(a) Any transfer of title in goods is a supply of goods - Transfer of title in a goods means transfer of possession and control on such goods i.e transfer of ownership. However, sometimes, title may be transferred before getting physical possession of goods. For example, X being reseller of sewing machine receives order to supply 15 pieces of sewing machine to a business person Y



in Bihar. But, Y instructs X to deliver the same to Z in Jharkhand. In this case, Y transfers the title of the goods to Z without getting physical possession of the goods. Hence, in this case there are two distinct supplies of goods, first one by X to Y and the second one by Y to Z.

There may be situations where transfer of title of taxable goods may not be treated as supply in GST. In case of 'High Sea Sales' transfer of title of goods occurs on high seas. Subsequently, documents of Customs clearance i.e. Bill of Entry etc is filed by the person who buys the goods from the original importer during the said sale. This high sea sale is not a supply in GST as per entry no. 8(b) of Sch. III.

(b) Any transfer of right in goods or of undivided share in goods without the transfer of title thereof is a supply of services – “Transfer of right to use of goods” was always a point of dispute between two different taxation authorities. Transfer of effective control and possession over any goods along with the transfer of right to use was considered as deemed sale under the VAT Act. However, if there was no transfer of effective control and possession over any goods, mere transfer of right to use was considered as supply of service. So, upon consideration of all the conditions it was always difficult to decide whether a particular transaction was liable to levy of VAT or service tax. This particular entry in Sch. II has done away with any such confusion and henceforth any transfer of right in goods or of undivided share in goods without the transfer of title thereof would be considered as supply of services.

Excavators, Cranes, Dumper trucks, Generator, Transit Mixer and many such machineries are usually supplied on rent basis without transferring the title. All such transactions are treated as supply of service in GST. But, as per the rate notification, rates of applicable GST of such services is equivalent to the rates of the particular goods.

(c) Any transfer of title in goods under an agreement which stipulates that property in goods shall pass at a future date upon payment of full consideration as agreed, is a supply of Goods-

Example of the aforesaid entry can be Hire Purchase. There may be a two-party transaction between the owner and the hirer or there may be a tripartite agreement between seller, the buyer and the financier. Obviously the second type of agreement is more popular nowadays. However, this kind of tripartite

arrangement cannot be considered as hire purchase. In this case, full payment is made by the financing company for the purchase of the buyer and the purchaser becomes the owner of the goods. The finance company has only right to seize the goods for non-payment of loan. In case of failure to pay the loan when the finance company sells the goods after taking possession of the goods. In such case, it is a supply in GST and there is specific valuation rule 32(5) of the GGST Rules, 2017 which reads as follows:

“Where a taxable supply is provided by a person dealing in buying and selling of second hand goods i.e., used goods as such or after such minor processing which does not change the nature of the goods and where no input tax credit has been availed on the purchase of such goods, the value of supply shall be the difference between the selling price and the purchase price and where the value of such supply is negative, it shall be ignored:

Provided that the purchase value of goods repossessed from a defaulting borrower, who is not registered, for the purpose of recovery of a loan or debt shall be deemed to be the purchase price of such goods by the defaulting borrower reduced by five percentage points for every quarter or part thereof, between the date of purchase and the date of disposal by the person making such repossession”.

This is further clarified by Question No.63 in FAQ issued by the CBIC on Banking, Insurance and stock brokers sector dated 27.12.2018.

2. LAND AND BUILDING

(a) Any lease, tenancy, easement, license to occupy land is a supply of services,

(b) Any lease or letting out of the building including a commercial, industrial, or residential complex for business, or commerce, either wholly or partly is a supply of services -

Land and building being immovable properties are kept outside the ambit of ‘Goods’ as defined under GGST Act, 2017. But services like lease, tenancy, tenancy transfer, easement, license to occupy land lease or letting out of any building or part thereof are treated as supply of service in GST. Even, the tenancy premium is liable for levy of GST. There are certain kinds of such supplies which are notified as nil rated supply. e.g. Leasing of industrial plots or plots for development of infrastructure for financial business. Grant of

tenancy rights in a residential dwelling for use as residence dwelling against tenancy premium or periodic rent or both is also exempt supply [vide sl. no 12 of Notification No. 12/CT (R)2017].

An interesting ruling by AAR of GST, Karnataka is relevant to mention here [vide, ruling 2020 (4) TMI 692]:

Applicant has let out a Residential complex to a company who is engaged in the business of providing residential accommodation to students by entering into sublease agreement with students for providing residential accommodations with amenities, security, entertainment facilities for a period varying from 3 months to 11 months. The ruling held that they are like hotel rooms and no circumstances can be termed as a residential dwelling. The services provided are not for use as a residence by the lessee. Hence it is not the nature of the property which determine taxability but the purpose of letting out the property which determine taxability.

3. TREATMENT OR PROCESS

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

Any treatment or process applied to another person's goods is a service. Further, any treatment or process undertaken by a person on goods belonging to another registered person is defined as "job work" in GST. Now, if consumables are supplied by the job worker in the process of applying treatment or process then also it would be treated as supply of services.

However, if goods are also supplied by the job worker for manufacturing of a product as per the specification of the Principal then the same may be considered as manufacturing of that particular goods. Accordingly, the job worker is liable to charge GST at applicable rates for supply of that particular goods. In this respect clarification in Circular No: 52/26/2018-GST dated 09.08.2018 is relevant:

Fabrication of buses may involve the following two situations - (a) Bus body builder builds a bus, working on the chassis owned by him and supplies the built-up bus to the customer, (b) Bus body builder builds body on chassis provided by the principal for body building. In situation (a), the supply of a bus is being made, and accordingly the supply would attract GST@ 28%. In situation (b), fabrication of body on chassis provided by the principal (not on

account of bus bodybuilder), the supply would be treated as services, and 18% GST as applicable will be charged accordingly.

4. TRANSFER OF BUSINESS ASSETS

(a) Where goods forming part of the assets of a business are transferred or disposed of by or under the direction of a person carrying on the business so as no longer to form part of those assets, whether or not for a consideration, such transfer or disposal is a supply of goods by the person.

In this entry “business assets” means both Fixed and Current assets. Transfer or disposal of the same would be taxable under GST irrespective of whether the transaction is done with consideration or without consideration.

(b) Where, by or under the direction of a person carrying on business, goods held or used for the purpose of the business are put to any private use or are used , or made available to any person for use, for any purpose other than a purpose of the business, whether or not for a consideration, the usage or making available of such goods is a supply of services.

Where goods held or used for the purpose of business -

- (i) are put to private or personal use; or
- (ii) made available to another person for use for any purpose other than a purpose of the business,

In both such cases it would be supply of services even if such transaction is made without consideration.

e.g1. A proprietor who is in the business of selling cars brings a car temporarily for 2 months to his residence for personal use. Here, it should be deemed as a supply of services by the said registered person.

e.g2. When a registered person transfers the right to use his assets to his sister concern (who are distinct persons) for a limited period of time, it would also be a supply of services even if there is no consideration involved.

(c) Where any person ceases to be a taxable person, any goods forming part of the assets of the business carried on by him/her, shall be deemed to be supplied by him/her in the course or furtherance of his business immediately before he/she ceases to be a taxable person unless-

- (i) The business is transferred as a going concern to another person, or**
- (ii) The business is carried on by a personal representative who is deemed to be a taxable person.**

Example- A manufacturer of hosiery goods has decided to close his business. At the time of filing application for cancellation of registration, he has raw material and finished goods as stock worth of Rs.10 Lakh. He also has Plant & Machinery worth Rs.15 Lakh. He has disclosed such assets but failed to pay any tax. His application is accepted and registration is cancelled. This manufacturer is liable to pay tax on his/her stock including Plant & Machinery as the same is deemed to be supplied by him/her immediately before he ceases to be a taxable person. However, in the present case if the person would have transferred the business as a going concern to another person, in such case, it would have been treated as exempt supply of services in accordance with sl.no

2 of Notification No. 12-CT(R)/2017 dated 28.06.2017. Similarly, in case of death of the person, if the business is carried on by his legal heir as a taxable person under GST then all liability of the deceased proprietor would be transferred to the legal heir.

5. SUPPLY OF SERVICES -

As per Sch. II following activities are treated as supply of services:

- (a) renting of immovable property
- (b) Construction of a complex, building, civil structure or a part thereof, including a complex or a building intended for sale to a buyer, wholly or partly, except where entire consideration has been received after the issuance of completion certificate, where required by the competent authority or after its first occupation, whichever is earlier.
- (c) Temporary transfer of right to use or enjoyment of intellectual property right is service.
- (d) Development, design, programming, customization, adaptation, upgradation, enhancement, implementation of information technology software
- (e) Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act
- (f) Transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment, or other valuable consideration

(a) Renting of immovable property is service - The word Immovable Property has not been defined in the CGST/WBST Act, 2017 however the same has been defined u/s 2(19) of General Clauses Act, 1977 - "Immovable Property" shall include land, benefits to arise out of the land, and things attached to the earth, or permanently fastened to anything attached to the earth.

Suppose, a heavy generator is installed on the ground of any registered person. Whether the same would be treated as immovable property? In the judgement of Mallur Siddeswara Spinning Mill case (166) ELT 154 (SC) the Hon'ble Supreme Court of India held that if a machine (say a Gen set) is fastened on a frame and is capable of being shifted from that place, it is capable of being sold. It is goods and not immovable property.

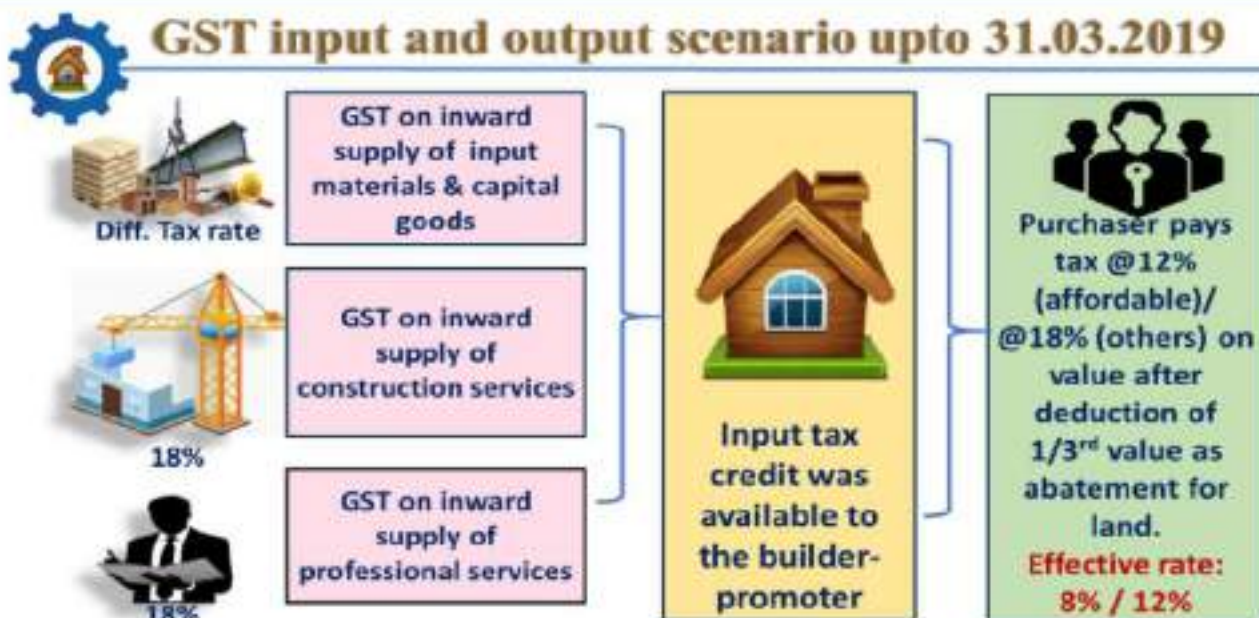
Several activities are associated with renting of immovable properties such as:

- Renting of residential complex / building / flats/ etc.
- Renting of a commercial complex/unit/flat.
- Renting of place / property/ complex for a religious function.
- Renting of place / property/ complex for social function.
- Renting of place / playground for sports and games.
- Renting of property to an educational institution.

(b) Construction of a complex, building, civil structure or a part thereof, including a complex or a building intended for sale to a buyer, wholly or partly -

Where any consideration in respect of construction of complex, building, civil structure or part of it is received partly or wholly, before issuance of completion certificate, then the entire consideration shall be treated as consideration for the services provided and, the same is taxable under the act. But, if no consideration is received before getting completion certificate of first occupancy, whichever is earlier then sale of that complex or building or any civil structure will neither be treated as supply of services nor as supply of goods.

The tax rate on supply related to real estate project has undergone a change w.e.f. 01.04.2019. The input- output scenario up to 31.3.2019 was as follows:



In the real estate sector, a Developer - Promoter or a Landowner - Promoter is primarily engaged in supply of service.

A Developer-Promoter is a promoter who constructs or converts a building into apartments or develops a plot for sale.

A Landowner-Promoter is a promoter who transfers the land or development rights or FSI to a developer-promoter for construction of apartments and receives constructed apartments against such transferred rights and sells such apartments to his buyers independently.

Apart from the aforesaid services there are various other services also associated. A separate book has been published by the Directorate of Commercial Taxes, West Bengal on the real estate sector. An Audit officer entrusted with the job of auditing a taxpayer in real estate sector is advised to follow the book and go through the notifications related to real estate.

Present input- output scenario in the real estate sector which is effective from 01.04.2019 is as follows:



GST input and output scenario from 01.04.2019



Diff. Tax rate

GST on inward supply of input materials & capital goods



18%

GST on inward supply of construction services



18%

GST on inward supply of professional services



Input tax credit was available to the builder-promoter



Purchaser will pay tax @1.5% (affordable) / 7.5% (others) on value after deduction of 1/3rd value as abatement for land.

Effective rate:
1% / 5%

This is applicable for projects other than ongoing project



Comparative view

Sl. No.	Description	Effective New Rate	Effective Old Rate
1.	Construction of affordable Residential Apartment by a promoter (RREP & REP other than RREP)	1% (without ITC)	8% (with ITC)
2.	Construction of other than affordable Residential Apartment by a promoter (RREP & REP other than RREP)	5% (without ITC)	12% (with ITC)
3.	Construction of commercial apartment in RREP by a promoter	5% (without ITC)	12% (with ITC)
4.	Construction of commercial apartment in REP other than RREP by a promoter	12% (with ITC)	12% (with ITC)

(c) Temporary transfer or permitting the use or enjoyment of any intellectual property right -

The term 'Intellectual Property Right' (IPR) has not been defined in GST Act. However, IPR includes Copyright, Trademark, Patents and other similar rights to an intangible property. In GST law goods comprise of both tangible and intangible goods. IPR is nothing but goods. Temporary transfer or permitting

the use or enjoyment of IPR is treated as supply of service in GST. However, if IPR is permanently transferred it would be considered as a supply of Goods.

(d) Development, design, programming, customization, adaptation, upgradation, enhancement, implementation of information technology software -

Software a goods or service?

Software in physical form is considered as goods in GST. However, the act of development of software is service.

(e) Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act is service in GST-

One of the services which have always been the point of discussion in pre-GST regime as well as in the GST regime is the supply of service for "agreeing to the obligation to refrain from an act, or to tolerate an act or situation, or to do an act" Some illustrations of such services are as follows-

- Cancellation charges charged by Hotel, airlines or charges for cancellation of any booking.
- Demurrage charges for various reasons.
- Notice pay charges.
- Liquidated damages recovered by contractees and contractors.
- Penal charges for not completing any construction within time or award charges for early completion of any construction.
- Forfeiture of deposit or advance or earnest money as penalty (like inferior quality of goods, construction machineries are not as per standard, late delivery, violation of any terms of contract).

There should be an agreement between the parties written or verbal to refrain, tolerate or to do an act.

Example 1: Cancellation charges – There is a policy agreement of a ‘Travel & Tour’ agency with the customer that 10% of the booking money will be forfeited and the balance will be refunded if the booking is cancelled within 1 month. In this case the cancellation (10% of booking money) is not for providing any travel and tour services rather for the act of tolerance. In this

case, 'Travel & Tour' agency is basically tolerating the act of cancellation of the customer which is categorized as service in entry (e) of Schedule II.

Example 2: Notice Pay recovered from employee – There is an agreement that, if an employee leaves job without serving notice 2 months / 3 months in advance (as fixed in the agreement), notice pay would be recovered from such employee. This is again an act of tolerance by the employer which is a service in GST.

Example 3: Allowing an exclusive brand is also tolerance – In a busy junction of Kolkata there is a famous shop of beverages. PepsiCo India offers the shop owner to keep and sell products of PepsiCo India only from his shop, for which act the company will issue him a cheque for Rs.10 Lakh besides the commission / margin on sale of products. This consideration of Rs.10 Lakh is nothing but for rendering the act of tolerance service to PepsiCo India.

Example 4: Liquidated damages recovered – Charge on liquidated damage is an additional levy to tolerate an act of non-performance or breach of any clause of agreement. A real estate developer recovers liquidated damages caused by a contractor for not supplying construction machinery as specified in the agreement. This is a kind of service by the developer as 'tolerating the act' of the contractor.

A contractor undertakes to complete a road construction work within 1 year and deposits Rs.1 Cr as earnest money to the contractee as security. Within a few days the contractor prayed to cancel the order since he is not in position to undertake this project. The contractee forfeited 10% of the earnest money and refrained the contractor for doing the act as per the agreement. This forfeiture is nothing but realization for providing the service of 'refraining to do an act' to the contractor.

(f) Transfer of Right to use goods for cash, deferred payment or valuable consideration is considered supply of services under Schedule II.

It has already been discussed in Sl. No.1(b) above. Let us discuss some ruling by AAR in this respect:

Example 1: AAR Kerala in the case of M/s. Abbott Healthcare Pvt. Ltd. –

Abbott undertakes an agreement for placement of specified medical instruments to customers like hospitals, labs etc, for their use without any

consideration but with the condition that these hospitals, labs etc agree to purchase at least a specified number of products like reagents, calibrators, disposals etc. The ruling says that it is a composite supply where the principal supply is the transfer of right to use of any goods for any purpose which is supply of service and is liable to GST under SI No. 17 (iii) – Heading 9973 of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017.

Example 2: Case Number 46 of 2019, Order Number 40 of WBAAR/2019-20 - M/s Ishan resins & Paints Limited, the applicant is engaged in the business of leasing out trucks or tankers without operator to GTA raised query as to whether it would be covered under serial no. 22 (b) of Notification no 12/2017 CT(Rate) dated 28/06/2017 (corresponding State Notification No. 1136 – FT dated 28/06/2017) as exempt services by way of giving on hire of transportation of goods to GTA.

The AARWB HELD THAT: - The Applicant intends to lease out vehicles like trucks, tankers etc. that are designed to transport goods. The control and possession of the vehicle will be transferred to the lessee, who will engage operator and bear the cost of repair, insurance etc. It is, therefore, not classifiable under SAC 9966, which is restricted to rental services of transport vehicles with operator. The service is classifiable under SAC 997311 as leasing or rental services concerning transport equipment without operator. It amounts to transfer of the right to use the goods and taxable under SI No. 17(iii) of the Rate Notification.

6. COMPOSITE SUPPLY

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

- (i) works contract as defined in clause (119) of section 2; and
- (ii) supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration.

(i) Works contract:

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



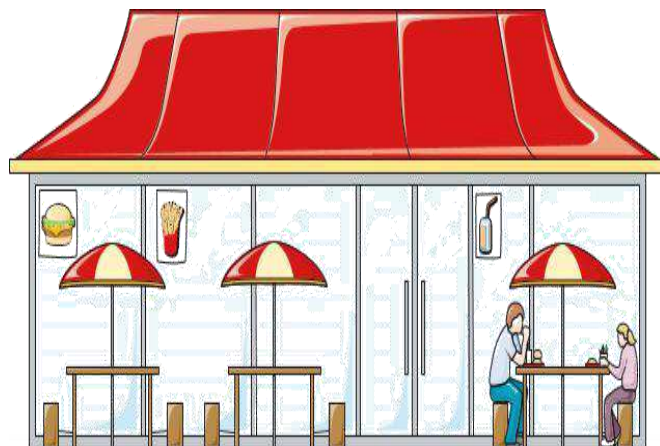
Thus, it is seen from the definition that the term works contract has been restricted to contract for building construction, fabrication etc **of any immovable property only**. This is a clear diversion from the concept of works contract as per the VAT Act. This diversion is expected to solve many disputes in the realm of taxation of works contract.

In works contract both goods and services are naturally bundled and supplied in conjunction with each other in the ordinary course of business. So, basically it is a composite supply. But, there is no need to find the principal supply since this entry 6(a) in Schedule II specifies works contract as a supply of service.

Apart from works contract in GST, there are several other composite supplies such as fabrication or painting job done in automotive body shop, service contract of different machines and equipment etc. However, these would not be covered within the definition of works contract in GST. In such contracts it is important to identify the principle supply for levy of appropriate rate of tax.

(ii) Supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration is a supply of service –

There were several judgements before the 46th amendment of the Constitution of India in this respect. Hon'ble Apex Court in the matter of State Of Punjab vs M/S. Associated Hotels Of India (on 4 January, 1972) analyzed the nature of contract where a customer stays in the hotel and meals are served as part of and incidental to that service.



Hon'ble Andhra High Court in the matter of Durga Bhavan And Ors. vs The Deputy Commercial Tax Officer on 19 September, 1980 categorized sale of food in restaurant in two parts -

The supply of food, etc., by restaurants may be made to customers who sit in the restaurants and consume the food. In such a case they enjoy the amenities provided by the owners of the restaurants.

The second class of cases comprise of supply of food-stuffs, snacks, drinks, etc., across the counter where there is practically no service rendered or amenities provided except in the manner of supplying the goods like packing, etc.

Finally, it was needed to make 46th Constitutional Amendment in the year 1981.

Key Elements of Article 366(29A)(f)

"Tax on the sale or purchase of goods includes:

(f) a tax on the supply, by way of or, as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service, is for cash, deferred payment or other valuable consideration, and such transfer, delivery or supply of any goods shall be deemed to be a sale of those goods by the person making the transfer, delivery or supply and a purchase of those goods by the person to whom such transfer, delivery or supply is made."

Thus, in the pre-GST regime both Service Tax and VAT was levied on this supply. This entry 6(b) of the Schedule II is expected to reduce any confusion

in respect of determination of this particular nature of supply since entry 6(b) of the Schedule II specifies the supply as the supply of service.

However, there may still prevail some confusion regarding the nature of certain supplies.

Illustration -

- a. Whether tobacco consumed in hookah bar would get covered in the entry 6(b) of Schedule – II “as any other article for human consumption”?

To analyse this, we need to take resort to a popular and established principle of a law which is “*Ejusdem Generis*”.

“*Ejusdem Generis*” is an aspect of the principle of “*Noscitur a sociis*”. The Latin word ‘sociis’ means ‘society’, ‘Society’ of same nature. It is an established principle of law that when general words follow specific words, such cannot be read in isolation. Their color and their contents are to be derived from the context of specific words. In this case “any other article for human consumption” can’t be read in isolation. It must be read as “being food or any other article for human consumption”.

The phrase ‘any other article’ takes its color from the word ‘food’. Now the question arises whether hookah is a food? Since, it is not a food it will not be covered under this entry of Schedule II. In hookah bar, hookah paste is supplied with the right to use of smoking apparatus. So, it is a composite Supply where hookah paste is the principal supply.

[There is a very famous judgement in respect of the principle of “*Ejusdem Generis*”. Interested reader may go through the judgement in the case of *McBoyle v. United States* 283 U.S. 25 (1931)].

12.12. Annexure – 12: Levy of tax on Reverse Charge Mechanism (RCM)

Tax is payable by a 'taxable person' in GST. Usually, tax is levied on the outward supplies of goods or services or both by a supplier. But in some specified transactions liability to pay tax gets reversed i.e., in such cases tax is levied on the recipient.



This mechanism of liability / livability to pay tax by the recipient is called Reverse Charge Mechanism (hereinafter referred to as RCM).

a. Definition of reverse charge: “reverse charge” means the liability to pay tax by the recipient of supply of goods or services or both instead of the supplier of such goods or services or both under section 9(3) or section 9(4) of the CGST /SGST Act or under section 5(3) or 5(4) of the Integrated Goods and Services Tax Act. [sec. 2(98)]

b. Notified supplies under sec 9(3):

The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both. [sec. 9(3) of the GGST Act/sec. 5(3) of the IGST Act].

Notifications issued:

Sl. No.	Subject	Notification No. & date
1.	Consolidated list of goods on which tax is payable under RCM under section 9(3) of the SGST Act, 2017.	CGST Notification No. 04/2017-CT(Rate) dt. 28.06.2017

2.	Consolidated list of services on which tax is payable under RCM under section 9(3) of the SGST Act, 2017	CGST Notification No. 13/2017-CT(Rate) dt. 28.06.2017
3.	Notification for RCM on goods under section 5(3) of the IGST Act, 2017	4/2017-ITR dated 28.06.2017 as amended time to time.
6.	Notification for RCM on services under section 5(3) of the IGST Act, 2017	10/2017-ITR dated 28.06.2017 as amended time to time.

c. Supplies received from unregistered person under sec 9(4):

The provision of section 9(4) of GGST Act /5(4) of IGST Act has been amended w.e.f. 01.02.2019. Before this amendment the aforesaid provision upto 31.01.2019 was as follows - *"The State tax/central tax/integrated tax in respect of the supply of taxable goods or services or both by a supplier, who is not registered, to a registered person shall be paid by such person on reverse charge basis as the recipient and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both."*

Thus, as per the above provision (s), a registered person was liable to pay tax on RCM whenever he received any taxable supply from an unregistered person.

But, on the recommendation of the GST Council, notification under section 11(1) has been issued to exempt payment of tax under section 9(4) of the GGST Act up to a certain limit (Rs.5000/- per day) of inward supply from 01.07.2017. [CGST Notification No. 08/2017-CT(Rate) dt. 28.06.2017.]

The Gist of the said notification is as under:

- If the amount of inward supplies of goods or services or both, received in a day by a registered person from all unregistered suppliers, does not exceed Rs.5000/-, no tax is payable on RCM under section 9(4) by a registered recipient.
- If a registered person receives inward supplies of goods or services or both exceeding Rs. 5000/- in a day from all unregistered suppliers, he/she is liable to pay tax on RCM basis on entire amount of such supplies received by him/her.

Example - on 01.08.2017, a registered person X receives goods and/or services from five suppliers. Three of such suppliers are unregistered from whom total

supplies have been received to the tune of Rs. 4900/-. In this case, the entire amount of Rs. 4900/- is exempted from payment of any tax u/s 9(4) by virtue the notification No. 1132-F.T. Now, on the same day another registered person Y has received supplies of goods and/or services from ten suppliers out of whom six are unregistered from whom, total supplies received on that day is of Rs. 5100/. In this scenario, Y is liable to pay tax on the entire value of supplies received from unregistered person i.e., on Rs.5100/-.

- **The above provision was effective from 01.07.2017 to 12.10.2017.**

From 13.10.2017 the provision for payment of tax under section 9(4) of GGST Act and section 5(4) of IGST Act have been omitted by amending CGST Notification No. 08/2017-CT(Rate) dated 28.06.2017 and CGST Notification No. 38/2017-CT(Rate) both dated 13.10.17.

CGST Notification No. 08/2017-CT(Rate) dated 28.06.2017 have been finally rescinded w.e.f. 01.02.2019 vide CGST Notification No. 01/2019-CT(Rate) dated 29.01.2019.

- d. **Supplies received from unregistered person under amended provisions of sec 9(4):**

Finally, the provision is amended w.e.f. 01.02.2019 as below:

“Govt. may specify by notification a class of Registered recipients who shall pay tax on RCM on supply received from an unregistered supplier.

CGST Notification No. 07/2019-CT(Rate) dated 29.03.2019 have been issued w.e.f. 01.04.2019 to specify that subject to certain conditions a promoter is liable to pay tax under section 9 (4).

- e. **Compulsory Liability of Registration for a person liable to pay tax on RCM:**

As per the provisions of section 24(iii) of the SGST/CGST Act, persons who are required to pay tax under reverse charge are liable to be registered without any threshold.

Hence if any person receives inward supply of goods and/or services for the purpose of business on which tax is payable on RCM, he is liable to be registered without any threshold.

f. x payable by e-commerce operator [Sec 9(5)]:

The Government on the recommendation of the GST Council may notify categories of services wherein the person responsible for payment of taxes in GST would neither be the supplier nor the recipient of supply, but the e-commerce operator through which the of notified services are effected. It is important to know that all the provisions of the Act is applicable to such e-commerce operator as if he is the supplier of the specified services and liable to pay tax.

The Govt. has notified certain services in this regard vide, CGST Notification No.17/2017-CT (R), dated 28.06.2017 as amended time to time, including services by way of transportation of passengers by a radio-taxi, motor cab, maxi cab and motor cycle, etc. on which tax will be payable by the e-commerce operator u/s 9(5).

Where the e-commerce operator does not have a physical presence in the taxable territory, any person representing him/her in the taxable territory would be liable to pay the taxes. If no such representative exists, the e-commerce operator is liable to appoint such a person to discharge all the obligation.

g. Some queries on RCM:

Sl. No.	Question	Answer
1	<p>A registered person receives service from a Goods Transport Agency (GTA) who doesn't charge any GST.</p> <p>a. Is the registered person liable to pay tax on RCM?</p> <p>b. What would happen if the recipient was unregistered? In that case, who will pay the tax, and at which rate?</p>	<p>a. Yes. (vide Entry No. 1 of CGST Notification No. 13/2017-CT(Rate) dt.28.6.2017)</p> <p>b. The recipient, other than an individual or a HUF, is liable to pay tax on RCM.</p> <p>(i) From 01.07.2017 till 21.08.2017, the GTA was liable to pay tax @ 5% without ITC;</p> <p>(ii) from 22.08.2017 to 12.10.2017 the GTA may pay tax @ 5% without ITC or @12% with ITC; and</p> <p>(iii) from 13.10.2017, no tax is payable on such supply as it became "NIL" rated vide Entry No. 21A of CGST Notification No. 12/2017-CT(Rate) dated 28.06.2017.</p>

- a cricket tournament. In this case, is there any supply involved? What is the nature of such supply?
- 2 (i) Who is the supplier, and who is the recipient?
(ii) Who is liable to pay GST?
- “Sponsorship service (SAC Code-998397)”.
- (ii) Here, the tournament’s organizing body is the supplier of such services and XYZ Co. is the recipient.
- (iii) Here, the tax is payable under RCM by XYZ Co. .

- 3 A registered person in India imports services (other than OIDAR services provided by a person in a non-taxable territory received by a non-taxable online recipient) from a company in USA. Is there any liability to pay tax under GST by either of the parties? If the answer is ‘Yes’, who is liable to pay tax?
- Yes. Notification No. 10/2017-ITR dated 28.06.2017 issued under section 5(3) of the IGST Act stipulates that the recipient registered person is liable to pay tax on RCM.
- Note: In case of OIDAR services provided by a person in a non-taxable territory received by a non-taxable online recipient, the supplier of services located in a non-taxable territory is liable for paying integrated tax.

- 4 A Panchayat Samity sells old and used goods to a registered person on 01.08.2017. In this case Who is liable to pay tax in this case? If such sale would have been effected on say, 01.11.2017 who is liable to pay tax?
- A Panchayat Samity is a local authority. During the period 01.07.2017 to 12.10.2017 tax on such supplies by Government or a local authority was leviable under forward charge. So, in the instant case the Pachayat Samity was liable to pay tax.
- If the recipient of the supply, is a registered person, then such recipient was liable to pay tax on RCM. (Entry No. 6 of CGST Notification No. 04/2017-CT(Rate), dated 28.06.2017 inserted by CGST Notification No. 36/2017-CT(Rate) w.e.f. 13.10.2017).
- However, if the said supply is made to an unregistered person, the Panchayat Samity itself has to charge tax on forward charge basis.

- 5 A registered person imports goods from Bangladesh. Is he liable to pay tax (IGST) on RCM as in case of importer of services?
- While importing goods from Bangladesh, he/she has to pay IGST. But such tax is paid by him/her under section 3 of the Customs Tariff Act, 1975. It is worthwhile to mention that subject to conditions, the importer is eligible to avail ITC on such payment of IGST.

6	A GTA has accrued liability for registration. He thinks that as tax is payable on GTA service by the recipient on RCM basis, he is not required to be registered under GST. Is he correct?	As per CGST Notification No. 05/2017-CT dated 19.06.2017, persons who are only engaged in making supplies of taxable goods and/or services, the total tax on which is liable to be paid on RCM by the recipient under section 9(3) of SGST Act are exempted from obtaining registration. But in case of supplier of GTA services option is there to pay tax on forward charge also. So, it cannot be said that total tax on that service is liable to be paid on RCM by the recipient under section 9(3). Thus, the person is not correct, and he/she is required to be get himself/herself registered.
7	An Advocate decided not to get registration even though he has crossed threshold of Rs. 20 lakhs. Is he correct as per GST Law?	Yes. Advocate service is exclusively taxable on RCM under section 9(3). So, the said Advocate is correct in his position.

h. Court judgements on RCM under GST:

Several judgements have been pronounced by different High Courts on reverse charge mechanism under GST. Gist of some important judgements are compiled in the Table below:

Sl. No.	Issue of the case	Gist of the Judgement
1.	Bombay High Court Bai Mamubai Trust and 2 Ors vs Suchitra Wd/Of Sadhu Koraga ... on 13 September, 2019 Bench: S.J. Kathawalla	Q.1. Whether GST is liable to be paid on services or assistance rendered by the Court Receiver appointed by Court? A.1 There may be instances where payments received by the Court Receiver may attract GST- (i) Where the Court Receiver is appointed to run the business of a partnership firm in dissolution, the business of the firm under the control of receivership may generate taxable revenues.

(Courtesy: Indian Kanoon Org)

- (ii) Where the Court authorises the Court Receiver to let out the suit property on leave and license, the license fees paid may attract GST.
- (iii) Where the Court Receiver collects rents or profits from occupants of properties under receivership, the same will be liable to payment of GST.
- (iv) Consideration received for assignment, license or permitted use of intellectual property.

In such cases, GST may be collected from the Court Receiver as a representative assessee under Section 92 and as such the Court Receiver may be required to obtain registration under the relevant GST laws. [Para. 84 & 85]

However, if the Court Receiver is deputed to make an inventory of goods, collect rents with respect to immovable property in dispute or where the property has to be sealed, or the Receiver is appointed to call bids for letting out the premises on leave and license, the fees or charges of the Court Receiver are exempt. [Para. 86]

Q.2. Whether GST is liable to be paid on royalty or payments under a different head paid by a defendant (or in a given case by the plaintiff or third party) to the Court Receiver in respect of properties over which a Court Receiver has been appointed?

A.2. The answer is in the affirmative, subject to the payment towards royalty or the payment to the Court Receiver (described by whatever name) is towards or in relation to a "supply" within the meaning of the CGST Act. [para. 87]

Q.3. Specifically, in the facts of the present Suit, where the Plaintiff alleges the Defendant is in illegal occupation of the Suit Premises: Whether there is any 'supply' within the meaning of the CGST Act?

		<p>Whether payment of royalty for remaining in possession of the Suit Premises, either during the pendency of the Suit, or at the time of passing of the decree, falls within the definition of 'consideration' for a 'supply' chargeable to payment of GST under Section 9 of the CGST Act?</p> <p>A.3. The answer is in the negative. [Para. 88]</p> <p>Q.4. If in any circumstance GST is payable or applicable to payments made to the Court Receiver, how is that statutory liability to be discharged? Is it to be paid by the Defendant / party in occupation directly, or by the Court Receiver?</p> <p>A.4. Where any payment to be made under an order of the Court attracts GST, the agent appointed by the Court Receiver must have or must obtain CGST registration and make such payment on behalf of the Receiver and indemnify the Receiver for any liability that may fall upon the Receiver under Section 92 of the concerned GST Act. Where no agent is appointed, naturally the Court Receiver will have to obtain registration. [Para. 91 & 92]</p>
2.	<p>Rajasthan High Court - Jodhpur</p> <p>Vinod Kumar Sharam vs State Of Rajasthan on 10 April, 2019 read with Ladu Lal Hiran and Ors vs State Of Rajasthan And Ors on 28 August, 2018</p>	<p>(i) Whether Royalty Contractors (termed as ERCC Contractors) appointed by the Government of Rajasthan exclusively for collecting the royalty on behalf of the Government from the mining lessee of natural resources without supply of such natural resources can collect GST @ 18% as forward charges – the answer is in the negative.</p> <p>(ii) Whether the royalty paid for mining activities as chargeable under the notification dated 28.06.2017 provides that the lease holders are required to pay the GST under the reverse charge mechanism – the answer is in the affirmative.</p>

12.13. Annexure 13: Key points for value of supply -

TABLE II: KEY POINTS FOR VALUE OF SUPPLY			
SR. NO.	KEY POINTS IN RELATION TO SCOPE OF SUPPLY	Reference Points from returns	Accounts
1	Whether the transaction value is in accordance with the terms of the contract?	<ul style="list-style-type: none"> Contracts/Agreement Purchase order Invoices File of Correspondence with Client/Customer 	
2	Whether the discounts allowed are in accordance with regular practice of the taxpayer and the purchaser has paid the sum originally charged less the discount?	<ul style="list-style-type: none"> Price Circular Invoice linked to Discount 	
3	Whether any amount, that the supplier is liable to pay but incurred by the purchaser has been included in the value of supply?	Price circular	
4	Whether interest or late fee or penalty for delayed payment of any consideration for any supply collected from the purchaser is included in the value of supply?	Debit Notes	
5	Whether there are supporting documents for the credit notes issued for supplies made?		
6	Whether there are supporting documents for the debit notes issued for supplies made?		

7	Whether terms of contract detail any consideration flowing from the third party?		
8	Whether taxpayer has engaged in any supplies to related persons as defined in section 15? If so, check whether there is significant variation in the value in comparison to similar transactions with unrelated buyers.	Interunit movement check Through delivery challan.	
9	Whether taxpayer has made any supplies where money is not the sole consideration?		
10	Whether any exchange offer or scheme has been offered by the tax payer?	Exchange offers during festive months.	

12.14. Annexure 14: Value of supply -

The GST is applied on value of supply of goods and services. The consideration may be in money or in other form. Buyer can also pay for his inward supply with non-monetary considerations by giving the seller other goods or services in exchange. There may be situation when there is no consideration at all. Then what will be the value of supply? Hence it is really important to calculate the value of supply properly as per provisions of laws.



There are several situations where valuation takes a vital role, such as the case of different sales offer, free distribution, combo offer etc. Therefore, what can

be part of the value of supply or what does not, is very important to understand to levy GST.

A. The methodology of valuation of a particular supply is exclusively discussed in Section 15 of the CGST Act, 2017.

What is the value of supply under GST?

As per Section 15(1) the value of supply is the transaction value actually paid or payable for the supply of goods and / or services **between parties not related** and where **price is the sole consideration**. 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 CGST Act, SGST Act, UTGST Act and the GST (Compensation to States) Act, if charged separately by the supplier;
- (b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;
- (c) 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;
- (d) interest or late fee or penalty for delayed payment of any consideration for any supply; and
- (e) subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.

The above provisions of Section 15(1) are applicable to determine value of supply when the parties not related. So, it is important to know first who are related parties and who are not.

Related Parties:

The supplier and recipient of a particular supply will be considered as related persons if they satisfy the below mentioned situations enumerated in the explanation to Section 15(5) of the CGST /SGST Act 2017:

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

Where persons are related, price determined under section 15(1) is disqualified and is subject to verification under section 15(4) by reference to the rules applicable.

Price is the sole consideration:

It is important to understand then the term 'price is the sole consideration'. If there is any consideration not in money, the money actually paid cannot be taken as the basis of valuation. Any additional consideration received apart from the monetary consideration shall also be considered to arrive at the actual transaction value. In fact, the consideration can be both monetary and non-monetary which is well defined in Section 2(31) of the [GGST Act](#).

There is an important clause in the provisions of valuation – *“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..”*

This clause is a check to ascertain that any amount of a supply may not be diverted by the supplier from the actual value of supply.

Example: There is a supply agreement between a principal and an agent where the principal fixed his supply value to the agent at Rs.500/- per unit for a taxable item and also fixed the sale price of the agent to any buyer at Rs.600/- per unit of that item where Rs.50/- per unit will be retained by the agent as commission and balance as incidental expenses. Question arises

now, what will be the supply value of principal to agent? As per the above clause of valuation provision the supply value should include this commission and incidental expenses of the agent. The supplier (here the principal) manages to escape from the liability of paying commission and incidental expenses to the agent by transferring to the buyer. But, it shall be part of supply value from principal to agent.

Incidental expenses as a part of supply value – Incidental charges incurred before or at the time of supply shall form part of supply value.

Example – There is a supply contract of door delivery of a fragile goods with proper packing. Suppose, value of the goods is Rs.10,000/-, packing charges is Rs.500/- and door delivery cost is Rs.600/-. Then, it will be a composite supply with the supply of that goods as principal supply and value of supply is Rs.11,100/-.

So, the incidental charges incurred before or at the time of supply shall be part of supply value. But, if such charges incurred after the supply whether that should not be part of supply value? Let us explain it with an example –

Warranty supply of parts to end-customer through a dealership – Suppose a company sold a car with a consideration of Rs.10 Lakh to a customer with 3 years free service warranty. An authorized service centre of that car company supplies service of servicing of car to that car owner. This service is actually provided by the car company (as per term of purchase of car), through the authorized service centre. There may be replacement of parts under warranty also. Now, the free service and / or warranty replacement between the car company to the customer is not liable to GST not because it is free now, since the price for the replacement is built into the price of the car originally supplied and therefore tax has already been paid by the car company at the time of selling of the car. Now, question arises then what is the role of the service centre here? In fact, the service centre delivers the part and rendered service to customer but ‘supplies’ it to the car company. Hence, there is another supply involved here between the service provider and the car company which is taxable supply in GST.

[Reference: Mohd. Ekram Khan’s decision of SC in 144 STC 542. As such, warranty involves two supplies and neither of which are free from tax. One

is tax pre-paid and another is currently taxed though not involving end customer].

Interest, late fee or penalty for delayed payment are also part of supply value- All these special charges are linked to an underlying original supply, therefore, shall be part of supply value. So many questions may arise – what will be time of supply for these special charges? Whether the rate of tax of original supply will be applied for the special charges also? Whether all such special charges are liable to GST? It is better to explain it with an example –

Example: A contractee awarded a contractor with a ‘turnkey project’ to build a road with an agreed price of Rs.100 Cr (Excluding GST). Some of the terms of agreement were as follows –

- i. The contractor must pay earnest money Rs.5 Cr in form of FD as a security to abide by the terms and condition to use machinery and materials not below the specified standard and also for timely completion of the project. However, if completion is delayed more than 6 months 50% of the security will be forfeited. Similarly, any breach in the condition of quality is liable to forfeiture of 10% of the security. At the same time if it is completed 2 months prior to the date the company will provide prize money of Rs.50 Lakh to the contractor. There was also a clause that if the contractee fails to provide land in time the contractor will charge 1 Cr. for each month of delay.
- ii. The contractor finished the work 2 months prior to scheduled time. Due to bad quality of machine the contractee forfeited 5% of earnest money. The contractee failed to deliver land to the contractor in due time therefore, the contractor charged Rs. 4 Cr extra to the contractee. The contractor also charged interest of Rs.60 lakh for late payment.

In this example, there are so many incidental charges. But, all are not taxable in GST. Earnest money is a kind of security only. So, GST is not leviable on the same. The taxability of the above charges is explained the table below –

Sl. No.	Description	Amount	Remarks
1	Turnkey project of construction of road	100 Cr	Taxable as works contract service.
2	Security	5 Cr.	Not a supply in GST
3	Forfeiture of security by the contractee	2.5 lakh	It's kind of tolerance service provided by the contractee to the contractor.
4	Award for early completion	50 Lakh	Taxable service as 'agreeing to the obligation to do an act'.
5	Penalty for delay to handover land.	4 Cr	It's kind of tolerance service provided by the contractor to the contractee.
6	Interest for delayed payment of contractual price	60 Lakh	Taxable and shall be part of the value of construction service.

Thus, there are so many special charges but only the last one is for the underlying original supply of construction service.

Subsidy realized by the supplier on any supply – Only subsidy given by the Government is excluded from value of supply. All other types of subsidy form part of supply value of the supplier who receives this subsidy.

Example 1: Many companies provide subsidized canteen facility to the employees. A canteen of a company charges Rs.25/- per lunch pack to each worker and receives Rs.20/- per such pack more from the company as subsidy. In this case supply value of each lunch pack is Rs.45/-.

Example 2: The price of an LPG cylinder is say, Rs. 600/-. The government subsidy payout to domestic users of LPG per cylinder is, say, Rs 200/-. Now, the question arises, whether GST is applicable on Rs. 600/- or Rs. 400/- as it a government subsidy. Since such subsidy is reaching the recipient of supply and not the supplier, it will not form a part of the value of supply and GST will be applicable on Rs. 600/-

Discounts to be excluded from Taxable Value – As per Sec 15(3) value of supply will not include discount, provided:

- It is allowed before supply, or
- It is allowed after supply, provided that it is established in agreement linked to specific supplies and corresponding credit is reversed by recipient.

Example: M/s. A of Kolkata supplied 10 pcs of i-Phone to M/s. B of Kolkata on 20.09.2019 where basic price of such phones is Rs. 10 lakh. A discount of Rs. 1 lakh is offered and courier charges of Rs.1000.00 is charged at the time of supply. **What is the value of supply in the above transaction if the tax rate of such i-phones is 12%?** As per condition 50% payment was made at the time of delivery and further condition was if balance payment is made within 20.10.2019 then 10% further discount on basic price will be allowed. If such payment is made in time, **whether this discount will also will be deducted from the supply value?**

In this example, courier charges are to be added to the value of supply as incidental charges and discount is to be deducted as it is offered at the time of supply. Hence, taxable value will be Rs. 9,01,000/-. GST @ 12% is to be added to Rs. 9,01,000/- to get the value of supply ie. Rs. 10,09,120/-. If 50% of the amount is paid and rest is paid within 20.10.2019, further discount of 10% on basic price will be allowed. Though it is a post-sale discount but, the condition was fixed at the time of supply. So, the discount is allowed for deduction. Accordingly, M/s A may decrease his output tax subject to condition that M/s B reversed equal amount of ITC.

In lieu of discounts if promotional items are offered by the supplier to increase sales volume and to attract new customers for their products, such promotional items are not discounts as not satisfying the requirements of section 15(3).

Example: Two goods, say A (tax rate 12%) & B (tax rate 18%) are offered for a single price of Rs. 3000/- under the scheme 'Buy one get one free'. Now, what will be the transaction value? What will be the rate of tax on such supply?

In this example, it may appear first at a glance that one item is being 'supplied free of cost' without any consideration. But, it is not an individual supply of free goods rather a case of two or more individual supplies where a single price is being charged for the entire supply. It can at best be treated as supplying two goods for the price of one. Hence, here transaction value will be Rs. 3000/-. Taxability of such supply will be dependent upon as to whether the supply is a composite supply or a mixed supply. If composite supply, then tax rate of the principal supply will be applicable and if it is a mixed supply, tax rate shall be 18%.

B. Determination of Value of Supply as per GST Rules:

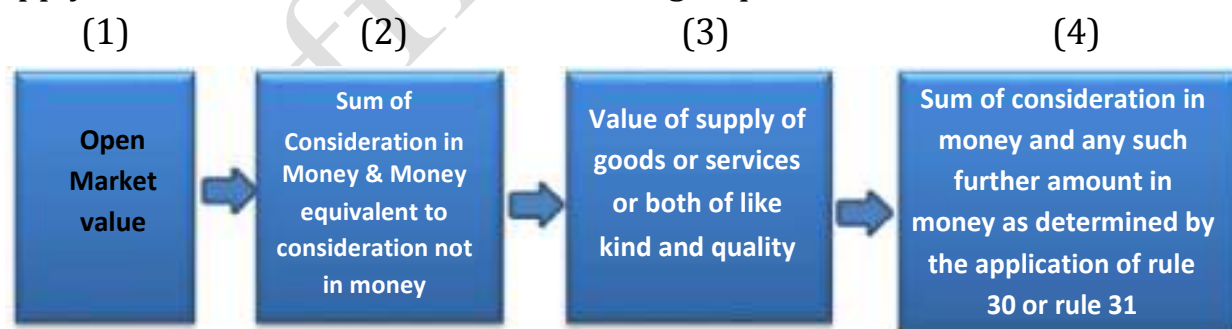
Reference to GST Rules related to valuation is permitted only if the transaction value cannot be determined as discussed above. These are cases where either the parties are related/distinct/agent or the price is not the sole consideration. Valuation Rules are prescribed under Chapter IV of the GGST Rules, 2017 from Rule 27 to Rule 35.

The above Rules are explained below:

1. Where consideration is not wholly in money - Rule 27

This rule is applicable for the supplies like barter, exchange and transactions listed in schedule I where transaction is not wholly in money as they fail to qualify for application of section 15(1).

Now, the order of application of the methods to determine the value of supply has to be maintained in the following sequence.



Example 1:

(a) X Co. supplied a car to Mr. Sen in exchange of Mr. Sen's old car and on payment by Mr. Sen of Rs. 5,00,000/-. If the price of the new car without exchange is Rs. 9,00,000/-, then the open market value of the new car is Rs. 9,00,000/-.

(b) If the open market value of the new car is not known, and the price of the old car is Rs. 4,00,000/- at the time of supply, then the value of supply of the new car will be Rs. 9,00,000/-.

(c) A customized air conditioning unit whose open market value is not available is installed at an office wherein the consideration is paid in the form of money of Rs. 40,000 and an old air conditioning unit whose price is not available at the time of supply. A similar air conditioning unit in terms of characteristics, quality, functional components, materials and reputation etc. has been installed by the company at another client's premises for Rs. 60,000/-. Since, the value of goods of like kind and quality is available, the value of Rs. 60,000/- will be taken under Rule 27.

(d) value determined by rule 30 or rule 31.

2. Where supply is made between related persons with or without consideration and distinct persons without consideration - Rule 28

The value of supply under this rule will be:

- (a) **Open market value:** *Example:* A cell phone dealer gifts a cell phone set worth Rs. 23,000/- to his son. Since, this is the open market value, it will be the value of supply for the mobile set supplied to a related person.
- (b) **Value of Supply of Like kind and quality:** If open market value is not available, then value of supply may be determined on the basis of supply of like kind and quality.
- (c) Value determined by rule 30 or rule 31.

The two provisos to this rule are of significance:

- (i) If the supply to related or distinct person is for further supply, then the value may be an amount equivalent to 90% of the value of supply of like kind & quality to non-related person.
- (ii) where it is the recipient, who is entitled to full credit, the value declared in the invoice is deemed to be open market value. This provision appears to accommodate internal preferences between distinct persons.

[Reference: In a case of GKB Lens Pvt Ltd, Advance Ruling has been sought on whether goods supplied to the branches in states other than West Bengal can be valued in terms of the Cost Price under the Second Proviso to Rule 28 of CGST Rules, 2017, instead of 90% of MRP as required under the First Proviso of the same Rule. AAR

West Bengal held - The Applicant has the option of not supplying goods to its branches under the First Proviso of Rule 28 and is eligible to value these goods by applying the terms of the Second Proviso to Rule 28 of GST Act.]

3. Where supply is made or received through agent - Rule 29

This rule is applicable only in case of '**supply of goods**' and not 'supply of services'. The value of supply under this rule will be:

- (a) Open market value or 'at the option' of supplier 90% of the price charged for goods of 'like kind and quality' by the Agent.

Example: Agent supplies groundnut @5000/- per Qtl. Agent is purchasing groundnut from non-related supplier @4550/- per Qtl. What should be the supply value from principal to agent?

It should be 90% of Rs. 5000/- ie. Rs. 4500/-

- (b) Value determined by rule 30 or rule 31.

This rule is applicable only in case of those transactions where the Agent 'handles' the goods of the Principal. It is clarified vide Circular No. 73/47/2018-GST dated 05-11-2018 that in case of supply of goods, if the invoice is issued by supplier to customer either himself/herself or through a del credere agent, then it does not fall under the ambit of agent. However, in case where the invoice is issued by the del credere agent than it would fall under the ambit of agent.

4. Value of supply based on cost - Rule 30

This rule is applicable for valuation of supply of goods and services, only where the other methods of valuation does not be apply. It provides that the value will be '**cost plus 10%**'.

Example: Suppose ABC Limited is a manufacturer of office furniture. Say, cost of manufacturing a chair is Rs. 4,000/-. Similar chair in open market is valued at Rs. 4,500. These chairs are supplied to a furniture showroom at the rate Rs. 3,000 and balance in non-monetary consideration. Now since the open market value is available, Rs. 4,500 will be considered for valuation of supply. However, if Open Market Value is not available, the value of supply as per cost method will be 110% of the cost of manufacturing i.e. $\text{Rs. } 4,000 \times 110\% = \text{Rs. } 4,400$.

5. Residual method of valuation - Rule 31

As per the residual method, where the value of supply of goods or services or both cannot be determined under the cost method, the same shall be

determined using reasonable means consistent with the principles and general provisions of the GST law. Unitary method or number of man hours required to complete a job can be examples of such valuation method.

6. Lottery, betting, gambling and horse racing - Rule 31A

Supply Value in case of Lottery: Value shall 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.

Note: The above Rule is as amended by the GGST (Second Amendment)

Rules, 2020, w.e.f. 1-3-2020. Prior to the amendment, the Rule provided for determination of value of supply for lottery run by state Government as 100/112 of the face value of ticket or the price as notified in the Official Gazette by the organising State whichever is higher. Value of supply for lottery authorized by state Government was determined as 100/128 of the face value of ticket or the price as notified in the Official Gazette by the organising State whichever is higher.

Betting, Gambling or Horse Racing: 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 to totalizator. This implies that that the value on which GST has to be paid will be the amount of bet placed or the amount paid to the totalizator instead of the commission or share of revenue of the race club.

Actionable claim is “goods” under section 2(52). Hence, actionable claim in the form of chance to win betting, gambling and horse racing with reference to the above definitions will be goods and not services. The tax rate notifications issued for goods states that ‘actionable claim in the form of chance to win in betting, gambling, or horse racing in race club’ is liable to tax at the rate of 28%. The rate notification issued for services also specifies that the gambling as an activity involving services and accordingly, liable to tax at 28% (refer entry No. 34(v) of Notification No. 11/2017 (Rate)).

With the above ambiguities there may be some confusion whether to tax actionable claims as goods or services.

7. Specific valuation provisions – Rule 32

Rule 32 is only an option available to the supplier for determination of valuation of certain specific supplies. He may opt for the mechanisms specified in rule 32 or in rules 27-31 or in section 15 as the case may be.

(a) Purchase and sale of foreign currency including money changing:

Option 1	Option 2
Difference between buying-selling rate and the RBI reference rate. Where reference rate is not available, 1% of gross Indian Rupee provided/received. And where the conversion is not into Indian Rupees, then 1% of the lesser of the Indian Rupee equivalent of each currency exchanged. <u>Example:</u> Suppose a company M/s Thomas Cook Ltd, a money changer, converts 1000 Euro into rupees @90 per Euro. The RBI reference rate for Euro is Rs. 88. So, the value of supply shall be = $(90-88) \times 1000$ = Rs. 2000/-.	For currency exchange \leqRs.1 L: 1% or Rs.250/- which one is higher. For currency exchange $>$Rs.1L but \leq 10L 0.5% of exchanged amount exceeding 1 L plus Rs.1000/- For currency exchange $>$Rs.10L: 0.1% of exchanged amount exceeding 1 L plus Rs.5500/- but maximum Rs.60000/- <u>Example:</u> Suppose a money exchanger received Singapore Dollar and provided Indian Rs. 5,00,000/-. The value of supply shall be $(4,00,000 \times 0.5\%) + 1000$ =Rs. 3000/-

(b) Value of service in relation to air travel agent: 5% of basic fare in case of domestic booking and 10% of basic fare in case of international booking of passenger by air. Commission to the travel agent may flow from passenger or airline or any other person and the value determined here will be the tax for all the sources of commission.

(c) Supply of services in relation to life insurance:

- If in the policy allocation for investment of certain amount is intimated to the policy holder: Gross premium - Investment amount
- In case of single premium other than (i): 10% of single premium
- In cases other than (i) & (ii): 25% of premium charged for first year & 12.5% for subsequent year

(d) Supply of services of person dealing in second-hand goods:

- If supplied as it is or after minor processing without changing nature of goods and without availing ITC: Sale price - Purchase price (If this difference is negligible, that shall be ignored)

- (ii) Purchase price in case of repossessed goods from defaulting borrower who is unregistered: Purchase price - 5% from purchase price for each quarter from date of purchase to date of disposal after repossession.

(e) Supply of voucher: The value will be the redemption value of the voucher. Voucher includes coupon, stamp, token, et

8. Service of pure agent - Rule 33

This rule applies only to supply of services. The cost incurred by the supplier shall be excluded from value of supply if the following tests are satisfied:

- (a) the supplier acts as a pure agent of the recipient of the supply, when he makes payment to the third party on authorisation by such recipient;
- (b) the payment made by the pure agent on behalf of the recipient of supply is separately indicated in the invoice issued by the pure agent to the recipient of service;
- (c) the supplies procured by the pure agent from the third party as a pure agent of recipient of supply are in addition to the services he supplies on his own account.

Pure agent:

- A person who enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure in the course of supply of goods or services or both;
- Neither intends to hold or holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply.
- Does not use for his own interest such goods or services so procured as pure agent.
- Receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.

Example: Mr. A is an importer who goes to Mr. B for custom clearance work in respect of import of a consignment. The clearance of goods would also require taking of transporter service. Mr. A also authorizes Mr. B to incur expenditure on his behalf for procuring the transporter service and agrees to reimburse such expenses. In this scenario Mr. B is providing custom broker service to Mr. A, which is principal to principal basis and the transportation services procured by Mr. B on behalf of Mr. A is a pure agent service and expenses incurred by Mr. B on transportation shall not form part of value of custom broker service.

9. Rate of exchange of foreign currency - Rule 34

Any transactions undertaken in foreign currency must be converted into INR and the rate of such exchange is as follows:

- (a) for determination of the value of taxable goods the rate of exchange shall be the applicable one as notified by the Board under section 14 of the Customs Act, 1962.
- (b) for determination of the value of taxable services rate of exchange shall be the applicable one determined as per the generally accepted accounting principles for the date of time of supply of such services in terms of section 13 of the Act.

10. Value of supply inclusive of integrated tax, central tax, state tax, union territory tax – Rule 35

In such case, the tax amount shall be determined in the following manner:

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 %)

12.15. Annexure 15: Input Tax Credit –

Availability of Input Tax Credit throughout the value chain is the essence of GST in India. Needless to say, that, examining the veracity of ITC availed by an Auditee is of paramount importance to an auditor. The provisions related to ITC are as follows:



Sec 16

Eligibility and conditions for taking input tax credit.

Sec 17

Apportionment of credit and blocked credit.

Sec 18

Availability of credit in special circumstances.

Sec 19

Taking ITC in respect of inputs and capital goods sent for job work.

Sec 20

Manner of distribution of credit by Input Service Distributors.

Sec 21

Manner of recovery of credit distributed in excess.

Relevant Rules -

Rule 36	Rule 37	Rule 38	Rule 39	Rule 40
Rule 41	Rule 42	Rule 43	Rule 44 & 44A	Rule 45

a. How is Input Tax Credit (ITC) defined in GST

Section 2(63) of the GGST Act defines Input Tax Credit as the **credit of input tax**.

Section 2(62) defines input tax as follows: **“input tax”** in relation to a registered person **means any tax** such as Central Tax, State Tax, Integrated Tax or Union territory tax **charged on any supply of goods or services or both** made to him/her & **includes**:-

- **Integrated Tax charged on import of goods &**
- **Tax payable under reverse charge mechanism,**

but does not include the tax paid under the composition levy.

Input is defined in Sec 2(59) as any goods other than capital goods used or intended to be used by the supplier in the course or furtherance of business.

Capital goods is defined in Sec 2(19) as goods, the value of which is capitalized in the books of account of the person claiming ITC and which are used or intended to be used in the course or furtherance of business.

Input service is defined in Sec 2(60) as any service used or intended to be used by a supplier in the course or furtherance of business.

b. Provisions of section 16(1) -

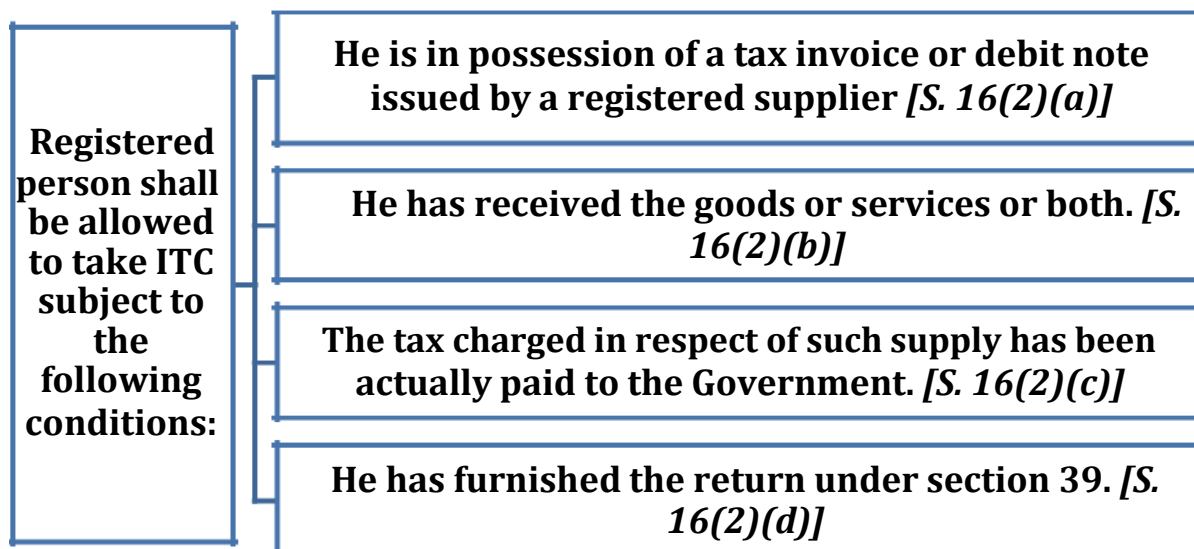
Who can claim ITC?	In respect of which?	Primary condition?
Every registered person subject to conditions and restrictions	In respect of credit of input tax charged on any supply of goods or services or both	Used or intended to be used in the course or furtherance of his business.

In accordance with Section 16(1) of the GGST Act, 2017:

- Only a registered person other than persons under composition scheme is entitled to claim ITC.
- However, this claim is not unconditional and is subject to conditions and restrictions as prescribed.

- (iii). Self-assessed ITC taken in the return is credited to the electronic credit ledger of the taxpayer.
- (iv). ITC can be taken on such supply of goods or services or both to the registered person which are used or intended to be used in the course or furtherance of his business.

c. Provisions of sec 16(2) provide conditions to avail of ITC –



d. Deemed recipient of goods / services:

Where goods are delivered by the supplier to a recipient or any other person on direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods either by way of transfer of documents of title to goods or otherwise it shall be deemed that the registered person has received the goods for the purpose of Section 16(2)(b).

Where services are provided by the supplier to any person on direction of and on account of another registered person, it shall be deemed that the registered person has received the services for the purpose of Section 16(2)(b).

It may be noted in this regard that the date of receipt of the goods or services is vital for availing ITC. It may happen that the supplier issues invoice on 30th of a particular month and uploads details of the same in Form GSTR-1 of that month and the same is auto-populated in GSTR-2A of the recipient in the same month. However, this does not make the recipient eligible to avail of ITC in the return of this said month if he receives the goods in the subsequent month. In case of goods,

many audit trails can be found in respect of receipt of goods in documents like E-Waybill, GRN etc.

This, however, may be difficult to ascertain in case of services. Further, there may be situation that goods are received in the subsequent month but purchase is auto populated in GSTR 2A in the month of sale as disclosed by the supplier in GSTR 1. In such cases there is probability to claim ITC wrongly by the recipient though the goods are not received.

e. Goods received in lots:

If goods are received in installments against a single invoice, credit can be availed only upon receipt of last instalment of goods.

Suppose, a consignment of iron ores was dispatched from Jharkhand to Kolkata by 10 trucks. Invoice was raised to the recipient on 28.10.2018. Three trucks reached Kolkata by 30.10.2018 but the truck carrying the final lot of the consignment reached the recipient on 03.11.2018. The supplier also disclosed such sales in his GSTR 1 for the month of Oct'18. In this case, **ITC in respect of the invoice issued on 28.10.2018 can be availed not before the month of November, 2018.**

f. Payment in respect of the supply as a condition to avail ITC:

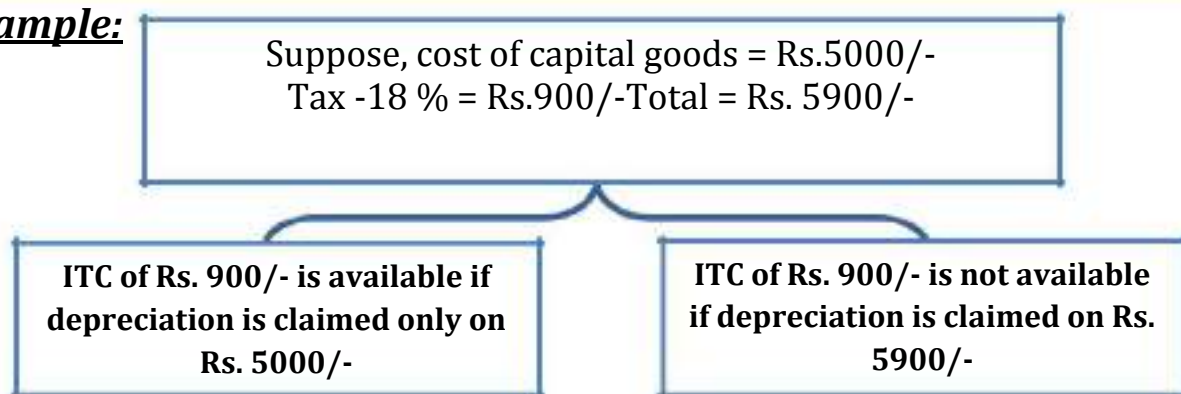
When a recipient fails to pay his supplier (other than supplies on which tax is payable under RCM), the amount of value of supply along with tax payable thereon within a period of 180 days from the date of issue of invoice, the recipient is liable to add the ITC availed on such supply to his output tax liability along with interest thereon.

However, the recipient is also entitled to avail the credit of ITC once he makes the payment towards the amount of value of supply along with tax payable thereon.

Capital goods and plant & machinery on which depreciation is claimed on the tax component under the Income Tax Act:

Sec 16 (3) **does not allow** a registered person to take **ITC on such tax component** of the **cost of capital goods** and **plant and machinery**, on which he has **claimed depreciation** under the provisions of the **Income Tax Act, 1961**.

Example:



g. Time limit to claim ITC:

As per Sec 16(4), a registered person shall not be entitled to take ITC in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return (Form GSTR-3B) under section 39 for the month of September following the end of financial year to which such invoice or 'invoice relating to such debit note pertains' or furnishing of the relevant annual return, whichever is earlier.

- **For F/Y 2017-18**, a taxpayer shall be allowed to take ITC till the due date of furnishing of the return for the month of March, 2019 i.e. 23.04.2019 in respect of any invoice or invoice relating to such debit note for supply of goods or services or both made during the FY 2017-18, the details of which have been uploaded in the Form GSTR-1 for the month of March, 2019. [\[ROD.No.1887-F.T.dt31.12.2018 w.e.f.31.12.18\]](#).
- **For F/Y 2018-19**, a tax payer shall be allowed to take ITC till the due date of furnishing of the return for the month of September, 2019 i.e. 20.10.2019. For the FY 2018-19, for the taxpayers having aggregate turnover up to Rs. 2 cr, filing of GSTR-9 is optional and for the taxpayers having aggregate turnover up to Rs. 5 cr filing of GSTR-9C is optional. The Ministry of Finance, GoI in an Official Press Release dt.24.10.2020 announced the extension of due date to file GSTR 9, GSTR 9A & GSTR 9C for the FY 2018-19 to 31st December, 2020.

h. ITC in respect of supplies not declared by the supplier in Form GSTR-1:

A supplier is supposed to disclose all B2B supplies in Form GSTR 1 which gets auto populated in Form GSTR 2A of the recipient. Auto-population of invoices in Form GSTR 2A primarily assures disclosure of relevant supply by the supplier.

However, disclosure in Form GSTR-1 does not sufficiently ensure that tax in respect of such supplies has been paid by the supplier which is paid in the return in Form GSTR-3B.

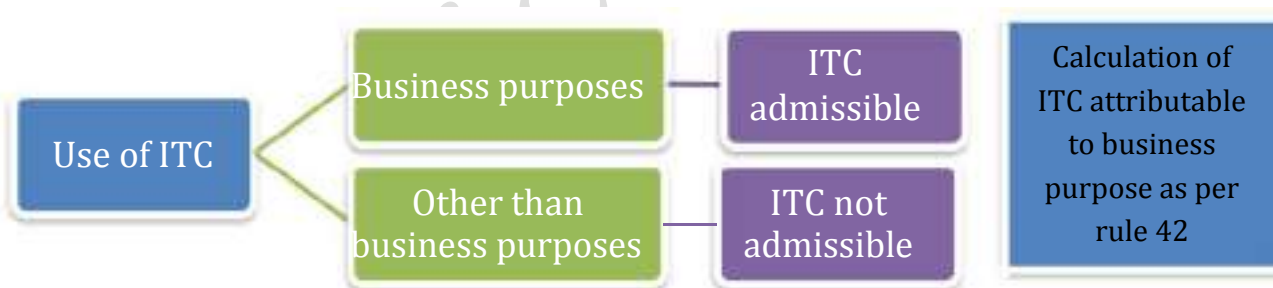
Rule 36(4) has been inserted vide notification No 49/2019-CT, dt. 09-10-2019 (corresponding State notification. No 1730-F.T. dt.16.10.2019) and it applies to all returns filed after 9th Oct 2019. In accordance with Rule 36(4), a registered person is entitled to avail of maximum 10% (20% from 09.10.2019 to 31.12.2019) of eligible credit on the basis of auto-populated details in Form GSTR-2A of a particular month in respect of details of invoices or debit notes which have not been uploaded by the corresponding suppliers (i.e. which have not been auto-populated in Form GSTR-2A).

Illustration:

Suppose X calculates ITC at Rs. 100/- for the month of January 2020 on the basis of invoices in his possession. However, his suppliers declare invoices whose corresponding ITC calculates to Rs. 60/- only, in their Form GSTR-1 which is auto-populated in Form GSTR-2A for the month of January 2020 of X. It is also found out that ITC is eligible for Rs. 60/- since nothing in this amount is restricted by Section 17(1)/(2)/(5) etc.

In this case, X is eligible to avail of ITC to the tune of Rs. 66/- [Rs. 60/- + Rs. 6/- (=Eligible ITC: Rs. 60/- x 10%)]

i. Apportionment of Credit [Sec 17(1)]:



Example: A registered person claims ITC as follows –

- ITC of Rs.20,000/- for purchase of taxable goods for resale.
- ITC of Rs.5000/- on rent payment for a two storied building, where 1st floor is used for business purpose and 2nd floor for residential purpose.
- ITC of Rs.1500/- for renting cab services both for business and for personal use.
- ITC of Rs.6000/- for purchase of furniture for residence.

Ineligible ITC:

Rs.1500/-: Restricted in accordance with section 17(5)

Rs.6000/-: On purchase of Furniture for residence (for purpose other than business).

Eligible ITC:

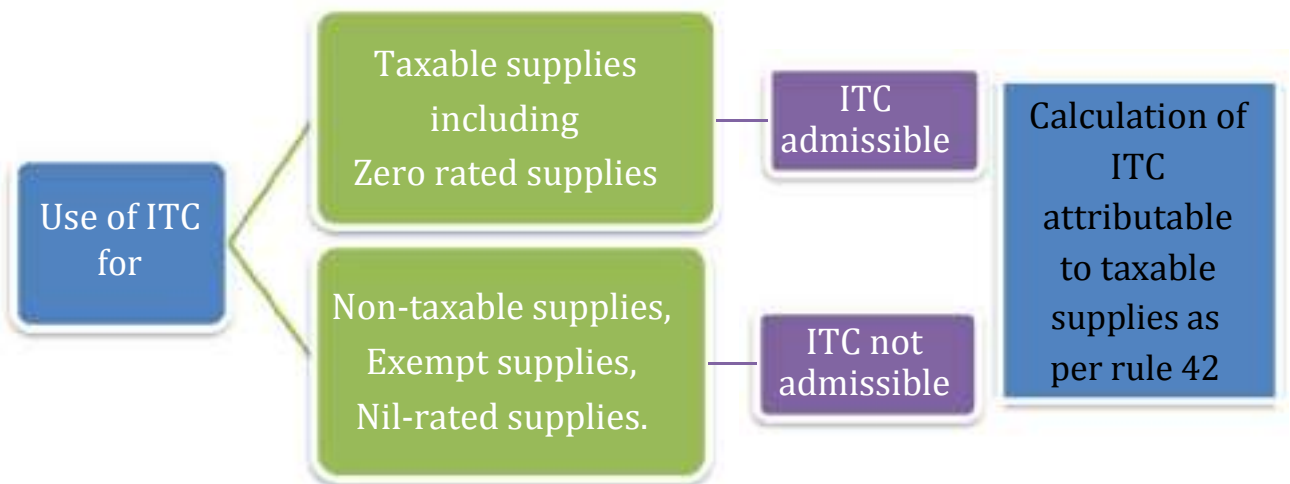
Rs.20,000/-

ITC to be apportioned in accordance with rule 42

Rs.5,000/-: Common Credit for service availed for both business and non – business purpose.

Eligible to claim portion of ITC out of Rs.5, 000/- which is attributable to business purpose (to be calculated in accordance with rule 42)

j. Availability / apportionment of ITC when used for taxable supplies (including zero-rated supplies) as well as exempt supplies [Sec 17(2)]:



Value of exempt supply for the purpose of apportionment of ITC [Sec 17(3)]:

Exempt supply has been defined in sec 2(47) of the GGST Act as supply of any goods or services or both which attracts nil rate of tax or which may be wholly

exempt from tax under section 11 of the GGST Act or under section 6 of the IGST Act, and it includes non-taxable supply.

For the purpose of apportionment of ITC as per sec 17(2) exempt supply includes the outward supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause 5(b) of Schedule-II, sale of building.

However, it shall not include the value of activities or transactions specified in schedule III, except sale of land & subject to clause 5(b) of Schedule II, sale of building.

Example: A registered person engaged in manufacturing of both taxable and exempted goods and pays tax on procurement amounting to Rs.1,50,000/- on input and input services for a particular period. The input and input services are used as follows –

- a. Rs.5,000/- exclusively for non-business purpose.
- b. Rs.45,000/- exclusively for exempt supply.
- c. Rs.10,000/- ineligible credit u/s 17(5).
- d. Rs.40,000/- exclusively for taxable supplies including zero rated supply.
- e. Rs.50,000/- Common credit for both taxable and exempt supply.
- f. Exempt supply during the period was Rs.1,20,00,000/- and taxable supply was Rs.80,00,000/-.

What will be the eligible credit during the period?

Answer:

Ineligible ITC:

Rs.5,000/-: exclusively for non-business purpose.

Rs.45,000/-: exclusively for exempt supply

Rs.10,000/-: Restricted in accordance with section 17(5)

Eligible ITC:

Rs.40,000/-: exclusively for taxable supplies including zero rated supply

ITC to be apportioned in accordance with rule 42 Rs.50,000/-: Common

Credit used for both taxable supply & exempted supply

Eligible to claim portion of ITC out of Rs.50,000/- which is attributable to taxable supply (calculated in accordance with rule 42)

$\text{Rs.}50,000 \times (\text{Rs.}80,00,000 / (\text{Rs.}80,00,000 + \text{Rs.}1,20,00,000)) = \text{Rs.}20,000/-$

Total eligible credit available to the registered person: $\text{Rs.}40,000/- + \text{Rs.}20,000/- = \text{Rs.}60,000/-$

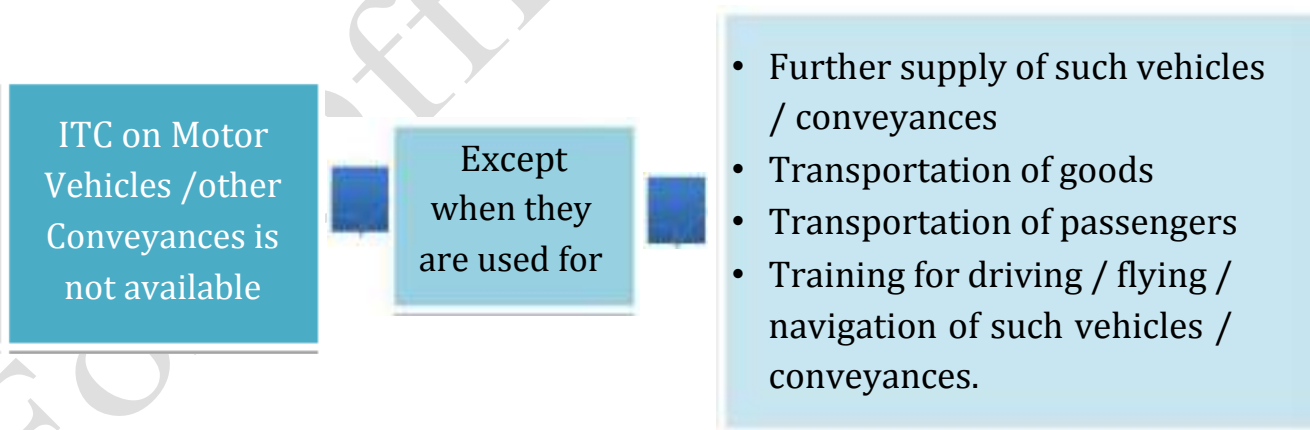
Availability of Credit for a banking Company or a financial institution including NBFC [Sec 17(4)]:

Descriptions	Options of availing of ITC	Conditions
Banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances.	<p>• Either apportion the ITC as per provisions of section 17(2).</p> <p>OR</p> <p>• Avail 50% of the eligible ITC on inputs, capital goods and input services every month and the rest shall lapse.</p>	<p>• Option once exercised shall not be withdrawn during the remaining part of the FY</p> <p>• The restriction of 50% shall not apply to the tax paid on supplies made by one registered person to another registered person having the same PAN.</p>

k. Ineligible Input Tax Credit [Sec 17(5)]:

Input tax credit is not available in respect of certain inward supply of goods or services in accordance with Section 17(5) (**blocked credit**). The provision of Section 17(5) was amended w-e-f 1st February, 2019. Hence, the provisions are discussed accordingly:

i. Motor vehicles and other conveyances (valid upto 31.01.2019)–



Example:

ABC Pvt Ltd has purchased an SUV @ Rs 7.5 lac +GST on 31.12.2018 to be used by one of its directors. Shall the company be allowed to avail of this ITC?

Ans: No, the company is not eligible avail of this ITC since this is blocked as per the provisions of Sec 17(5).

There may be a situation where a company may claim ITC on cars purchased in the name of the company with the plea that cars are used to carry employees to office / factory / work site.

Whether ITC is allowable in such cases?

No, ITC is not allowable in this case also.

ii. Food, beverages, outdoor catering, beauty treatment etc (valid up to 31.01.2019)

Supply of goods and services being:

Food & Beverages	Beauty Treatment	Cosmetic & Plastic surgery
Outdoor Catering	Health Services	Rent-a-cab

ITC is not available except where the inward supply is used for making taxable outward supplies of the same category of goods or services or both or as an element of taxable composite or mixed supply.

Membership of club	Health and fitness centre	Travel benefit to employee for leave
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ITC always blocked

Rent a cab	Life/ Health Insurance
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ITC is not available except:
(i) where the services are obligatory for an employer to provide to its employees under any prevalent law.
(ii) the inward supply is used for making taxable outward supplies of the same category of goods or services or both or as an element of taxable composite or mixed supply

Example: A company pays tax on procurement on some input services as follows:

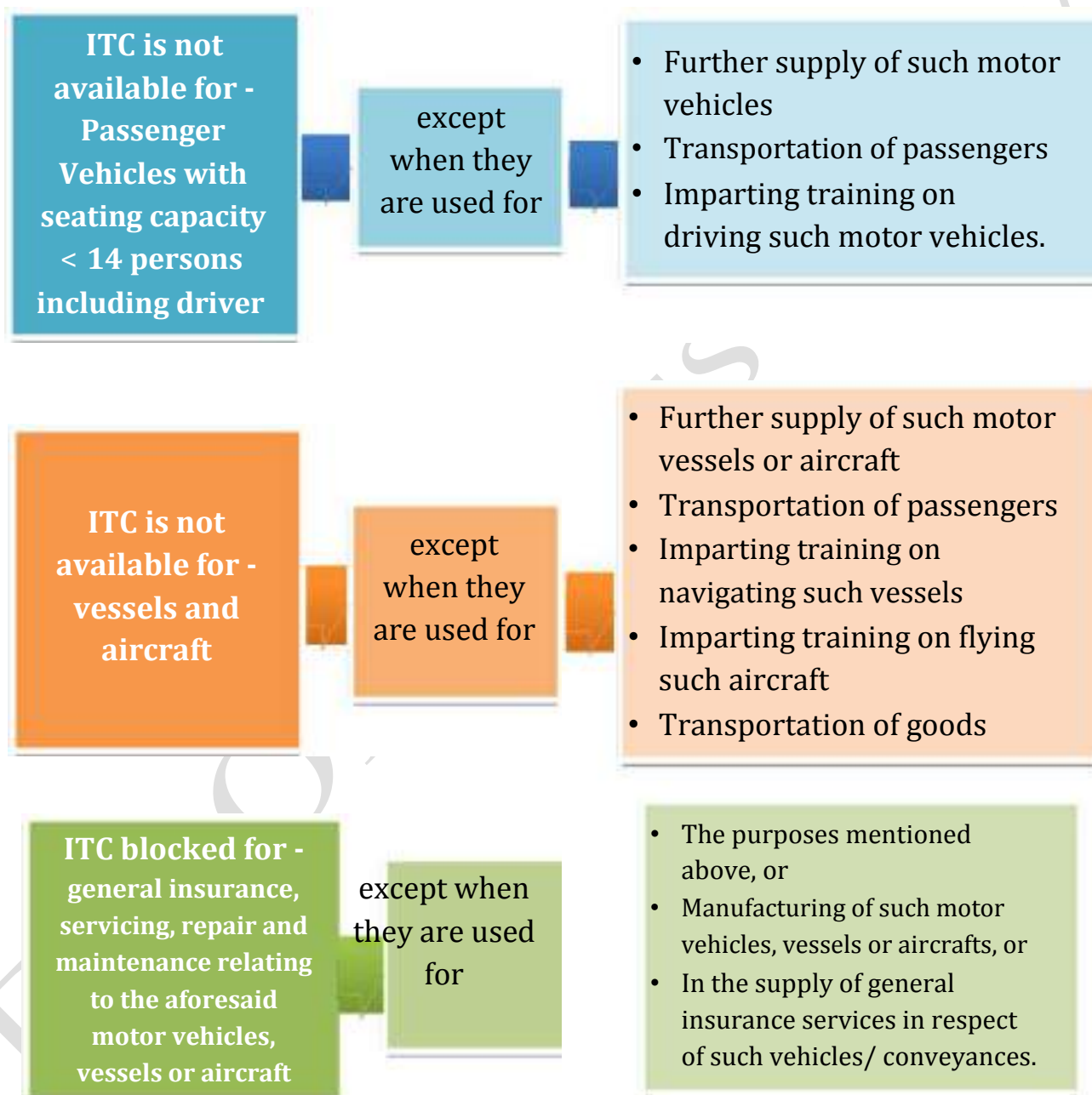
- Rs.15,000/- on food and beverages for factory workers.
- Rs.2,500/- for outdoor catering for picnic of office employees
- Rs.3,500/- for health-related services to employees
- Rs.3000/- on rent-a-cab services for guests,
- Rs.10,000/- for purchase of GI policy for workers (150 workers),
- Rs.12,000/- for health insurance policies of office staff
- Rs.4,000/- for membership and other expenses of club
- Rs.5,000/- for travel benefit to employees for visiting different sites.

i. Rs.2,600/- for travel benefit to employees going on leave.

Calculation of eligible ITC.

Group insurance to workers is obligatory on the part of the employer as per Workmen Compensation Act. Therefore, ITC is admissible on such input service. Travel benefit is restricted only during leave. Thus, input tax credit for procurement of services under sl. No. 'e' and 'h' above are only eligible for availing.

iii. Motor vehicles and other conveyances (valid w.e.f. 01.02.2019)-



Subsequent to amendment of Section 17(5) the ambit of availability of ITC on motor vehicles is expanded. Prior to 01.02.2019, passenger vehicles, goods vehicles and other conveyances were treated at par and ITC was available for specific purposes only as mentioned above in Table in (i) above. However, subsequent to the amendment w.e.f. 01.02.2019, ITC is made available for goods vehicles. In respect of the passenger vehicles, ITC has been denied for vehicles with seating capacity not more than 13 persons including the driver. This means that, ITC is available on passenger vehicles with seating capacity more than 13 persons including the driver w.e.f. 01.02.2019. However, doubts may prevail in respect of availability of ITC in respect of construction machineries like tractor, crane, road roller, tippers and dumpers etc. i.e. Whether they can be classified as motor vehicles?

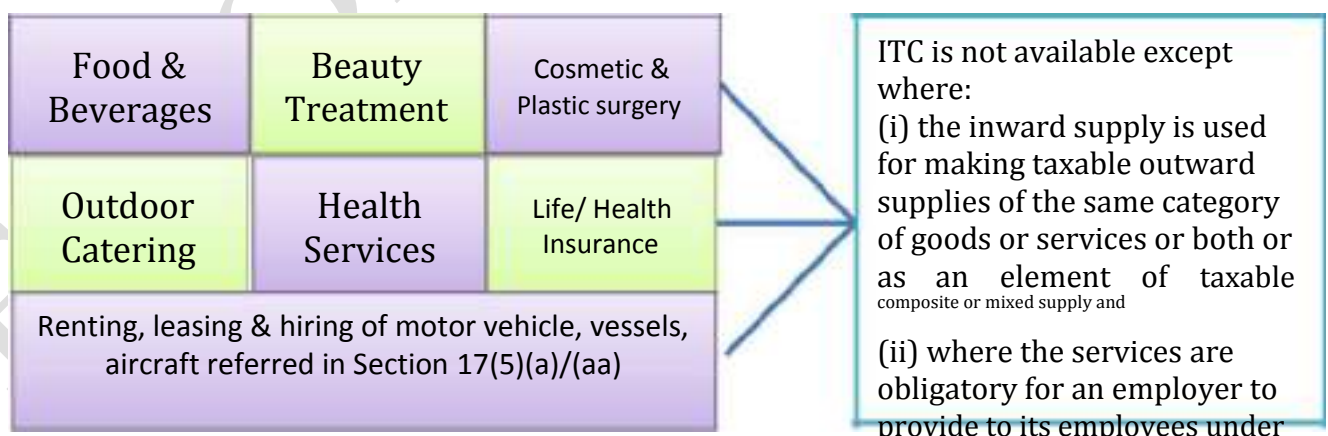
It may be noted that, most of the earth moving machineries require registration under MV Act as motor vehicle. Since, earth moving machineries like tractor, crane, road roller, tippers, dumpers etc are also considered as motor vehicles, they are not outside the restriction clause in section 17(5).

It may further be noted in this regard that, fulfillment of conditions specified in section 16 and 17 of the GGST Act may not be sufficient sometimes for availing of ITC. Certain restrictions in respect of availability of ITC are also provided in the rate notifications.

Illustration–

Tax paid on purchase of a goods vehicle by a GTA would otherwise be available as ITC, but as per rate notification no.13/2017 – CT(R) dt.28.06.2017, services of a GTA in relation to transportation of goods is taxable @ 5% provided that the ITC on goods and services used in supplying the service has not been taken

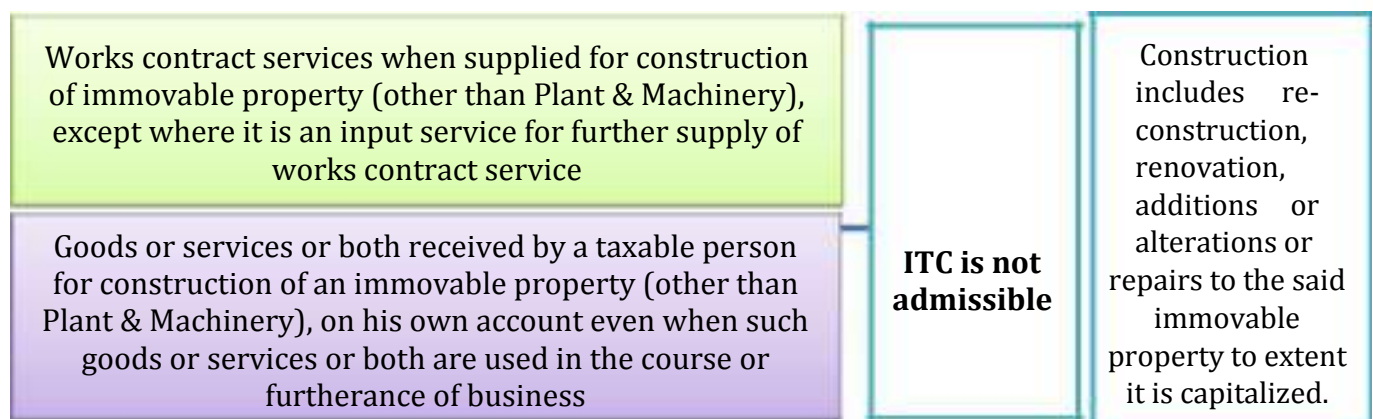
iv. Food, beverages, outdoor catering, beauty treatment etc (w-e-f 01.02.2019)–





Hence, w-e-f 01.02.2019, ITC would be available in respect of the aforesaid services if it is obligatory on the part of employer to provide the same to its employees under any law for the time being in force.

v. Works Contract Service used for immovable property other than plant & machinery but including repair maintenance and renovation to the extent of capitalization –



Works contract is defined under section 2(119) as a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract.

Works contract as defined under section 2(119) though being a composite supply is treated as a supply of services as per Para 6(a) of Schedule II of the GST Act, 2017. If a registered person avails of works contract service as input service for further supply of works contract service, then in such a scenario he would be eligible to avail of the ITC on such service procured by him.

Illustration- A taxpayer is constructing his new factory for manufacture of taxable goods. Contractor 'A' supplies construction services and another vendor 'B' supplies 'Plant & Machinery'. The taxpayer also procures goods and services on his own account to develop the boundary wall of the factory premises.

In this case, the taxpayer is not in the business of supplying works contract service. Therefore, he is not eligible to claim ITC in respect of tax paid on inward supplies of works contract service. He is eligible to claim ITC on plant & machinery. The taxpayer is also not eligible to claim ITC on tax paid on procurement of goods and services on his own account for building the boundary wall.

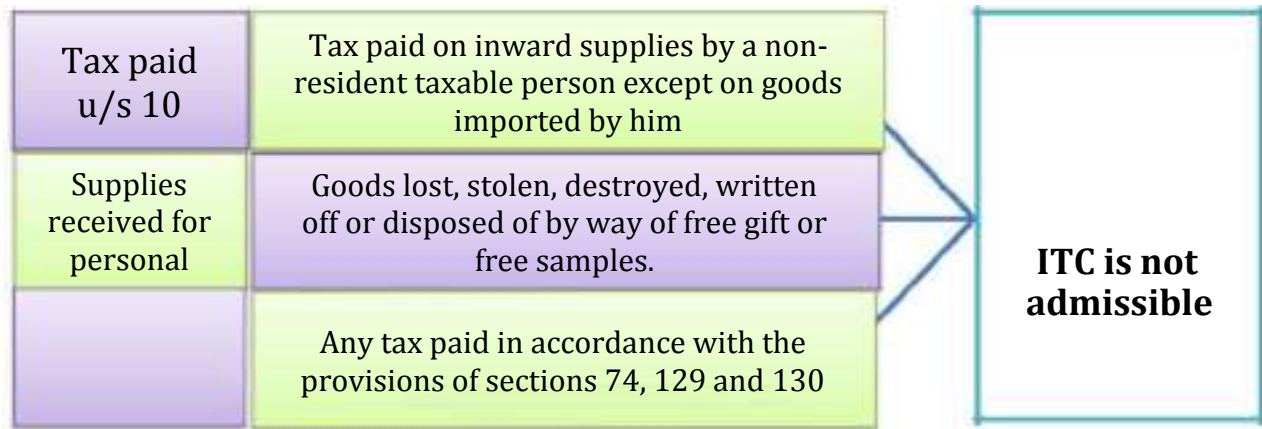
However, if contractor 'A' engages a sub-contractor, he is eligible to claim ITC on procurement of works contract service from the sub-contractor since the same is procured for further supply of works contract service.

Plant and Machinery may also be of the nature of immovable property in certain cases when affixed permanently to the earth. It may be noted that, when a works contract service is procured for construction of plant and machinery, ITC would be available to the recipient, since works contract service procured for construction of plant and machinery is excluded from the negative list.

For the purpose of Input Tax Credit “plant and machinery” means apparatus, equipment, 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—

- (i) land, building or any other civil structures;
- (ii) telecommunication towers; and
- (iii) pipelines laid outside the factory premises.

vi. Other unavailable credit –



ITC is blocked in respect goods lost, stolen, destroyed, written off or disposed off by way of free gift or free samples. Confusion may arise that whether those goods are only inputs and capital goods or also manufactured end product or any intermediary products. Since, there is no such condition, so whether those goods are inputs, capital goods, finished product or any intermediary products ITC is required to be reversed when such goods are lost, stolen, destroyed, written off or disposed off by way of free gift or free samples.

1. Availability of credit in special

circumstances: a. Sec 18(1) and 18(2) -

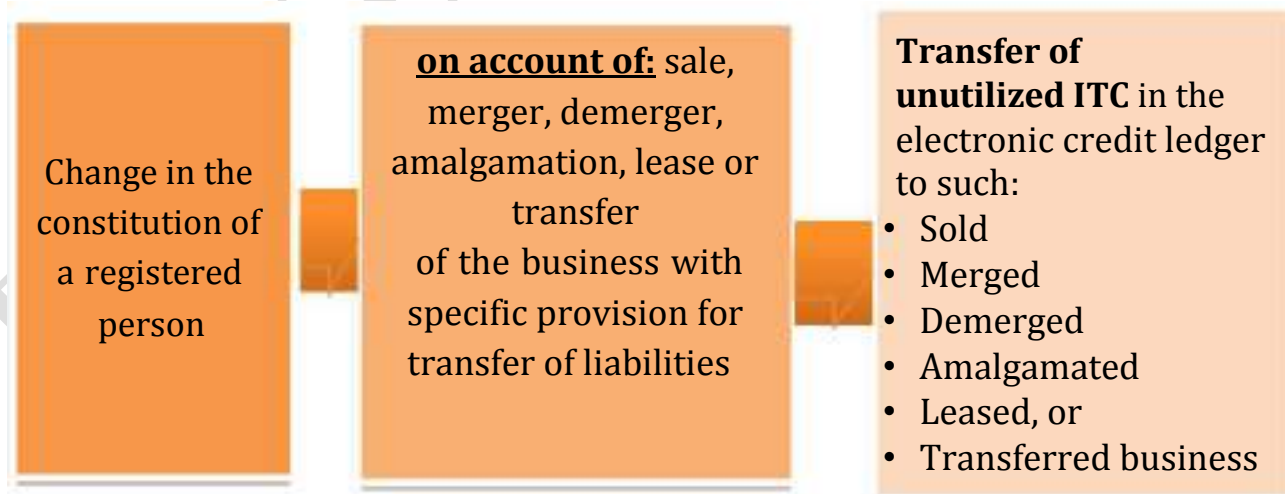
Supplier	Stock held as			Stock to be considered as on
	Inputs or Inputs contained in semi-finished/ finished goods	Input Service	Capital Goods	
Person, who has applied for registration within 30 days from the date of incurring liability for registration and who has been granted such registration	ITC available	Stock of service is not possible. ITC not available	ITC not available	The day immediately preceding the date from which he becomes liable to pay tax

Voluntarily Registered	ITC available	ITC not available	ITC not available	The day immediately preceding the date from which supplier is liable to pay tax under the regular scheme.
Person ceases to pay tax under the composition scheme	ITC available	ITC not available	ITC available	The day immediately preceding the date from which supplier is liable to pay tax under the regular scheme.
Exempt supplies become taxable	ITC available on inputs relatable to such exempt supply	ITC not available	ITC available on capital goods exclusively used for such exempt supply	The day immediately preceding the date from which exempt supplies become taxable.

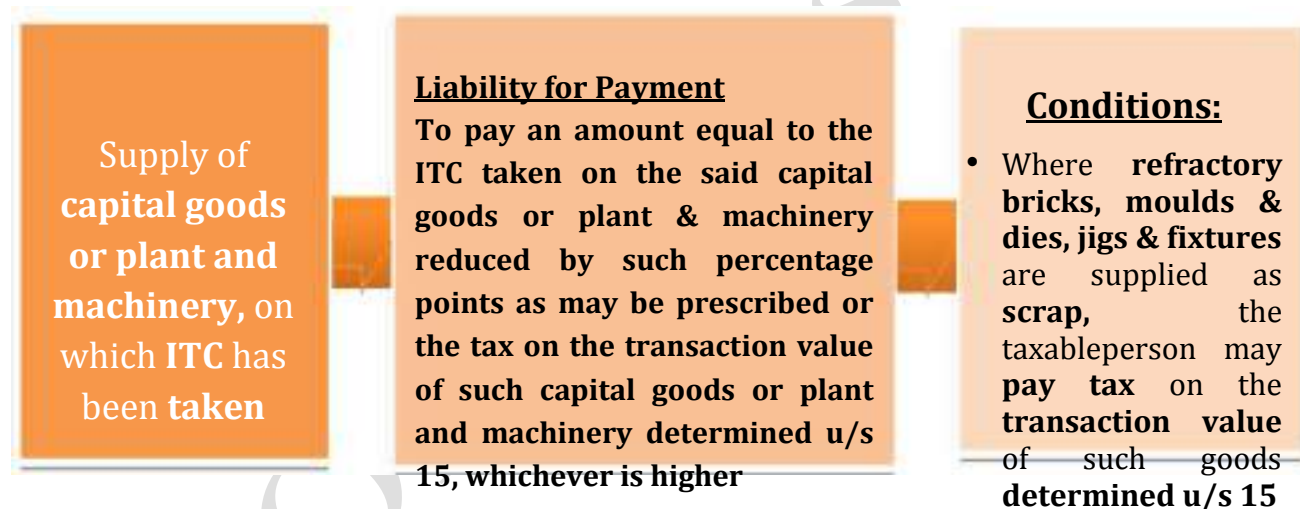
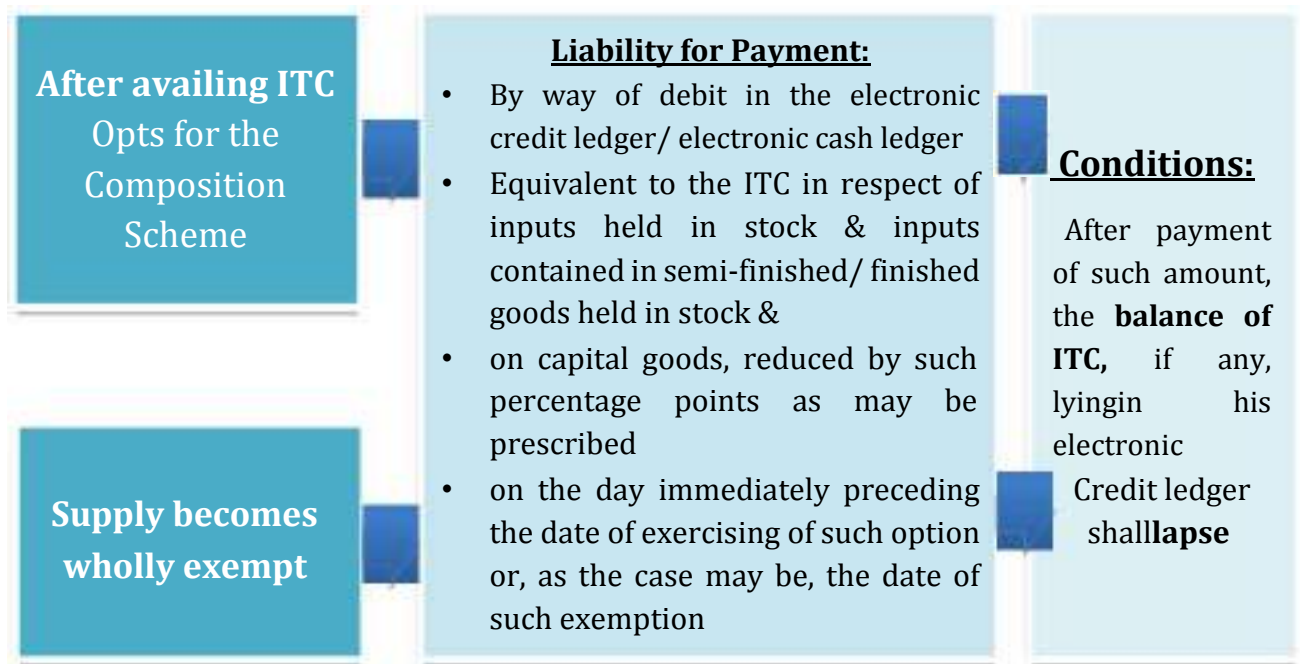
Note:

- ITC in respect of inputs or inputs contained in semi-finished/ finished goods or capital goods held in stock as noted in the above table would be available only within one year from the date of issuance of the tax invoice related to such supply.
- The credit on capital goods shall be reduced by five percentage points per quarter or part thereof from the date of invoice.

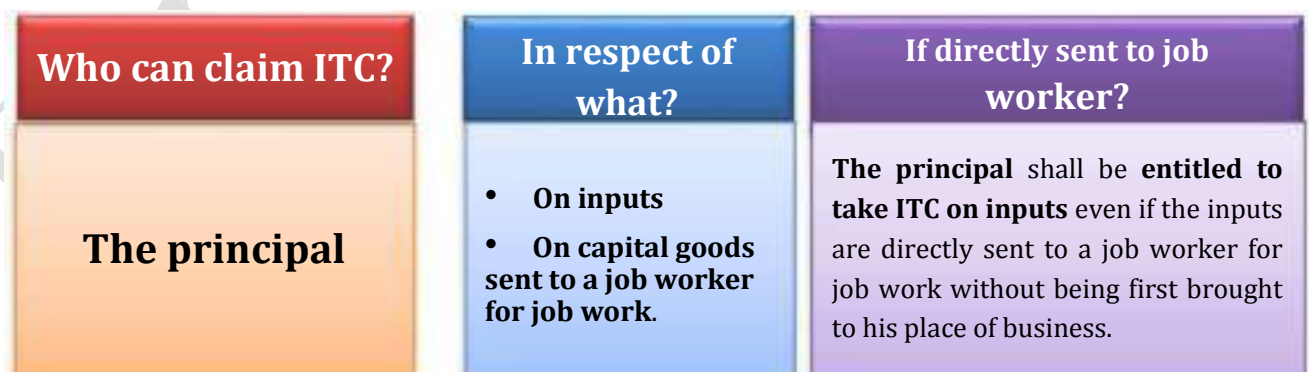
b. Transfer of credit in special circumstances [Sec 18(3)]



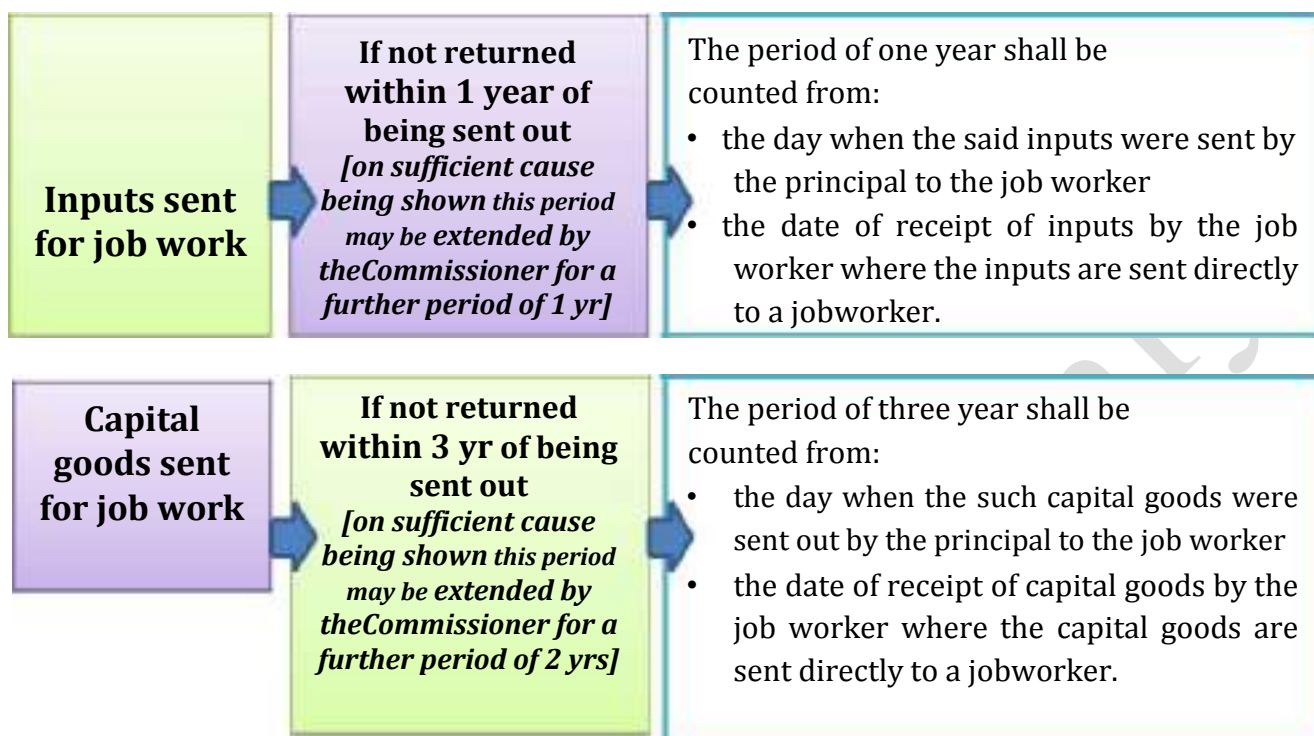
c. Other circumstances provided under section 18:



d. ITC in respect of inputs and capital goods sent for job work.



If the inputs/ capital goods sent for job work are not received back by the principal after completion of job work or otherwise or are not supplied from the place of business of the job worker (Sec 19)



- The above time period for returning back inputs/ capital goods from job workers to the principal shall not apply to moulds and dies, jigs and fixtures, or tools sent out to a job worker for job work.
- Principal means a registered person referred to in section 143(1)
- For the purposes of jobwork, input includes intermediate goods arising from any treatment or process carried out on the inputs by the principal or the job worker.

e. Manner of distribution of credit by Input Service Distributors.

Who can distribute?	What to distribute?	How?
The Input Service Distributor	<ul style="list-style-type: none"> the credit of State tax as State tax /IGST the credit of Central tax as Central tax /IGST IGST as IGST or State tax/Central Tax 	By way of issue of documents containing the amount of ITC being distributed in such manner as may be prescribed

a. Conditions for distribution of Credit by ISD

CONDITIONS

The credit can be distributed to the recipients of credit against a document containing such details as may be prescribed

The amount of the credit distributed shall not exceed the amount of credit available for distribution.

The credit of tax paid on input services attributable to a recipient of credit shall be distributed only to that recipient

The credit of tax paid on input services attributable to more than one recipient of credit shall be distributed amongst such recipients to whom the input service is attributable and such distribution shall be *pro rata* on the basis of the turnover in a State/UT of such recipient, during the relevant period, to the aggregate of the turnover of all such recipients to whom such input service is attributable and which are operational in the current year, during the said relevant period;

The credit of tax paid on input services attributable to all recipients of credit shall be distributed amongst such recipients and such distribution shall be *pro rata* on the basis of the turnover in a State/ UT of such recipient, during the relevant period, to the aggregate of the turnover of all recipients and which are operational in the current year, during the said relevant period.

- **“relevant period”** for the purposes of Section 20 shall be–
 - (i) if the recipients of credit have turnover in their States or UTs in the financial year preceding the year during which credit is to be distributed, the said financial year; or
 - (ii) if some or all recipients of the credit do not have any turnover in their States or UTs in the financial year preceding the year during which the credit is to be distributed, the last quarter for which details of such turnover of all the recipients are available, previous to the month during which credit is to be distributed
- **“recipient of credit”** means the supplier of goods or services or both having the same Permanent Account Number as that of the Input Service Distributor;

- **“turnover”**, in relation to any registered person engaged in the supply of taxable goods as well as goods not taxable under this Act, means the value of turnover, reduced by the amount of any duty or tax levied under entries 84 and 92A of List I of the Seventh Schedule to the Constitution and entry 51 and 54 of List II of the said Schedule.

Example of distribution of ITC by ISD:

A company has 6 numbers of GSTIN under a single PAN in the following States:

- In Delhi as normal taxpayer
- In Delhi as ISD
- In West Bengal as normal taxpayer
- In Bihar as normal taxpayer
- In Uttar Pradesh as normal taxpayer
- In Punjab as normal taxpayer

The ISD received invoices from different vendors as follows:

- Factory building renovation in West Bengal involving IGST of Rs.1,00,000/- (renovation works duly capitalized in the books in HQ Delhi)
- Advertisement in all the above States involving input tax of Rs.30,000/- as IGST.
- Repairing of plant & machinery at Delhi and UP involving input tax of Rs.10,000/- as CGST and Rs.10,000/- as SGST.
- Tax audit in Punjab involving input tax of Rs.20,000/- as IGST.

Turnover of previous year of the above GSTINs was as follows:

	Delhi	UP	Punjab	MP	WB	Bihar
Turnover	10 Cr	10 Cr	4 Cr	5 Cr	8 Cr	1 Cr
Pro-rata ratio	25%	25%	10%	12.5%	20%	2.5%

The ISD distributed ITC as follows:

Invoice wise total credit (Rs.)	Delhi	UP	Punjab	MP	WB	Bihar
Inv. a 1,00,000					IGST=100000	
Inv. b 30000	CGST=3750 SGST=3750	IGST=7500	IGST=3000	IGST=3750	IGST=6000	IGST=750

Inv. c 20000	CGST=5000 SGST=5000	IGST=10000				
Inv. d 20000			IGST=20000			

Distribution of ITC by the ISD as appeared in the above tables is correctly done except in respect on Inv. a. for which ITC is blocked as per provisions of section 17(5) of the GGST Act. Now, the question arises how and from whom that can be recovered? Let us go through the provisions of section 21 below.

Manner of recovery of credit distributed in excess [Sec21].

Distributes excess credit	What to do?	How?
When the Input Service Distributor distributes the credit in contravention of the provisions contained in sec 20 to one or more recipients of credit	The excess credit so distributed shall be recovered from such recipients along with interest	The provisions of section 73 or section 74, as the case may be, shall, mutatis mutandis, apply for determination of amount to be recovered.

Thus, the credit distributed in excess to West Bengal by the ISD as IGST of Rs.1,00,000/- for renovation of factory building which has been capitalized can be recovered under section 73 or 74 as applicable along with interest from the distinct person in West Bengal as he was the recipient in this case.

12.16. Annexure 16: Important Circulars –

1. In printing works both service and goods are required.

Then which rate will be applicable? Goods or Service?

In the case of printing of books, pamphlets, brochures, annual reports, the content supplied by the publisher, are the intangible inputs, while the physical inputs including paper used for printing belong to the printer.



Supply of printing is the principal supply here and therefore such supplies would constitute supply of service falling under heading 9989 of the scheme of classification of services.

In case of 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, is pre-dominant supply of goods. Supply of printing of the content supplied by the recipient of supply is ancillary to the principal supply of goods and therefore such supplies would constitute supply of goods falling under respective headings of Chapter 48 or 49 of the Customs Tariff.

[Ref:[Circular No. 11/11/2017-GST Dated: 20.10.2017](#)]

2. Sale of Lottery Ticket – Supply of Goods or Service?

Supply of lottery is treated as supply of goods. It is clarified that the classification for lottery in respective CGST, IGST, UTGST and SGST notifications shall be of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and tax on lottery.

GST rate on lottery tickets (upto 29.02.2020):

State-run lottery - 12 % State-authorized lottery-28%.

GST rate on lottery tickets (from 01.03.2020):

State-run lottery - 28 % State-authorized lottery-28%.



Ref:[Circular No. 6/6/2017-GST Dated: 27.08.2017](#)

3. Unstitched Salwar Suits – Which rate will be applicable? Fabric or Garments?

Fabric is cut from bundles or *thaans* and sold in that unstitched state. The customers buy these sets or pieces and get it stitched to their shape and size. Fabrics are classified under chapters 50 to 55 of the First Schedule to the Customs Tariff Act, 1975 on the basis of their constituent materials and attract GST 5% with no refund of the unutilized input tax credit. Mere cutting and packing of fabrics into pieces of different lengths from bundles or *thaans*, will not change the nature of these goods and such pieces of fabrics would continue to be under the respective heading as the fabric and attract the 5% GST rate.



Ref: [Circular No. 13/13/2017-GST](#)
Dated: 27.10.2017

4. Milling of paddy into rice on job work basis is liable to GST or not?

Milling of paddy into rice changes its essential characteristics. Milling of paddy into rice cannot be considered as an intermediate production process in relation to cultivation of plants for food, fiber or other similar products or agricultural produce. Therefore, Milling of Paddy is not exempted. Milling of paddy into rice on job work basis is liable to GST at the rate of 5%, on the processing charges.



Ref: [Circular No. 19/19/2017-GST](#) Dated: 20.11.2017

5. Whether IGST is applicable on inter-state movement of various modes of conveyance, carrying goods or passengers or for repairs and maintenance, between distinct persons?

Inter-state movement of various modes of conveyance carrying goods or passengers or for repairs and maintenance, between distinct persons as specified in section 25(4) of the GGST Act, 2017, carrying goods or passengers or both; or for repairs and maintenance shall be treated “neither as a supply of goods or supply of service” and therefore not be leviable to IGST. However, applicable GGST/IGST, as the case may be, shall be leviable on repairs and maintenance done for such conveyance.

Ref: [Circular No. 1/1/2017-GST New Delhi, 7th of July, 2017](#)

6. Clarification on Inter-state movement of rigs, tools and spares and all goods on wheels [like cranes] between distinct persons:

IGST shall not be levied on interstate movement of rigs, tools and spares on wheels between distinct persons. However, in cases where movement of rigs, tools and spares is for further supply, IGST will be applicable. But, GGST/IGST, as the case maybe, is leviable on repairs and maintenance done for such goods.

Ref: [Circular 1/1/2017-IGST dated 7.7.2017 and Circular No. 21/21/2017-GST Dated: 22.11.2017.](#)

7. Issues in respect of maintenance of books of accounts relating to additional place of business by a principal or an auctioneer for the purpose of auction of tea, coffee, rubber etc.

Ref: [Circular No. 23/23/2017-GST Dated: 21.12.2017](#)

8. Is hostel accommodation provided by Trusts to students covered within the definition of Charitable Activities and exempt under Sl. No. 1 of notification No. 12/2017- CT (Rate)?

Hostel accommodation services do not fall within the ambit of charitable activities as defined in para 2(r) of notification No. 12/2017-CT (Rate). However, services by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, having declared tariff of a unit of accommodation below one thousand rupees per day or equivalent are exempted. Thus, accommodation service in hostels including by Trusts having declared tariff below one thousand rupees per day is exempted [Sl. No. 14 of notification No. 12/2017-CT(Rate) refers].

Ref: [Circular No. 32/06/2018-GST Dated: 12.02.2018](#)

Note: concept of declared tariff has been changed to 'value of supply' in Notification no.13/2018 CTR dt.26.07.2018.

9. Whether retreading of tyres is a supply of goods or services?

In retreading of tyres, which is a composite supply, the pre-dominant element is the process of retreading which is a supply of service. Rubber used for retreading is an ancillary supply. The primary question that should be asked in this case is

that what is the essential nature of the composite supply and which element of the supply imparts that essential nature to the composite supply. Supply of retreaded tyres, where the old tyres belong to the supplier of retreaded tyres, is a supply of goods (retreaded tyres under heading 4012 of the Customs Tariff attracting GST @ 28%).

Ref: Circular No. 34/08/2018-GST Dated: 01.03.2018

10. Clarifications regarding levy of GST on accommodation services -

[Circular No. 27/01/2018-GST Dated: 04.01.2018](#)

Question	Answer/Clarification
Will GST be charged on actual tariff or declared tariff for accommodation services?	Tax rate slab is determined on Declared tariff and GST is payable on the actual tariff paid.
What will be GST rate if cost goes up (more than declared tariff) owing to additional bed.	GST rate is determined on declared tariff for the room, and GST at the rate so determined would be charged on the entire amount paid by the customer.
Where will the declared tariff be published?	Declared tariff can be published anywhere on the websites or may be printed on tariff card or displayed at the reception. In case different tariff is declared at different places, the highest of such declared tariffs shall be considered as the declared tariff for the purpose of levy of GST.
Same room may have different tariff at different times depending on season or flow of tourists as per dynamic pricing. Which rate to be used then?	In case different tariff is declared for different seasons or periods of the year, the tariff declared for the season in which the service of accommodation is provided shall apply.
If tariff changes between booking and actual usage, which rate will be used?	The declared tariff at the time of supply would be considered.
GST at what rate would be levied if an upgrade is provided to the customer at a lower rate?	GST would be levied on the modified tariff.

Note: concept of declared tariff has been changed to 'value of supply' in Notification no.13/2018 CTR dt.26.07.2018.

12.17. Annexure 17: Some order of Authority of Advance Ruling of different States

Disclaimer: All the orders mentioned below may be subject to modification of any order by Appellate Authority of Advance Ruling or any Court of law.

A. Classification of goods and services:

Sl. No.	Query	Answer /Ruling
1	What is the rate of GST on the services of a club offers its members like the restaurant service, valet parking, decoration and other such services associated with organizing social gatherings etc?	<p>If food is supplied by way of or as part of the services associated with organizing social events at the club premises, together with renting of such premises, it will be classifiable under SAC 9963.</p> <p>All other services offered by the club are classifiable under SAC 9995.</p> <p>In all of the above cases tax will be charged as per Notification No. 11/2017-CT (Rate) dt 28/06/2017</p> <p>Vide, AAR, WB, 48/WBAAR/2018-19 dated 28/03/2019, The Bengal Rowing Club.</p>
2	What is the applicable tax rate on activities of supplying: - food/ beverages on board trains and on railway platforms as per the agreements with IRCTC / Indian Railways?	<p>Supplying food/beverages on board train or in food stalls on the railway platforms is considered as a pure supply of goods. It does not have a service element and would not be treated as a composite supply of services. A train is a mode of transport and it cannot be called a restaurant. Taxability would be as under:</p> <ul style="list-style-type: none"> Supply of goods, ie food, bottled water etc., shall be charged to GST on individual values of goods (excluding the service charges) at their respective applicable rates. Service charges invoiced separately are classified under the head 'catering services in train' and GST is charged at the applicable rate. <p>Vide:- M/s Deepak & Co. (AAR Delhi; No.02/DAAR/2018 dt 28.03.2018)</p>

3	What is the correct classification of Fried Fryums of different shapes, sizes and varieties which are ready to eat?	<p>The product 'Fried Fryums' is classifiable under Tariff Item 2106 90 99 of the First Schedule to the Customs Tariff Act, 1975.</p> <p>GST rate 18% (CGST 9% + GGST 9% or IGST 18%)</p> <p>Vide: Alisha Foods (GST AAR Madhya Pradesh), 20/2019, dt 28/11/2019</p>
4	An RTP is running sweetshop and a restaurant in two distinctly marked separate parts of the same premises, separate accounts and billings for the two types of businesses were also maintained. Whether supply of food items from the sweetshop or the restaurant is a supply of goods or a supply of services?	<p>In case of sale of food items from restaurant, GST rates on restaurant service will be applicable on all such sales and ITC will not be allowed. In case of sale of those items from sweetshop counter it will be treated as supply of goods and GST rates of the respective items being sold will be levied and ITC will be allowed on such supply.</p> <p>Vide: Kundan Misthan Bhandar (GST AAR Uttarakhand) 09/2018-19/ 5459</p>
5	Whether the parking lot services provided by the Contractor appointed by the Market Committee, which is a Government Authority is exempt under Notification No.12/2017 as the parking lot activity is covered under Article 243 of the Constitution.	<p>The parking services provided by the Contractor appointed by the Market Committee, are not exempt under Notification No. 12/2017 as the Market Committee is not a Government Authority. The activity / services of parking provided by the applicant falls under heading 9967 and attracts GST @ 18%</p> <p>Vide: Pushpa Rani Pabbi (GST AAR Punjab), AAR/GST/PB/011</p>
6	An RTP is involved in laying of trenches and optical fiber cables through which they are supplying internet connectivity to the gram panchayats. Whether the Contract will fall under Construction Service or Original Work to Government Authority, and will the rate of tax applicable be 12%?	<p>The work done by the RTP will not fall under the mentioned category because the underground optical fibre cables can also be used for commerce, industry, or any other business or profession. Therefore, the contract in question does not satisfy the conditions envisaged in 3(vi) of Notification No.24/2017-Central Tax (Rate) dated 21.09.2017. The rate of tax will be 18%.</p> <p>Vide: Shree Hari Engineers & Contractors (GST AAR Gujarat) GUJ/GAAR/R/2020/16</p>

7	What is the HSN code of an Alcohol Based Hand Sanitizer? Can it be classified as an essential commodity and thus exempt from GST?	<p>Alcohol Based Hand Sanitizers manufactured by the applicant is not exempt from GST. Rather these are covered by HSN 3808 and are accordingly taxable at appropriate rate (18%) as per schedule entry notified vide Notification No. 1 Central Tax (Rate) dated 28/06/2017.</p> <p>Vide: Springfields (India) Distilleries (GST AAR Goa) GOA/GAAR/1 of 2020-21/531</p>
8	Whether EPC Contract for electrical cable supply and laying work can be classified as contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract.	<p>Yes, such EPC Contract can be classified as a supply of works contract service under GST law.</p> <p>Vide: Yogiraj Powertech Private Limited (GST AAR Maharashtra) GST-ARA-47/2018-19/B-120</p>
9	An RTP, say, Mr X supplied goods worth Rs 10,000 to Mr Y on 01.01.2018 with the condition that Mr Y need to make payment by 31.01.2018 else interest will be applicable. In this case if Mr Y actually made payment of Rs 10,000 on 31.03.2018 and as a result of delay in payment Mr X levies interest of Rs 200. Is the RTP required to pay GST @ 18% on such interest of Rs 200?	<p>Yes, the RTP is required to pay GST @ 18% on such interest of Rs 200 as well.</p> <p>However Notification No. 12/2017- CT (Rate) dated 28.06.2017 in Sl.no. 27 has specifically mentioned that any interest charged on account of extending deposit, loan or advances (other than interest on credit card services) would not attract GST.</p> <p>Vide: M/s Shreenath Polyplast Pvt Ltd (AAR Gujarat) GUJ/GAAR/R/2018/3</p>

10	<p>a) Whether filters manufactured solely for use by/ in Indian Railways and supplied directly to Indian Railways are classifiable under HSN Heading 8421 or under HSN Heading 8607 of the Customs Tariff?</p> <p>b) Whether aforementioned classifications of filter alter if identical goods are supplied to a distributor instead of Indian railways directly, and the distributor in turn effects supply to Indian railways?</p>	<p>a) Filters manufactured by the Appellant solely for use by the Indian Railways and supplied directly to the Indian Railways are classifiable under Chapter Heading 84.21 of the Customs Tariff.</p> <p>b) The classification of the subject goods will not change if the same are supplied to Indian Railways through a distributor.</p> <p><u>Vide: Parker Hannifin India Pvt Ltd, (GST AAAR Karnataka) KAR/AAAR/07/ 2019-20</u></p>
11	<p>Whether the transaction of printing of content provided by the customer, on Poly Vinyl Chloride (PVC) banners and supply of such printed trade advertisement material is supply of goods?</p>	<p>The transaction of printing of content provided by the customer, on Poly Vinyl Chloride (PVC) banners and supply of such printed trade advertisement material is supply of service.</p> <p>The classification of aforesaid supply of service is 9989. The applicable rate of GST is 18% up to 30.10.2017 & 12% effective from 31.10.2017, as per Entry No.27 of the Notification No.11/ 2017-Central Tax (Rate) dated 28.06.2017, as amended.</p> <p><u>Vide: Macro Media Digital Imaging Pvt. Ltd, KAR ADRG 06/2020 dated 17.02.2020</u></p>
12	<p>Whether resale of food & bakery products fall under restaurant services?</p>	<p>No. A restaurant is a place of business where food is prepared in the premises and served based on the orders received from the customer. In the instant case it is a bakery, where ready to eat items are sold and mere facility is provided to have it from the shop.</p> <p><u>Vide: Square One Homemade Treats (GST AAR Kerala) KER/66/2019</u></p>

13	Whether activity of “printing of photographs from media” is a supply of goods or services? What is the classification of such activity?	<p>The activity of “printing of photographs from media” is classifiable as ‘supply of services’ under SAC 9989. The activity carried on by the RTP is taxable at 12% under Serial No. 27 (i) of Notification No. 11/2017 – Central Tax (Rate) dated 28/06/2017.</p> <p>Vide: Photo Products Company Pvt Ltd (AAR Kolkata) 06/WBAAR/2018-19</p>
14	Whether “flavored milk” can be classified under tariff heading 2202 which deals with “water based beverages and other non alcoholic beverages” or under Tariff heading 0402 which covers “milk and cream, concentrated or containing added sugar or other sweetening matter”?	<p>In the instant case the predominant constituent is milk and hence the “flavoured milk” does not merit classification under beverage containing milk, under tariff heading 2202 9930, but merits classification as milk, under tariff heading 0402. The HSN code of the instant product is 0402 99 90.</p> <p>Vide: Karnataka Co-operative Milk Producers Federation Ltd. (GST AAR Karnataka) KAR ADRG 88/2019</p>

B. Nature of supply:

Sl. No.	Question	Answer /Ruling
1	Whether any sale done by the liquidator of the assets of a corporate debtor under the provisions of the Insolvency and Bankruptcy Code, 2016 is a “supply” in GST?	<p>The sale of the assets of a corporate debtor is a supply of goods by the liquidator, who is required to take registration u/s 24 of the GST Act. If she is already registered as a distinct person of the corporate debtor in terms of Notification No. 11/2020 – Central Tax dated 21/03/2020, she should continue to remain registered till her liability ceases under section 29 (1) (c) of the GST Act.</p> <p>Vide, AAR, WB, M/s Mansi Oils and Grains Pvt Ltd, 02/WBAAR/2020-21 dt 29/06/2020</p>

2	A registered society providing security services and scavenging services to various hospitals under the State Government. Whether it is liable to pay GST on the portion of the payment received on account of the bonus paid or payable to the persons it deploys as security personnel?	<p>Yes, it is liable to pay GST on the portion of the payment received on account of the bonus paid or payable to the persons it deploys as security personnel.</p> <p>Vide, AAR, WB, Ex-servicemen Resettlement Society, 35/WBAAR/2019-20 dated 29/11/2019</p>
3	Whether the supply of goods to international outbound passengers, holding international boarding passes, from retail outlets located in international airports and claimed to be beyond the Customs Frontiers of India, should be considered as zero-rated supply?	<p>Such supply cannot be treated as 'export' or 'zero rated supply' and GST is payable at the applicable rates.</p> <p>When goods are exported by air, the export will be completed only when goods cross the airspace limits of the territory or the territorial waters of India.</p> <p>Outlets are located at the security hold area of international airports, which is not outside India but is within the territory of India. Hence, the applicant is not taking goods out of India and the supply cannot be treated as 'export' or 'zero rated supply'.</p> <p>Vide: Rod Retail Pvt. Ltd., AAR Delhi No, 01/DAAR/2018 dt 27.03.2018</p>
4	A stevedore Company handles imported raw whole yellow peas. Are such imported yellow peas 'agricultural produce' and whether this services by way of handing of it is exempted?	<p>The Company supplies the service of loading, unloading etc. after the cargo of yellow peas, imported from a foreign land, reaches the port of entry.</p> <p>Exemption is not applicable to the said service under Notification No. 12/2017- CT(R) dt 28/06/2017 (corresponding WB State Notification No. 1136 - FT dt 28/06/2017)</p> <p>Vide, AAR, WB, TP Roy Chowdhury & Company Pvt Ltd, 17/WBAAR/2019-20 Dt 19-08-2019</p>

5	Whether repairing and servicing of machine or equipment owned by others is job work u/s 2(68) of the GST Act, or whether it is a composite supply?	<p>Repairing & servicing of machine or equipment owned by another person is not job work. It is composite supply unless the contract specifies that the goods and services are to be separately charged. The principal supply is the service of repair of such machine or equipment classifiable under SAC 998719.</p> <p>Vide, AAR, WB, Alok Bhanuka, [Bhanuka Enterprises], 47/WBAAR/2018-19 dated 26/03/2019</p>
6	<p>a) Whether contributions from the members in the Administration Account, recovered for expending the same for the weekly and other meetings and other petty administrative expenses incurred including the expenses for the location and light refreshments, amounts to or results in a supply, a per GST law?</p> <p>b) Whether the said collection of funds under common pool and spending back on the same said contributors, would entail 'supply' as defined in the law?</p>	<p>Yes, both the cases result in supply as defined in GST law. These are supply of services and attract GST @18%.</p> <p>Vide: Rotary Club of Mumbai Nariman Point (GST AAR Maharashtra) GST-ARA-142/2018-19/B-88</p>
7	Whether GST is leviable on sale of TDR/FSI received as consideration for surrendering the joint right in land in terms of development control regulations and granted in light of the article of agreement dated 18.12.2017 entered between the landowner and the municipal corporation?	<p>Yes, GST is applicable and classified under heading 9972 and the applicable rate of GST is 18%.</p> <p>Vide: Vilas Chandanmal Gandhi (GST AAR Maharashtra) GST-ARA- 40/2019-20/B-06</p>

8	A printer is making a bundled supply to a Club of printing service and intermediary service for selling space for advertisement on behalf of the Club and charging a single price for the bundle. Is it a case of composite supply? What will be the tax rate?	<p>The two services are not naturally bundled or supplied in conjunction with each other in the ordinary course of business. It is, therefore, not a composite supply but a mixed supply of printing service (SAC 998912; GST12) and intermediary service for selling space for advertisement on behalf of the club (SAC 998362) and attracts the higher rate of tax ie. 18%. (<i>intermediary service taxable @ 18% under SI No. 21 (ii) of Notification No. 11/2017 — CT (Rate) dated 28/06/2017</i>)</p> <p>Vide: Infobase Services Pvt Ltd. (GST AAR West Bengal) 38/WBAAR/2019-20</p>
9	Whether supplying stores like electronic equipment or any other goods to foreign going vessels are zero-rated supplies?	<p>Supply of stores to foreign going vessels, as defined under section 2(21) of the Customs Act, 1962 Act, is not zero-rated supply, unless it is marked specifically for a location outside India & suppliers are liable to pay GST on such supplies.</p> <p>However, the supplies to the foreign going vessels shall be treated neither as a supply of goods nor services in terms of paragraph 8(a) of Schedule III u/s7(2)(a) of the GST Act if such stores are warehoused goods supplied to the recipient before clearance for home consumption.</p> <p>Vide, AAR WB, Shewratan Company Pvt Ltd, 32/WBAAR/2019-20 dated 11/11/2019</p>
10	A landowner develops his own land with an infrastructure such as Drainage line, Water line, Electricity line etc. as per the requirement of the approved Plan Passing Authority (i.e. Zilla Panchayat) and sells such developed land as plots. Is GST applicable on such supply?	<p>The activity of the sale of developed plots would be covered under the 'construction services' and GST is payable on such supply of developed plots in terms of CGST Act / Rules and relevant Notification issued time to time.</p> <p>Vide: Shree Dipesh Anilkumar Naik (GST AAR Gujarat) GUJ/GAAR/R/2020/11</p>

11	Whether supply of a printer along with consumables comprising of blanket, photo imaging plate, binary ink developer, imaging oil, blanket web and other machinery products by the supplier to its customers is a 'mixed supply' or a 'composite supply'?	<p>The supplies have been held to be a continuous supply because each of the supplies has its own pattern and can be supplied separately as they are not dependent on each other. May be for the first time, the products are supplied together but it may not happen that the products are supplied together every time. Hence, it is a case of 'mixed supply' and not 'composite supply',</p> <p>Vide: H.P.Sales india Pvt. Ltd. (GST AAAR Maharashtra) MAH/AAAR/SS-RJ/21A/2018-19</p>
12	Is GST applicable on cheque bouncing charges?	<p>The receipt of cheque bouncing charges on dishonoring of cheques would be receipt of amounts for tolerating the act of their customers. Therefore, it would be treated as supply as per of Schedule II 5(e) of the CGST Act, 2017 and, hence, taxable under the GST Act.</p> <p>Vide: Bajaj Finance Limited (GST AAAR Maharashtra) MAH/AAAR/SS-RJ/25/2018-19</p>
13	Whether a supplier is liable to pay GST on supplies of consumer goods like biscuits, soaps etc. earmarked 'FOR PDS SUPPLY ONLY' to fair price shops/PDS distributors?	<p>The Supply of goods through PDS is not exempted by any notification. Activities or transactions of this kind are not also included in Schedule III. Therefore, GST is payable at the applicable rate on supplies of goods through PDS.</p> <p>Vide, AAR, WB, Dipeet Agarwal, [trade name M/s Soorya Narayan Agency] 31/WBAAR/2019-20 dated 11/11/2019</p>
14	<p>a) Whether an RTP, incorporated under Companies Act, 1956 with 100% participation by way of equity by the State Government and is responsible in implementation of various sewerage projects can be defined as a governmental authority or Government entity under GST?</p> <p>b) Whether their supply of Sewerage Project Management services would qualify as an</p>	<p>a) The applicant falls under the definition of Governmental Authority or Government Entity clause (16) of section 2 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) and amended vide Notification No. 32/2017 – Central Tax (Rate) dated 13/10/2017.</p> <p>b) The services provided by the RTP appears to fall in the list of services enumerated under serial no. 6 of the 12th Schedule of Article 243W of the Indian Constitution, thus qualifying the admissibility criteria.</p>

	activity in relation to function entrusted to Panchayat or Municipality under Article 243G or Article 243W respectively, of the Constitution of India?	Vide: Sewerage & Infrastructural Development Corporation of Goa Ltd. (GST AAR Goa) GOA/GAAR/10 of 2018-19/1737
15	Whether printing of the Book in India is liable to GST when the order has been received from a foreign entity and payment also has been received in INR?	<p>The activity of printing of Book under the specific orders received from a foreign company is a supply of service classifiable under SAC 9989. The service is supplied to the recipient located in India & the consideration is received in INR. Hence the supplier is, liable to pay GST on such supplies.</p> <p>Vide, AAR, WB, Swapna Printing Works Private Limited, 28/WBAAR/2018-19 dated 21.12.2018.</p>
16	Whether hotel accommodation and restaurant services provided within the premises of a hotel which is outside an SEZ, to employees and guests of SEZ units, can be treated as supply of goods and services to SEZ units and thus can be treated as zero rated supply?	<p>In this case, place of supply shall be the hotel premises which is outside the SEZ. Thus, the said services shall be an 'intra-state' supply and taxable under GST.</p> <p>As per the provisions of GST Law, only supply of goods and services for authorised operations of an SEZ are treated as supplies to SEZ and can be zero rated.</p> <p>Vide: Gogte infrastructure development corporation limited (GST AAR Karnataka) KAR ADRG 02/2018</p>
17	A charitable organization runs a medical store and supplies medicine at lower rate to its customers. Is such supply a taxable one under GST and does the organization need to be registered?	<p>A charitable trust is a person and its activity to provide medicines with less pecuniary benefit is business as per GST law. Therefore, sale of medicine by them is a taxable supply of goods and GST is payable at applicable rate. When its aggregate turnover exceeds threshold limit it has to obtain registration under the relevant provisions of the CGST Act, 2017.</p>

		Vide: Nagri Eye Research Foundation (GST AAR Gujarat) GUJ/GAAR/R/2020/08
18	Whether TDS notifications applies to conservancy and waste management service to a municipality and whether he is required to obtain registration under the GST Act even if he is making exempt supplies only.	<p>The RTP's supply to the Municipal Corporation is exempt from the payment of GST under SI No. 3 of Notification No. 12/2017 — CT (Rate) dated 28/06/2017. As the RTP is making an exempt supply, the provisions of section 51 to the extent they mandate and deal with the mechanism of TDS, do not apply to his supply.</p> <p>If the Applicant's turnover consists entirely of exempt supplies, he is not liable to registration in terms of section 23(1)(a) of the GST Act.</p> <p>Vide: Time Tech Waste Solutions Private Limited (GST AAR West Bengal) 14/WBAAR/2019-20</p>
19	An RTP has been awarded a contract from Northern Railway for providing services in relation to Railway station sanitation and/or cleaning, Train cleaning, housekeeping etc. Whether such contract would be exempt from GST vide S. No. 3 of <u>Notification No. 09/2017-Integrated Tax (Rate) dated 28.06.2017</u> (as intimated by Northern Railway vide its letter dated 20.11.2017), what would be the impact of GST exemption, if the above contract is pure service contract or work contract (involving sanitation labour and material).	<p>The cleaning services supplied by the applicant to the Northern Railways are not exempted under S. No. 3 of the Notification No. 09/2017-Integrated Tax (Rate) dated 28.06.2017. The Railways cannot be called a Municipality under Articles 243P and 243Q of the Constitution of India. Further, the functions of Railways i.e. transport of goods or passengers are not covered in Schedule XII of the Constitution which covers the constitutional functions of Municipalities.</p> <p>Vide: VPSSR Facilities (GST AAR Delhi) 06/DAAR/2018</p>
20	Is GST payable on sale of LPG Gas sold in Bottle to Commercial Customer and LPG Gas sold in Bottle to Domestic Customer.	<p>Yes, GST @18% is payable on sale of LPG to the Commercial Customers. GST @ 18% is payable on sale of LPG to the Domestic Customers for the period upto 24.01.2018 and 5% on the LPG sold to the Domestic Customers with effect from 25.01.2018 onwards.</p> <p>Vide:Navbharat LPG Bottling Company (GST AAR Gujarat) GUJ/GAAR/R/2020/15</p>

C. Input Tax Credit:

Sl. No.	Question	Answer /Ruling
1	A dairy co. has procured capital goods and input services for commercial production of UHT milk, milk shake, curd & lassi. Among these items some are taxable, and rest are exempted. Is ITC admissible on such capital goods and input services?	<p>ITC is admissible on such capital goods and input services which are used for production of taxable items only.</p> <p>The Company is required to compute the admissible amount of ITC on the capital goods used for taxable supplies on the basis of proviso to rule 43(1)(d) and further prescriptions under rule 43(1)(e), (f) and (g) of the GGST Rules, 2017.</p> <p>Vide AAR, WB, Metro Dairy Ltd, 23/WBAAR/2019-20 dated 23/09/2019</p>
2	<p>A contractor received 10% of total value of contract on 24.06.11 from a State Govt as mobilization advance which is recoverable as adjustment towards the payment due for the tax invoices that the Company raises on attaining contract progress milestones.</p> <p>Whether GST shall be charged on the gross amount of the invoice or the net amount after adjusting the lump-sum amount outstanding as on 30.06.17?</p>	<p>The contractor has deemed to have supplied works contract services to the State Govt on 01.07.17 to the extent covered by mobilization advance and GST is leviable thereon accordingly.</p> <p>On the subsequent invoices, while determining value of supply such advance will be adjusted and GST shall be charged on the net amount that remains after such adjustment.</p> <p>Vide, AAR, WB, Siemens Ltd, 18/WBAAR/2019-20 dt 19-08-2019</p>
3	Whether input tax credit is admissible on ambulances purchased for the benefit of the employees under legal requirement of the Factories Act, 1948?	<p>As per Section 17(5) of the GST Act, admissibility of input tax credit on purchase of ambulance was blocked even if provisioning of ambulance service to the employees is obligatory under the Factories Act, 1948</p> <p>Vide, AAR, WB, Nipha Exports Pvt Ltd, 43/WBAAR/2018-19 dt 26/02/2019</p>

4	Whether ITC on Purchase of Lift would be available to Hotel as it has been used in the course or for the furtherance of business?	<p>The ITC of tax paid on lifts procured and installed in hotel building shall not be available as the same is an integral part of the building. ITC is blocked wrt construction of immovable property (other than plant and machinery) in terms of Section 17(5)(d) of the CGST Act 2017.</p> <p>Vide:- Jabalpur Hotels Pvt Ltd (GST AAR Madhya Pradesh), Order No. 10/2020, dt 08/06/2020</p>
5	Whether Maruti Suzuki can avail ITC charged on Demo cars as ITC on capital goods and whether the same can be utilized for payment of tax in GST?	<p>The demo cars are capital goods for Maruti Suzuki and they are eligible to avail ITC on these cars. When utilizing such ITC, the Supplier shall reverse an amount equal to the ITC taken on such demo cars reduced by prescribed percentage points or the tax on the transaction value of such demo cars whichever is higher.</p> <p>Vide: Chowgule Industries Pvt. Ltd. (GST AAR Maharashtra MAH /AAR- 18/2019-20/B-121</p>
6	An RTP is providing medical services and medicines as part of free medical facilities to their employees and pensioners in the in-house hospital. Is the company entitled to take credit of input tax on the inward supply of medicines used in providing such service?	<p>The RTP is procuring medical, diagnostic equipment, apparatus, instruments, consumables, disposables, spares and repairing services for the consumption of its employees and pensioners in the in-house hospital. No separate consideration has been charged for the same. They are in effect used for personal consumption of the employees, and pensioners and thus blocked as per Section 17(5)(g) of CGST Act.</p> <p>Vide:- Chennai Port Trust (GST AAR Tamilnadu) Order No. 32/AAR/2019, dt 25/07/2020</p>
7	A tax payer offers one unit of Agarbatti free on purchase of 1 Carton Box full of Agarbatti. Can credit of the Agarbatti given free of cost be availed as credit by the tax payer?	<p>No, credit cannot be availed by the taxpayer on the Agarbatti given free of cost as per section 17(5)(h) of the CGST Act, 2017.</p> <p>Vide: Moksh Agarbatti Co. (GST AAR Gujarat) GUJ/GAAR/R/2019/14</p>

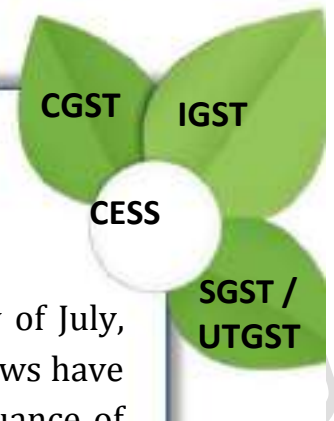
8	Sen Tour & Travels arranges accommodation in hotels for its clients. Whether the Tour operator can claim ITC on the GST charged by the hotels on it?	<p>The tour operator if arranges for clients' accommodation in hotels only, it is supplying a service classifiable under SAC 998552.</p> <p>It is taxable under Sl No. 23(iii) of the Rate Notification, and the tour operator is eligible to claim the ITC as admissible under the law.</p> <p>Vide AAR, WB, Golden Vacations Tours & Travels, 26/WBAAR/2019-20 dated 23/09/2019</p>
9	An RTP is engaged in the business of purchasing LPG Gas (Bulk) through Tanker and thereafter, refilling the same in bottles of different volume sell it to Commercial as well as Domestic Customers at GST Rate of 18% and 5% respectively. Is entire ITC. @ 18% eligible on Purchases of LPG Gas (bulk) through Tanker?	<p>The RTP is eligible to take the entire input cenvat credit @ 18% on purchases of LPG Gas in bulk through Tanker subject to the fulfilment of the conditions/provisions (wherever applicable) for taking ITC as envisaged in Sections-16, 17 and 18 of the CGST Act, 2017 and Rules-36, 37, 40, 41 and 42 of the CGST Rules, 2017.</p> <p>Vide: Navbharat LPG Bottling Company (GST AAR Gujarat) GUJ/GAAR/R/2020/15</p>
10	Whether an RTP can avail ITC of the full GST charged on the supply of invoice or a proportionate reversal of the same is required in case of post purchase discount given by the supplier of the goods or services?	<p>The RTP can avail ITC only to the extent of the invoice value less the discounts. If he has availed ITC on the full amount, he should reverse the difference amount equal to the discount, to avoid adding to his output liability.</p> <p>Vide: MRF Limited (GST AAR Tamilnadu) 5/AAR/2019</p>
11	Whether ITC can be claimed by an RTP on procurement of Gold coins which are to be distributed to the customers at the end of scheme period for achieving the stipulated lifting or payment criteria?	<p>The distribution of gold coins by the RTP to his customers is not but gifts and hence the transaction is covered by the provisions of Section 17(5) of the Act. To sum up ITC on "gifts" will not be available when no GST is being paid on their disposal.</p> <p>Vide: Biostadt India Limited (GST AAR Maharashtra) GST-ARA-72/2018-19/B-165</p>

12	An RTP constructed a new building for business purpose and installed sanitary fittings, purchased office fixtures & furniture, AC plant and accounting entry is capitalized in his books of account. whether credit will be available for the GST paid on such purchase?	<p>The ITC of GST paid in relation to building or any other civil structure is not available. The sanitary fittings are integral parts of building and related ITC is not available. However, the credit of GST paid in respect of office fixtures & furniture, AC plant is admissible if registered person doesn't claim depreciation on the GST component under the Income-tax Act.</p> <p>Vide: Bahl Paper Mills Ltd. (GST AAR Uttarakhand) /03/2018-19</p>
13	Whether ITC is available when online educational journals and periodicals are supplied to the Educational Institutions other than to pre-school and higher secondary school or equivalent, which is exempt by virtue of Notification No. 2/2018-Central Tax (Rate) dated 25.01.2018?	<p>The providing of access to the online content by the RTP to his users is covered under SAC 998431 and is liable to tax at 18% under the entry no.22 of Notification No.11/2017- CT (Rate) dated 28.06.2017 Since the transaction is not exempt, there is no restriction on ITC claims as per Section 17(1) or 17(2) of the CGST Act / SGST Act / IGST Act.</p> <p>Vide: Informatics Publishing Ltd. (GST AAR Karnataka) KAR ADRG 75/2019</p>
14	<p>a) Whether the Applicant is eligible to take ITC on GST charged by the Contractor for hiring of buses/cars for transportation of employees?</p> <p>b) Whether the restriction on 'Rent a Cab' service specified in Section 17(5)(b)(iii) is applicable to ITC on GST charged by the Contractor for hiring of buses/cars for transportation of employees?</p>	<p>a) The RTP is not eligible to take ITC on GST charged by the Contractor for hiring of buses/cars for transportation of employees.</p> <p>b) The restriction on 'Rent a Cab' service specified in Section 17(5)(b)(iii) is applicable to ITC on GST charged by the Contractor for hiring of buses/cars for transportation of employees.</p> <p>Vide: YKK India Private Limited (GST AAR Haryana) HAR/HAAR/R/2018-19/04</p>

15	<p>Whether ITC can be availed by a company on</p> <p>a) the detachable 14mm Engineered Wood with Oak top Wooden Flooring which is movable in nature and capitalized as furniture and fixture, and is not capitalized as immovable property?</p> <p>b) on the detachable sliding and stacking glass partition which is movable in nature and capitalized as “furniture and fixture”, and is not capitalizes as an immovable property?</p>	<p>a) The ITC can be availed by the company on the detachable 14 mm Engineered wood with Oak top wooden flooring which is movable in nature and capitalized as ‘furniture’</p> <p>b) The input tax credit of GST is not available on the detachable sliding and stacking glass partitions. There cannot be office space unless these are fixed and hence it can be said to be permanently fastened to the building. The fixing of sliding and stacking glass partitions amounts to addition or alteration to an immovable property and hence ITC shall not be available on such goods.</p> <p>Vide: Wework India Management Private Limited (GST AAR Karnataka) KAR ADRG 106/2019</p>
16	<p>An RTP, a supplier of Event Management Services in West Bengal and other states, seeks a Ruling on the following points:</p> <p>a. Can a person, registered in WB, claim ITC for CGST and SGST of other states?</p> <p>b. Can he adjust the ITC of one state’s CGST for payment of another state’s CGST?</p> <p>c. Can he adjust the ITC of Tamil Nadu GST for payment of IGST, whereas he is not registered in Tamil Nadu?</p>	<p>The RTP is not registered under Section 25(1) of the CGST Act in Tamil Nadu. The SGST and CGST paid on intra-state inward supply in Tamil Nadu are not, therefore, ‘input tax’ to the RTP. The GST Act does not contain any concept of ‘input tax’ in relation to an unregistered person. No credit of it is, therefore, admissible under the GST Act. So,</p> <p>a) A person, registered in WB, cannot claim ITC for CGST & SGST of other states.</p> <p>b) He cannot adjust the ITC of one state’s CGST for payment of another state’s CGST.</p> <p>c) He cannot adjust the ITC of Tamil Nadu GST for payment of IGST, whereas he is not registered in Tamil Nadu.</p> <p>Vide: Storm Communications Private Limited (GST AAR West Bengal) 39/WBAAR/2018-19</p>

Disclaimer: All the orders mentioned above may be subject to modification of any order by Appellate Authority of Advance Ruling or any Court of law.

12.18. Annexure 18: Important Changes in GST Laws and Rates during 2017-18 & 2018-19



Introduction:

Good and Services Tax came into force on the 1st day of July, 2017. With passage of time the provisions of the said laws have been changed on amending the GST Acts through issuance of notifications under sections 23, 128, 148 and 172 to give relief to the stakeholders. The Acts were also amended twice through legislation with effect from 1st February, 2019 and with effect from 1st January, 2020 respectively. Moreover, the rates of taxes were amended several times during 2017-18 and 2018-19. It is felt that some of the changes discussed above have direct impact over the payability of GST by a registered person. Hence those important changes are being enlisted in the following paragraphs.

1

Changes in RCM

2

Change in threshold in composition levy

3

Change in Time of Supply in case of advance

4

Changes in some other provisions of GST law

5

Changes in rate notification

12.18.1. Changes in Reverse Charge Mechanism (RCM):

Reverse charge is a mechanism under which the recipient of the goods or services is liable to pay the tax instead of the provider of the goods and services. Under the normal taxation regime, the supplier collects the tax from the buyer and deposits the same after adjusting the output tax liability with the input tax credit available. But under reverse charge mechanism (RCM), liability to pay tax shifts from supplier to recipient.

In respect of RCM u/s 9(3) of the SGST/CGST Acts, 2017, the SGST notification no.1128 FT and corresponding CGST Notification no. 04/2017-CT(Rate), both dt.28.06.2017 and SGST notification no. 1137 FT and corresponding CGST Notification no. 13/2017-CT (Rate), both dt.28.06.2017 notify certain specified Goods and Services for the supply of which tax is payable under RCM.

In respect of section 9(4) of GGST Act and section 5(4) of IGST Act the original provision has been amended as follows:

- ❖ If the amount of inward supplies of goods or services or both, received in a day by a registered person from all unregistered suppliers, does not exceed Rs.5000/-, no tax is payable on RCM under section 9(4) by a registered recipient.
- ❖ If a registered person receives inward supplies of goods or services or both exceeding Rs. 5000/- in a day from all unregistered suppliers, he is liable to pay tax on RCM basis on entire amount of such supplies received by him.

From 13.10.2017 the provisions of section 9(4) of SGST/CGST Act and section 5(4) of IGST Act have been kept suspended.

[Notification No. 1802-F.T. dated 13.10.17 read with No. 1132-F.T. dated 28.06.17 & No. 32/2017-Integrated Tax read with 10/2017-Integrated Tax]

Finally, the provision has been amended w.e.f. 01.02.2019 as below: "Govt. may specify by notification a class of Registered recipients who shall pay tax on RCM on supply received from an unregistered supplier."

It may be noted that, w.e.f. 01.04.2019 CGST Notification no. 03/2019 CTR dt.29.03.2019 have been issued on certain specific conditions and situations of “Construction Services” where tax is to be paid under reverse charge mechanism.

Changes at a glance in Sec 9(4) of GGST Act, Sec 5(4) of IGST Act Tax payable by registered person in respect of supply by unregistered person

**From 01.07.2017
To 12.10.2017**

- ❖ Registered person as a recipient shall pay tax on reverse charge basis when supplied by a unregistered person.
- ❖ When such inward supplies per day not exceeds Rs.5000/- no such tax under RCM is payable by such recipient.

[CGST Notification No. 08/2017-CT(Rate) dt. 28.06.2017]

**From 13.10.2017
To 31.01.2019**

- ❖ No tax is payable in RCM which is supplied by a unregistered person

[CGST Notification No. 38/2017-CT(Rate) dated 13.10.17]

From 01.02.2019

“Govt. may specify by notification a class of Registered recipients who shall pay tax on RCM on supply received from an unregistered supplier.”

[CGST Notification No. 07/2019-CT(Rate) dated 29.03.2019 have been issued to specify that subject to certain conditions construction services is liable to pay tax under section 9 (4)]

12.18.2. Composition levy:

- ❖ Threshold limit for opting Composition Levy was 75 lakh rupees at the advent of GST. Said threshold has been extended to 1 Crore rupees.
[CGST Notification No. 46/2017-CT, dated 13.10.17]
- ❖ Option for Composition Levy in the middle of 2017-18 has been allowed by inserting sub-rule (3A) to rule 3.

[CGST (Ninth Amendment) Rules, 2017 issued vide Notification No. 45/2017-CT, dated 13.10.17]

- ❖ Restaurants, eateries etc. shall not be barred from Composition Levy even if it supplies any exempt services including services by way of extending deposits, loans or advances

[RoD Order issued vide CGST Order No. 01/2017-CT, dated 13.10.17]

- ❖ Rate Reduction with effect from 01.01.2018:
 - Rate of Composition Levy for manufacturers has been reduced from one (01) per cent. of turnover in the State to half (0.5) per cent. of turnover in the State.
 - Rate of Composition Levy for traders has been reduced from half (0.5) per cent. on turnover in the State to half (0.5) per cent. of the **turnover of taxable supplies of goods** in the State

[CGST (1st Amendment) rules, 2018 issued vide notification No. 03/2018-CT, dated 24.01.2018]

12.18.3. Tax on Advance received:

Section 12(2) of the SGST/CGST Act:-

“The time of supply of goods shall be the earlier of the following dates, namely:-

- (a) the date of issue of invoice by the supplier or the last date on which he is required, under section 31, to issue the invoice with respect to the supply; or
- (b) the date on which the supplier receives the payment with respect to the supply:”

- So, in terms of the above provisions, tax is payable when advance payment is received for supply of both goods or services.
- But taxpayers having aggregate turnover in the preceding financial year upto 1.5 crore are exempted from payment of tax on Advance received in case of **supply of goods** with effect from 13.10.2017

[CGST Notification No. 40/2017-CT, dated 13.10.17]

- The above benefit has been extended to all taxpayers from

12.18.4. Changes in SGST/CGST Act relevant for 2017-18 & 2018-19

- ❖ Import of services without consideration by a **taxable person** from a related person or from any of his other establishments outside India, in the course or furtherance of business has been treated a supply as per para. 4 of Schedule I. Such provision is amended so that it will be applicable not only to a taxable person, but to **any person**. [w.e.f. 01.07.17]
- ❖ Scope of No supply extended w.e.f. 01.02.2019 by amending Schedule III:
 - Supply of goods from non-taxable territory to another non-taxable territory without entering into India. (Para. 7)
 - Supply of warehoused goods to any person before clearance for home consumption; and
 - Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption. [In common parlance **HIGH SEAS SALE**] (Para. 8)

Input Tax Credit:

- ❖ Where the **services** are provided by the supplier to any person on the **direction and on account of a registered person**, for the purpose of **entitlement of input tax credit** it shall be deemed that the said registered person has **received services** [Explanation to Sec. 16(2)(b) of SGST/CGST Act amended w.e.f. 01.02.2019]
- ❖ Subject to conditions, Input tax credit in respect of invoices or invoice relating to such debit notes for **supplies made during 2017-18** can be availed till the due date of furnishing return (GSTR-3B) for the month of **March, 2019** i.e. 23.04.2019 (as extended by Notification No. [09/2019-C.T./GST](#) dated 22.04.2019)

- ❖ **Condition:** Details of such invoices or debit notes are uploaded by the supplier in GSTR-1 till the due date for furnishing GSTR-1 for the month of March, 2019.

[Proviso added to section 16(4) by ROD Order No. 2/2018 ([1887-F.T. dated 31.12.2018](#))]

- ❖ ITC can be transferred on obtaining separate registration for multiple places of business within the State w.e.f. 01.02.2019 *[rule 41A inserted vide Notification No.[173-F.T. dated 29.01.2019](#)]*

- ❖ **Order of utilisation of ITC changed:**

- **Existing provision (from 01.07.17 to 31.01.19):** For payment of State tax/central tax, ITC of State tax/central tax has to be debited first, then ITC of integrated tax can be debited
- **New provision:** ITC of State tax/central tax shall be utilised for payment of integrated tax or State tax/central tax, only after the ITC of integrated tax has first been utilized fully towards such payment. [New section 49A inserted w.e.f. 01.02.2019 vide Notification No.[2227-L dated 18.12.2018](#)]

Important Changes in the IGST Act in relation to export of services and place of supply made by IGST (Amendment) Act, 2018

- ❖ **Export of services [sec. 2(6)(iv)]:**

- **Original provision [01.07.17 to 31.01.19]:** One of the condition to be satisfied for export of services is that the payment has to be received in convertible foreign currency
- **Changed provision from 01.02.19:** Now even if payment is received in Indian rupees wherever permitted by the RBI, if other conditions are satisfied such supply would be treated as export of services

- ❖ **Place of supply:**

- **Original provision [01.07.17 to 31.01.19]:** POS of services by way of transportation of goods to a registered person, shall be the location of such person, and that to an unregistered person, shall be the location at which such goods are handed over for their transportation. *[section 12(8) of the IGST Act]*
- **Changed provision from 01.02.2019:** Where the transportation of goods is to a place outside India, POS shall be the place of destination of such goods *[proviso added to section 12(8)]*
- **Original provision [01.07.17 to 31.01.19]:** Subject to other conditions, **POS of services** supplied in respect of **goods temporarily imported into India for repairs** is the **location of the recipient**

- **Changed provision from 01.02.2019:** Now, **POS of services** supplied in respect of **goods temporarily imported** into India for **repairs or for any other process or treatment** also is the **location of the recipient** [Second proviso to section 13(3)(a) substituted]

12.18.5. Rates of taxes under GST:

- ❖ **Rates of Goods:** Since the advent of GST the rate schedules for both goods as well as services have been amended time to time particularly in 2017-18 and 2018-19. A book named “GST Rates of Goods” has been published in August 2019 by the Directorate of Commercial Taxes, WestBengal with rate details updated till 01.08.2019. As this book contains both changed rates as well as the original rates, an auditing authority should consult this book for determining correctness of classification of goods by an Auditee.
- ❖ **Customs Tariff Code:** For classification of goods customs tariff code is very important. A consolidated list of Customs Tariff Code is available under GST-PPU/WB tab in the websites of the Directorate. Please click [Consolidated Customs Tariff Code 2016-17](#).
- ❖ **Rates of Services:** For the tax rates rates of Services, consolidated documents on the various notifications issued regarding Schedules of taxable services, NIL rated services, services on which tax is payable under reverse charge basis etc. have been prepared which are available under GST-PPU/WB tile in both the internal website as well as external websites of the Directorate.

12.19. Annexure 19: Due dates and extension of due dates of submission of various returns

12.19.1. Financial Year (2017-2018)

a. Return type – Form GSTR - 3B

Month	Due date/Extended due date	Submitted on	Days of delay	Late fee payable per day	Total Late fee payable	Remarks
July, 17	25.08.2017 ¹					Waived (CGST Notification No, 28/2017-CT, dt. 01.09.2017)
July, 17	28.08.2017 ²					
Aug'17	20.09.2017					Waived (CGST Notification No, 50/2017-CT, dt. 24.10.2017)
Sep'17	20.10.2017					

Oct'17	20.11.2017					@Rs. 25/day (Where total amount of tax payable in a return is nil, Rs. 10/day) subject to max of Rs. 5000/- under each of the GGST Act from the due date of return, till the date on which return is filed. <i>(CGST Notification No, 64/2017-CT, dt. 15.11.2017)</i>
Nov'17	20.12.2017					
Dec'17	22.01.2018					
Jan'18	20.02.2018					
Feb'18	20.03.2018					
Mar'18	20.04.2018					
Total late fee payable						
Total late fee paid						
Late fee due						
1.for all registered dealers other than those specified in 2 below. [06-C.T./GST dt. 21.08.17] 2.for registered dealers entitled to avail ITC and opting to file GST TRAN-1 (conditions apply) [05-C.T./GST dt. 17.08.17]						

a.1 Conditional waiver of late fee for delayed furnishing of return in Form GSTR-3B

Tax period	Late fee waived	Condition
October, 2017	Waived in full	❖ Return in FORM GSTR-3B was submitted but not filed on the common portal, after generation of the application reference number. <i>[CGST Notification No. 41/2018-CT, dt. 04.09.2018]</i>
July, 2017 to March, 2018	Waived in full	❖ If the said return is furnished between the period from 22nd December, 2018 to 31st March, 2019. <i>[CGST Notification No. 76/2018-CT, both dt. 31.12.2018]</i>

a.2 Conditional waiver of late fee for delayed furnishing of return in Form GSTR-3B

Tax period	Return in GSTR-3B furnished between 01.07.2020 to 30.09.2020	Return in GSTR-3B furnished after 30.09.2020
July, 2017 to March, 2018	<ul style="list-style-type: none"> ❖ Maximum Rs. 250/- under each of the GGST Act for each return period. ❖ Nil where the total amount of tax payable in the return for a tax period is nil. 	<ul style="list-style-type: none"> ❖ @ Rs. 25 / day subject to maximum of Rs. 5000/- under each of the GGST Act from the due date of return, till the date on which return is filed ❖ Where total amount of tax payable in a return is nil: @ Rs. 10 / day subject to a maximum of Rs. 5000/- under each of the GGST Act from the due date of return, till the date on which return is filed [CGST notification no. 52/2020-CT, dt. 10.07.2020]

b. Return type – Form GSTR - 9

Period	Due date	Submit on	Days of delay	Late fee payable per day	Total Late fee payable
2017-18	07.02.2020 [01/2020- C.T./GST, dt. 18.03.2020]			Rs. 100 per day max. quarter per cent. of turnover in the state	
Total late fee payable					
Total late fee paid					
Late fee due					

c. Form GSTR - 1

Period (Month / Quarter)	Due date	Submitted on	Days of delay	Late fee payable per day	Total Late fee payable
Jul'17	31.10.2018			@Rs. 25/day (Where total amount of tax	
Aug'17	31.10.2018				

Sep'17	31.10.2018			payable in a return is nil, Rs.10/day) subject to max of Rs. 5000/- under each of the CGST Act from the due date of return, till the date on which return is filed. (CGST Notification no. 04/2018-CT dt. 23.01.2018)	
Oct'17	31.10.2018				
Nov'17	31.10.2018				
Dec'17	31.10.2018				
Jan'18	31.10.2018				
Feb'18	31.10.2018				
Mar'18	31.10.2018				
Total late fee payable					
Total late fee paid					
Late fee due					

Amnesty: No late fee is payable for the registered persons who failed to furnish FORM GSTR-1 for the months/quarters from **July, 2017 to September, 2018** by the due date **but furnishes FORM GSTR-1 between the period from 22nd December, 2018 to 31st March 2019** [CGST Notification no. 75/2018, dt. 31.12.2018]

No late fee is payable for the registered persons who failed to furnish FORM GSTR-1 for the months/quarters from **July, 2017 to November, 2019** by the due date **but furnishes FORM GSTR-1 between the period from 19th December, 2019 to 17th January, 2020** [CGST Notification no. 74/2019-CT dt. 26.12.2019 read with CGST Notification no. 04/2020, dt. 17.01.2020]

12.19.2. Financial Year (2018-2019)

a. Return type – Form GSTR - 3B

Month	Due date / Extended due date	Submit on	Days of delay	Late fee payable per day	Total Late fee payable
Apr'18	22.05.2018			@Rs. 25/day (Where total amount of tax payable in a return is nil, Rs.10/day)subject	
May'18	20.06.2018				
Jun'18	20.07.2018				
Jul'18	24.08.2018				

Aug'18	20.09.2018			to max of Rs. 5000/- under each of the GGST Act from the due date of return, till the date on which return is filed. (CGST Notification no. 64/2017-CT, both dt. 15.11.2017)	
Sep'18	25.10.2018				
Oct'18	20.11.2018				
Nov'18	20.12.2018				
Dec'18	20.01.2019				
Jan'19	22.02.2019				
Feb'19	20.03.2019				
Mar'19	23.04.2019				
Total late fee payable					
Total late fee paid					
Late fee due					

a.1 Conditional waiver of late fee for delayed furnishing of return in Form GSTR-3B

Tax period	Late fee waived	Condition
April, 2018 to Sept, 2018	Waived in full	❖ If the said return is furnished between the period from 22nd December, 2018 to 31st March, 2019. [CGST Notification no. 76/2018-CT, dt. 31.12.2018]

a.2 Conditional waiver of late fee for delayed furnishing of return in Form GSTR-3B

Tax period	Return in GSTR-3B furnished between 01.07.2020 to 30.09.2020	Return in GSTR-3B furnished after 30.09.2020
April, 2018 to March, 2019	❖ Maximum Rs. 250/- under each of the GGST Act for each return period. ❖ Nil where the total amount of tax payable	❖ @ Rs. 25 / day subject to maximum of Rs. 5000/- under each of the GGST Act from the due date of return, till the date on which return is filed ❖ Where total amount of tax payable in a return is nil:

	in the return for a tax period is nil. <i>[CGST notification no. 52/2020-CT, dt. 10.07.2020]</i>	@ Rs. 10 / day subject to a maximum of Rs. 5000/- under each of the GGST Act from the due date of return, till the date on which return is filed
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b. Return type – Form GSTR 9

Period	Due date	Submit on	Days of delay	Late fee payable per day	Total Late fee payable
2018-19	31.12.2020 [12/2020-C.T./GST, dt. 04.11.2020]			Rs. 100 per day max. quarter per cent. of turnover in the state	
Total late fee payable					
Total late fee paid					
Late fee due					

c. Form GSTR - 1

Period (Monthly/Quarterly)	Due date	Submitted on	Days of delay	Late fee payable per day	Total Late fee payable
Apr'18	31.10.2018			@Rs.25/day (Where total amount of tax payable in a return is nil, Rs.10/day) subject to max of Rs. 5000/- under each of the GGST Act from the due date of return, till the date on which return is filed. <i>(CGST Notification no. 04/2018-CT, dt. 23.01.2018)</i>	
May'18	31.10.2018				
Jun'18	31.10.2018				
Jul'18	31.10.2018				
Aug'18	31.10.2018				
Sep'18	31.10.2018				
Oct'18	11.11.2018				
Nov'18	11.12.2018				
Dec'18	11.01.2019				
Jan'19	11.02.2019				
Feb'19	11.03.2019				
Mar'19	11.04.2019				
Apr-Jun 2018	31.10.2018				
Jul-Sept 2018	31.10.2018				

Oct-Dec 2018	31.01.2019				
Jan-Mar 2019	30.04.2019				
Total late fee payable					
Total late fee paid					
Late fee due					

Amnesty:

No late fee is payable for the registered persons who failed to furnish FORM GSTR-1 for the months/ quarters from **July, 2017 to September, 2018** by the due date **but furnishes FORMGSTR-1 between the period from 22nd December, 2018 to 31st March 2019** [CGST Notification no. 75/2018, dt. 31.12.2018]

No late fee is payable for the registered persons who failed to furnish FORM GSTR-1 for the months/ quarters from **July, 2017 to November, 2019** by the due date **but furnishes FORMGSTR-1 between the period from 19th December, 2019 to 17th January, 2020** [CGST Notification no. 74/2019-CT dt. 26.12.2019 read with CGST Notification no. 04/2020, dt. 17.01.2020]

12.19.3. Financial Year (2019-2020)

a. Return type – GSTR 3B

	Due date	Due date (Aggr. T.O. up to Rs. 5 Crore)	Submit on	Days of delay	Late fee payable per day	Total Late fee payable
Apr'19	20.05.2019				@Rs. 25/day (Where total amount of tax payable in a return is nil, Rs.10/day) subject to max of Rs. 5000/- under each of the GGST Act from the due date of return, till the date on which return is filed.	
May'19	20.06.2019					
Jun'19	20.07.2019					
Jul'19	22.08.2019					
Aug'19	20.09.2019					
Sep'19	20.10.2019					
Oct'19	20.11.2019					
Nov'19	23.12.2019					
Dec'19	20.01.2020					

Jan'20	22.02.2020	24.02.2020			(CGST Notification no. 64/2017-CT, dt. 15.11.2017)	
Feb'20	20.03.2020	24.03.2020				
Mar'20	20.04.2020	24.04.2020				
	Total late fee payable					
	Total late fee paid					
	Late fee due					

a-1 Conditional waiver of late fee for delayed furnishing of return in Form GSTR-3B

Tax period	Return in GSTR-3B furnished between 01.07.2020 to 30.09.2020	Return in GSTR-3B furnished after 30.09.2020
April, 2019 to March, 2020	<p>❖ Maximum Rs. 250/- under each of the GGST Act for each return period.</p> <p>❖ Nil where the total amount of tax payable in the return for a tax period is nil. [CGST notification no. 52/2020-CT, dt. 10.07.2020]</p>	<p>❖ @ Rs. 25 / day subject to maximum of Rs. 5000/- under each of the GGST Act from the due date of return, till the date on which return is filed</p> <p>❖ Where total amount of tax payable in a return is nil: @ Rs. 10 / day subject to a maximum of Rs. 5000/- under each of the GGST Act from the due date of return, till the date on which return is filed</p>

b. Return type – Form GSTR - 9

Period	Due date	Submit on	Days of delay	Late fee payable per day	Total Late fee payable
2019-20	31.12.2020			Rs. 100 per day max. quarter per cent. of turnover in the state	
Total late fee payable					
Total late fee paid					
Late fee due					

c. Form GSTR - 1

Period (Month / Quarter)	Due date	Submit on	Days of delay	Late fee payable per day	Total Late fee payable
Apr'19	11.05.2019			@Rs. 25/day (Where total amount of tax payable in a return is nil, Rs.10/day) subject to max of Rs. 5000/- under each of the GGST Act from the due date of return, till the date on which return is filed. <i>(CGST Notification no. 04/2018-CT, dt. 23.01.2018)</i>	
May'19	11.06.2019				
Jun'19	11.07.2019				
Jul'19	11.08.2019				
Aug'19	11.09.2019				
Sep'19	11.10.2019				
Oct'19	11.11.2019				
Nov'19	11.12.2019				
Dec'19	11.01.2020				
Jan'20	11.02.2020				
Feb'20	11.03.2020				
Mar'20	11.04.2020				
Apr-Jun 2019	31.07.2019				
Jul-Sept 2019	31.10.2019				
Oct-Dec 2019	31.01.2020				
Jan-Mar 2020	30.04.2020				
Total late fee payable					
Total late fee paid					
Late fee due					

Amnesty:

1. **No late fee is payable** for the registered persons who failed to furnish FORM GSTR-1 for the months/ quarters from **July, 2017 to September, 2018** by the due date **but furnishes FORM GSTR-1 between the period from 22nd December, 2018 to 31st March 2019** [CGST Notification no. 75/2018, dt. 31.12.2018]
2. **No late fee is payable** for the registered persons who failed to furnish FORM GSTR-1 for the months/ quarters from **July, 2017 to November, 2019** by the due date **but furnishes FORMGSTR-1 between the period from 19th Dec, 2019 to 17th January, 2020** [CGST Notification no. 74/2019-CT dt. 26.12.2019 read with CGST Notification no. 04/2020, dt. 17.01.2020]
3. **No late fee is payable** for the registered persons who failed to furnish FORM GSTR-1 for the month **March, 2020** and for the quarter **Jan-Mar 2020** by the due date **but furnishes FORMGSTR-1 on/before 10.07.2020 and 17.07.2020** respectively. [CGST Notification no. 53/2020-CT dt. 10.07.2020 read with CGST Notification no. 04/2020, dt. 17.01.2020]

12.20. Annexure 20: Ratio Analysis & Trend Analysis-

The relative values of one data field when compared with another could help to detect potential errors or areas of non-compliance. It also helps to detect wrong Input Tax Credit availed, wrong valuation, claiming of input tax credit on inputs used in exempted goods / services, availment of ITC without receipt/actual use of input, etc.



Example 1

Audit Officer finds that the RTP (Auditee) has a tax liability of Rs. 72 lakh out of which Rs. 70 lakh has been paid upon setting of ITC from his credit ledger and only Rs. 2 lakh has been paid in cash.

In this case, the Officer should apply the ratio of [ITC availed : Total tax paid through Electronic cash ledger + tax paid through Electronic credit ledger].

In this case,

The result is $70/(2+70) = 70/72 = 0.972$, i.e. 97.2%.

The result on such higher side may be of various reasons including accumulation of high stock resulting in accumulation of ITC.

But, if the RTP is a reseller without having significant warehouses, or if the goods dealt in are perishable in nature, the issue of stock holding will not stand good.

This should ring a bell in the audit officer's head that there may be a case of:

- wrong availment of input tax credit on goods/services in excess including claiming of input tax credit on inputs used in exempted products.
- under valuation of goods as value-addition should involve adequate difference between the two.
- or suppression of sales.

Example 2

The Auditee deals with both exempted goods and taxable goods. Total supply in the audit period is of Rs. 10 crore out of which exempted supplies amount to Rs. 6.5 crore.

In this case, the Audit Officer should apply the ratio of [Value of exempted outward supply: value of total outward supplies made]. This ratio helps to identify:

- outward supplies made in the guise of exempted supplies.
- supply of essential parts of outward supply as exempted supplies.
- under valuation of outward supplies by overvaluing exempted outward supply

As in this case, the ratio comes out as 0.65 or 65%.

If the audit officer is satisfied that the figures pertain to actual supply of exempted goods, it should be thoroughly examined whether the supplier has availed any ITC on inputs related to such exempted supplies. In such case, including cases of availing common credit, proportionate ITC is to be reversed.

Example 3

Ratio analysis for over a continuous period, say 3 years gives a holistic picture of the trend of the RTP. Taking an example, if the ratio of [Amount of input tax

credit availed on inward supply : Total tax liability on outward supply] is studied over a period of 3-4 years, and if the ratio is increasing there is the possibility of the following irregularities:-

- Rendering of unaccounted outward supply;
- Under valuation of outward supply;
- Showing outward supply income as non-taxable outward supply income.
- Inflation of inward supply credit.

Some of the indicative ratio analysis and trend analysis as follows may be carried out by the audit officer:

RATIO ANALYSIS

I. BASED ON RETURN DATA

Sl.	RATIO	2017-18	2018-19	2019-20
i)	Inward supply value : outward supply value			
ii)	EWB value of inward supply : EWB value of outward supply			
iii)	Non-GST Turnover : Total Turnover			
iv)	Exempted Supply value: Total Turnover			
v)	Value of Goods Sent for Job Work : Total Turnover			
vi)	ITC on inward supply : Total inward supply			
vii)	Total ITC available : Total GST payable			
viii)	ITC availed on capital goods purchased during the years : addition to capital goods			
ix)	ITC availed on Capital Goods : Total ITC availed			
x)	Transitional ITC availed : ITC availed in the year			
xi)	Tax payable: Total turnover			
xii)	Total Ineligible & Reversed ITC : Total ITC Availed			
xiii)	Tax payment by ITC : Total Tax paid			

xiv)	Tax paid in cash : Tax paid on setting off ITC			
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II. BASED ON FINAL ACCOUNTS DATA

Sl.	RATIO	2017-18	2018-19	2019-20
i)	Inward supply value : outward supply value			
ii)	Other income : outward supplies			
iii)	Gross profit : Gross revenue			
iv)	Power consumption/fuel consumption (Qty) : production quantity as per P&L Account			
v)	Production of Goods : Scrap			
vi)	Quantity of Actual production : installed capacity			
vii)	Cost of Major input: Value of outward supplies			
viii)	Consumables value: Value of taxable supplies.			

TREND ANALYSIS

I. GENERAL TRENDS

Sl.	PARTICULARS	2017-18	2018-19	2019-20
a)	Total Turnover			
b)	Total Zero Rated (Exports) Supply,			
c)	Supply to SEZ			
d)	Deemed Export			
e)	Total Exempted Supply			
f)	Total NIL rated Supply			
g)	Total Non-GST Supply			
h)	Total Taxable Outward Supply			
i)	Total Inward Supply subject to Reverse Charge			

j)	Total Tax payable on Outward Supplies			
k)	Additional Tax paid by DRC-03 (Annual Return)			
l)	GST of a particular goods/service vis-a-vis overall growth of that industry. (%)			
m)	Trend in proportion of value of exempted goods/services to the total value of goods/services. (%)			
n)	Gross operating profit			
o)	GST paid by debit in Electronic Cash ledger vis-à-vis GST paid by debit in Electronic Credit Ledger			
p)	GST paid by debit in Electronic Credit ledger vis-à-vis Total GST paid			
q)	Value of outward supplies made to related person vis-a-vis total value of supplies. (%)			
r)	Inter unit transfers /sales to related party as per Balance Sheet			
s)	Total refund claimed			
t)	Total refund sanctioned			
u)	Demand raised (if any)			
v)	Value of EWB outward			
w)	Value of EWB inward			

II. ANALYSIS FOR MANUFACTURER OF GOODS

Sl.	PARTICULARS	2017-18	2018-19	2019-20
a)	Cost of production of major finished Goods (as per cost record)			
b)	Quantity of inputs consumed in the production of Finished Goods			
c)	Value of inputs consumed in the production of Finished Goods			
d)	Production of finished goods compared to outward supplies			
e)	Production of scrap compared to Production of finished goods			
f)	Production of taxable outward supplies vis-a-vis exempted supplies			
g)	Movement of inward supplies vis-a-vis total production			

h)	Movement of inward supplies for goods manufactured on job-work vis-a-vis total production			
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III. ANALYSIS FOR MANUFACTURER AS WELL AS RESELLER OF GOODS

Sl.	PARTICULARS	2017-18	2018-19	2019-20
a)	Difference in ITC taken & ITC available on purchase of raw materials			
b)	Job work income as per P&L Account or Trial balance			
c)	Movement of inward supplies vis-a-vis total outward supply			

IV. ANALYSIS FOR SUPPLIER OF SERVICES

Sl.	PARTICULARS	2017-18	2018-19	2019-20
a)	Difference in ITC taken & ITC available on input services			
b)	Cost of procurement of major services provided (as per books)			

V. ITC TREND ANALYSIS

Particulars	2017-18	2018-19	2019-20
Opening balance			
Total ITC availed on Inputs			
Total ITC availed on Input Services			
Total ITC availed on Capital Goods			
Total ITC received from ISD			
TRAN credit claimed			
Total ITC eligible & availed			
Ineligible ITC, Not availed			

Credit utilized for payment of tax (Debit entries in e-credit ledger)			
ITC reversed			
Closing balance			

VI. TURNOVER TREND ANALYSIS

Year	Turnover as per P&L A/c or Trial Balance	Other Income	Value of Taxable Supplies	Total GST paid	GST paid in cash	GST paid by setting of ITC
2017-18						
2018-19						
2019-20						

12.21. Annexure 21: Study of Profit and Loss Account and Balance sheet-

Sl. No.	Examples of some types of Account that require thorough examination	Remarks
1.	Introductory Director's Report and Auditor's Notes	<p>The Annual Report prepared by a company <i>inter alia</i> contains the following:</p> <p>a) Director's Report: This gives information like overall financial results of the company, important happenings during the year and future plans of the company. Information in respect of advance received and order booked. Some of the important happenings like fire and loss of material in the company, details of new products launched, change in the marketing pattern etc. reported in the report may be useful to the auditor. It will help to know the business model of the company. It may contain certain details such as:</p> <ul style="list-style-type: none"> ➤ Classification of goods and services dealt with. It will help audit officers to determine applicable rate of tax. So, audit officer shall have adequate knowledge in classification of goods and services disclosed by the Auditee. Incorrect classification of goods or services can lead to incorrect GST payment. ➤ Foreign Exchange earned during the year; ➤ Foreign Exchange paid during the year, e.g. may be on account of taxable services received by the Auditee where he is liable to pay GST under reverse charge mechanism.

- Advance received. Audit officer should then concentrate on operational liability (current & recurring) where such advance is accounted for.
- Information on the operations carried out by the Auditee during the year under report. This may help in finding the exact nature of services provided by the Auditee.
- It may show some of the Directors having commission and some having received sitting fees. Are these receipts liable to GST? If, yes what will be the value of supply? Besides sitting fees if other facilities like car, flat, club membership etc are provided whether all such will be part of consideration or not? Audit officers should follow provisions of sec 15 read with rule 27 of the GGST Act, 2017.
- If any Director helped the company by standing as a guarantor in taking a loan whether that will be treated as supply or not?
- We may get information in respect of Seconded by Foreign entity to render services to an Indian Entity not as employee of Indian entity. This importation of service is treated as supply as per entry no.4 of Sch.I appended to section 7 of the GGST Act, 2017.

b) Auditor's Report:

- These may be reports of Statutory auditor or Internal auditor or C & AG Audit. In the case of statutory audit, a separate report under CARO (Companies Auditor's Report Order, 2003/2015) is required to be given. The same should be studied to find out any qualified/adverse opinion given by the auditors which may have impact on GST liability. For example, Auditor may report that goods meant for outward supply, available in stock were not reconciled or provision for obsolete items have not been made during the year. Tax auditor may like to examine such opinion in detail.
- **Company Auditor's Report Order (CARO)** may be studied to find out whether the fixed assets records have been maintained properly or whether physical verification of inward supply and goods meant for outward supply was under taken and whether any discrepancies were noticed on such verification or whether the company has maintained proper records for unserviceable or damaged goods. It also shows disputed tax liabilities separately for Customs, Income Tax, GST etc. Cases booked under Income Tax may be examined to find out any implication on GST.
- In the case of Public Sector unit, C & AG report and comment of the company available in the Annual Report should be examined.
- **Disclosure of accounting policies followed in the presentation of financial statement** – Auditor's Notes may contain accounting standards with the disclosure of significant accounting policies followed in the preparation and presentation of financial statements. Such policies often give additional valuable information, e.g. The Auditee may disclose revenue as per AS 7, where the principles of accrual system of revenue are acknowledged. But, the Auditee for GST purpose

		may disclose supply value from works contract on certified bill basis.
2.	P & L A/c	<p>Profit & Loss Account:</p> <p>The Profit and Loss Account shows major items of expenditure and income. This is one of the important documents used during desk review to find out the overall working of the unit. In the main body of the Profit & Loss Account, only major heads of expenditure and income are given and the constituents of these headings are given in a separate annexure. The said annexure should be studied in detail.</p> <p>P/L account may be studied for the following purposes:</p> <ul style="list-style-type: none"> ➤ The most important step of audit is to determine the Total Turnover in the State and the tax liability of the Auditee. This information in the P&L A/c may be available as Sale or Operating Revenue or in any other similar nomenclature. However, this part denotes only the operating income, i.e. income from the main activity of business. ➤ The Auditee may have other incomes like scrap, insurance claims receipt, profit on sale of fixed assets, commission received, erection and commissioning, freight and insurance recovered etc. which may be examined in detail to find out the exact nature of such incomes and whether these have any bearing on the valuation or whether these are liable for GST. They should carefully study the nature of business income – some of which may have accrued from the supply of taxable services and the balance from the supply of non-taxable services. The exact nature of these services may be determined from the supporting documents such as vouchers, bills or contracts. ➤ The primary documents to be examined in this case are: Supply Invoices; Bank Statement; Debtors Ledger; Party-wise customer list. To ascertain the veracity of the figure reported in the Sale A/c vis-à-vis the Turnover disclosed in the Returns, additional documents like Sale contracts, Delivery Challan, Material Transfer Notes may be examined.

3.	General Ledger A/cs for various expenses	<p>Scrutiny of expenses ledger is very important for an Audit Officer as the expenditure accounts have direct impact on availment of ITC, valuation of finished goods and payment of GST on the taxable value, value of inward supply on which GST is pay able under Reverse Charge.</p> <p>(e.g. Expense Accounts: Purchase, Packing and Forwarding Expenses, Advertisement Expenses, Transportation/Freight Charges, Outward supply Expenses, Sale Promotion, benefits to employees, entertainment expenses etc.)</p> <p>The General Ledger may contain various accounts depending upon the scale of business of the Auditee. Hence, selection of account for scrutiny is an important task for an auditor. For this purpose, accounts should be selected from the Trial Balance (if available) which gives names of all the accounts maintained by a unit.</p> <p>While making the detail examination -</p> <ul style="list-style-type: none"> ➤ All the important Purchase accounts need to be checked to find out whether any rejection of raw material or short receipt of input have taken place which will have impact on the ITC availed by the Auditee. ➤ Raw material consumption account may also be verified to find out with regard to writing off obsolete material. ➤ Expenditure accounts where recovery of expenses is possible like Packing and Forwarding Expenses Account, Advertisement Expenses Account, Transportation/Freight Charges Account, Outward supply Expenses Account etc. may be scrutinized in order to find out any recoveries being made from the customer. ➤ From the Trial Balance, the income accounts (these types of accounts will have credit balances) should be selected for scrutiny and the exact nature of such income's accounts should be found out from the study of the documents mentioned in the relevant ledger accounts. Some of these accounts might have direct impact on the valuation of finished goods or it may also affect the GST liability.
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4.	Income Tax Audit Report	<p>The Tax Audit Report is given by Chartered Accountant. The said report is given in the form 3 CD and it is required to be enclosed along with the Income tax return filed by the taxable person.</p> <p>Depreciation statement as per the provisions of Income Tax Act enclosed with Tax Audit Report may be verified to confirm the correctness of availment of ITC on capital goods.</p> <p>As per Clause 27(a) of the said report, amount of ITC availed or utilized during the year and its treatment in the Profit & Loss Account and treatment of outstanding ITC in the account is required to be given. Tax Auditor may compare the said information with the information as per taxable value records.</p> <p>As per clause 35(a) to 35(c), details like opening stock, purchases, outward supply and closing stock of trading activities and in the case of manufacturing unit quantitative details or principal items of raw materials, finished goods and by-products showing opening stock, purchases, consumption, outward supply, closing stock, yield of finished goods, percentage of yield and shortages/excesses is required to be given. This information may be used by Tax Auditor to verify the input-output ratio. The reasons for excessive shortage/excesses and whether GST has been paid on the outward supply of raw material as reported in the tax audit report may be inquired into.</p>
6.	Internal Audit Report	<p>This is the report submitted by internal auditors appointed by the company which looks into day-to-day activities and the systems followed by the unit.</p> <p>This report can be used for cross verification of loss of any input, excess availment of ITC, collection of additional consideration. Also the implications on the past period for any short payment or non-payment of tax can be examined from this report.</p> <p>Internal Auditor also reports about stock verification and in case of shortages the ITC availment needs to be examined.</p>

7.	Fixed Asset Schedule [available in Balance Sheet]	<p>This schedule contains the details of addition, deletion to the asset and depreciation charged thereupon.</p> <p>The examination thereof has multiple impact – in terms of turnover arising out of miscellaneous income and reversal of ITC under certain conditions.</p> <p>An asset can be deleted upon various circumstances – it may lose its working condition and hence may be written off. In such case, it may yield a scrap value.</p> <p>Whether any consideration has been received in this case can be verified from the Other Income/Miscellaneous Income A/c. This will have an impact on the Turnover.</p> <p>An old asset may also be permanently transferred to any related or distinct person. In such case, the matter should be looked into from the angle of Schedule I of Sec 7 of the SGST/CGST Acts, 2017. In case ITC has been availed on such asset, such has to be reversed.</p> <p>Furthermore, running assets are depreciated in prescribed rates. In case depreciation has been charged on a value inclusive of GST, such ITC has to be reversed. Verification of the claim of depreciation on capital goods should be made from the Income tax return filed by the taxable person or from the Income Tax Audit Report (Form 3CD).</p> <p>There may also be possibilities of recording both expenses as well as income relating to a particular asset in the same account, thus affecting the net balance of such account. In this case, each Ledger Account for individual assets need to be checked to ascertain whether there are any sale or disposal or transfer of such asset hidden in such account. Presence of such may have impact on the tax liability of the Auditee.</p>
8.	Other Income/ Miscellaneous Income	<p>Other income/Miscellaneous Income as reported in the P & L A/c comprises of income from all those sources which do not form its operating revenue.</p> <p>A supplier in GST has its operational revenue generating from supply of goods or service or both.</p> <p>But there are other sources from which he may earn something more which is not booked under the A/c heads of Sales or Services or Revenue, as the case may be.</p> <p>Such incomes in a consolidated manner are known as Other incomes/Miscellaneous Income.</p> <p>Some major sources of other/miscellaneous income are income from:</p> <ul style="list-style-type: none"> • Sale of scrap • Receipt of insurance claim

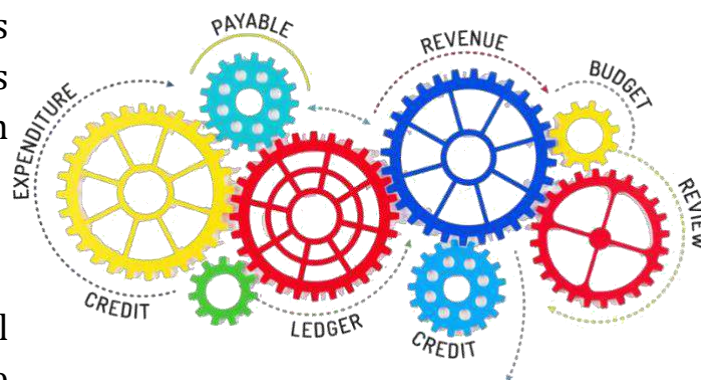
		<ul style="list-style-type: none"> • Profit on sale of fixed assets • Commission received • Penalty / demurrage/ compensation received from employee/customers/suppliers • Rental income • Interest from Bank • Interest from debtors for late payment • Revaluation gain on fixed assets • Gain on exchange rate • Discount received • Dividends • Freight and insurance recovered etc. <p>Many of such incomes are subject to GST such as sale of scrap or sale of fixed assets, as the nomenclature sale suggests. But there are many other account heads forming part of miscellaneous income (except a few) which also qualify as supply and should be forming a part of the GST Aggregate Turnover. Thus, these incomes are required to be examined in detail to find out the exact nature of such incomes and whether these have any bearing on the valuation or whether these are liable for GST.</p>
9	Un-billed revenue	<p>Un-billed revenue is actually recorded in the books of account and reflected in the financial statements, but in different accounting periods and it arises mainly in the context of supply of services. This arises from the concept of revenue recognition i.e. the question as to when should revenue in respect of a transaction or activity be recognized and recorded as such in the books of accounts and taken therefrom to the financial statements. Accounting Standard 9, issued by the Institute of Chartered Accountant of India, deals with revenue recognition and states that, generally:</p> <p><i>"Revenue from sales or service transactions should be recognised when the requirements as to performance are satisfied, provided that at the time of performance it is not unreasonable to expect ultimate collection. If at the time of raising of any claim it is unreasonable to expect ultimate collection, revenue recognition should be postponed."</i></p> <p>It may so happen that the terms of the contract stipulate that the invoice in relation thereto may be issued on the happening of a certain milestone, say the seventh day of the month following the month in which the work has been certified. But in such a case the revenue accrues on certification even though the invoice should be issued next month. If such an event were to happen in the last month of the financial year, the books of accounts and the financial statements would recognize the revenue on this count and the turnover declared in the financial statement would include this. However, since the invoice is issued in the next year, this turnover</p>

		would be reported in the GST return for the next year. Thus, for the purpose of reconciling the turnover declared in the returns for any year (say, Y1), the value of un-billed revenue in respect of the preceding year (Y-1) shall be added to the turnover declared in the financial statements of Y1. Similarly, the un-billed revenue as at the end of financial year Y1 should be deducted from the turnover declared in the financial statements of Y1. This information is also available in rows A and I of Table 5 in Part II of Form GSTR-9C. The exact amount of un-billed revenue as at the beginning and as at the end of any financial year can be verified from the financial of the relevant years; however, in respect of 2017-18, this exercise would have to be carried out separately for the period between April, 2017 to June, 2017 since this information may not be readily available from the financial statements as such.
10	Un-adjusted Advances	Un-adjusted Advances in respect of which GST has been paid during the financial year in accordance with the provisions of Section 12 and 13 of the Act also need to be added to (where such advances have been received during the <i>current</i> financial year) or deducted from (where such advances have been received during the <i>preceding</i> financial year) the turnover declared in the financial statements for the current financial year. This adjustment is necessary for reconciliation since GST liability on advances received has been discharged in the year in which such advances has been received while the revenue in respect of the said advances has been recognized in the books of accounts/financial statements of either the preceding or succeeding year;
11	Other adjustments	Other adjustments are also required to be carried out to the turnover as declared in the books of accounts/ financial statements drawn from such books of accounts in order to reconcile the said turnover with the turnover declared in the GST returns. Such adjustments have been listed at serial numbers 5E to 5O, <i>except</i> serial numbers 5H and 5I thereof (which have already been discussed above, of the Reconciliation Statement in Form GSTR-9C. It may be noted that although, in accordance with the provisions of section 35(5) read with section 44(2) of the Act, the reconciliation statement may not be required in cases where the annual turnover is below Rs. 2 crores, the aforesaid adjustments will apply to every taxpayer the turnover declared by whom in his returns is to be compared with the turnover declared in his books of accounts and the financial statements drawn on the basis of such books of accounts. The adjustments noted here in this para, and the preceding paras, should be recorded separately in a Tabular manner showing clearly the nature of the adjustments (e.g. unbilled revenue, credit notes, advances, etc.), the value as per the returns, the value as reflected in the books of accounts or financial statements and the difference, if any. That there will be differences

		<p>in the turnover as per the return and the turnover as per the books/financial statements is inevitable and the two can be reconciled within the framework of preparation of financial statements and maintenance of books of accounts and the framework of the GST Law. However, where the turnover as declared in the returns does not reconcile with that recorded in the accounts even after carrying out the aforesaid adjustments, the reasons for such difference may be examined in the light of the evidence and records presented to the auditor and explanations may be sought from the taxpayer. The tax implications of such un-reconciled differences may be worked out, the workings and documentation should be made part of the working papers/file/record of audit and should form part of the Audit Officer's report which is also made available to the taxpayer.</p>
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12.22. Annexure 22: Indian Accounting Standard in the perspective of GST:

Indian Accounting Standards (Ind ASs) are Standards prescribed under Section 211(3C) of the Companies Act, 1956. This Standard prescribes the basis for presentation of general purpose financial statements to ensure comparability both with the entity's financial statements of previous periods and with the financial statements of other entities. It sets out overall requirements for the presentation of financial statements, guidelines for their structure and minimum requirements for their content.



Accounting Standard

There are various fields where the manner of the accounting and provisions under GST may vary. GST in India is a paradigm shift with complete business change, which impacts finance, accounting and reporting functions.

The following illustrative examples are for primary understanding before conducting audit and there could be many more cases of differences in the turnovers between the financial statements and the GST Law when the auditor will audit in practical field.

1. AS 1 / IND AS 1: DISCLOSURE OF ACCOUNTING POLICIES -

AS 1 deal with the disclosure of significant accounting policies followed in the preparation and presentation of financial statements. It states that an enterprise needs to disclose significant accounting policies followed by it to prepare and present its financial statements.

The following are a few examples of the areas in which different accounting policies may be adopted by different enterprises.

- a) Methods of depreciation, depletion and amortization
- b) Treatment of expenditure during construction
- c) Conversion or translation of foreign currency items
- d) Valuation of inventories
- e) Treatment of goodwill
- f) Valuation of investments
- g) Treatment of retirement benefits
- h) Recognition of profit on long-term contracts
- i) Valuation of fixed assets
- j) Treatment of contingent liabilities.

e.g.1: Supplies on behalf of the principal are not reflected in the financial statements of the agent and only commission is shown as the revenue of the agent. Under the GST Law, such turnover would be treated as part of the agent's turnover also [Ref: Sch I under sec 7].

e.g.2: Disposal of business assets without any consideration - Suppose assets of a company are damaged due to flood. The company claimed insurance and also received the claim amount. The company disposed of such damaged assets. If no consideration is received on such disposal of business asset then also it will be considered as sale of assets in GST if input tax credit has been availed on such business assets [Ref: Entry no. 1 of Sch I under sec 7].

e.g.3: Other income from penal interest -

The interest may be for various reasons like bank interest against deposit, penal interest received for payment received beyond interest free credit period, etc. So, when examining such other income, the audit officer should check whether such interest is taxable or exempted. In the present case interest received from bank against deposit is exempted but interest received from the recipient of goods

and/or services for late payment is taxable if the supplied goods and/or services were taxable [Ref: sec 15(2)(d)].

e.g.4: Sometimes Auditee may prepare his final statement by showing certain income in different head of expenses. The following are a few examples of expenses in which supply may be involved-

- a) Printing & Stationery,
- b) Repairing of office and godown,
- c) Repairing of furniture & Fixture,

For example, the Auditee incurred expenses for purchase of office stationery and at the same time also received some sale proceeds against sale of old office stationeries. This sale proceeds may be accounted as other income or may be treated as credit entry in the printing & stationery head. So, the audit officer should check such expenses account to identify whether any supply is also clubbed in such expenses account or not.

e.g.5: Accrual accounting: The Auditee may disclose revenue as per Accounting Standard 7 (AS 7), where the principles of accrual system of revenue are acknowledged. But, the Auditee for GST purpose may disclose supply value from such works contract on certified bill basis. In this situation there may be difference in turnover as per books and as disclosed in GST return. While dealing with these cases the audit officer should know the exact provisions of time of supply and time limit to issue tax invoice to ensure whether there is any under reporting of supply value or not [Ref: Sec 13, Sec 31 and Rule 47].

e.g.6: As per Ind AS, excise duty is included in value of supply but, GST is not included [Sec 15(2)(a) of GGST Act]. For the first three months of 2017-18 revenue would be presented at Gross for Excise Less Excise Duty paid, and for the subsequent period it would be shown only the net.

2. AS 2 / IND AS 2: VALUATION OF INVENTORY –

As per AS-2 the costs of purchase of inventories comprise the purchase price, import duties and other taxes (other than those subsequently recoverable by the entity from the taxing authorities), and transport, handling and other costs directly attributable to the acquisition of finished goods, materials and services. Trade discounts, rebates and similar items are deducted in determining the costs of purchase.

In the GGST Act several provisions are there for the availment of input tax credit and refund of input tax credit in specified situations. Thus, to the extent credit is available or refund is available, it would not form part of the cost of inventory. But, in following situations input tax is not available for credit:

- (i). Input / input services /capital goods are used for other than business purposes.
- (ii). Tax paid on inward supplies by the composition tax payers.
- (iii). Restricted credits u/s 17(5) of the GGST Act;
- (iv). Depreciation claimed on tax element;
- (v). Input/input services/capital goods used for exempted supply.
- (vi). Any other ineligible input tax credit.

Thus, a systematic evaluative process is required to determine “what” credit is claimed and “what is” part of the cost of inventory as per the applicable accounting standard.

e.g.1: Goods and or services are procured where basic value is Rs. 1,00,000/-and tax paid @ 18% is of Rs. 18,000/-. Now, if ITC is available for set off against this inward supply, the cost would be recorded to the tune of Rs. 1,00,000/- only in the books whereas if availability of ITC is restricted u/s 17(5), the entire bill value of Rs. 1,18,000/- will be recorded as cost in the books as per AS 2.

e.g.2: A proprietor of a business having purchased face-masks distributes some to his office staffs and keeps a few for his home consumption. In that case, as per the AS2, the cost of such goods for business use as well as for personal use cost needs to be segregated keeping in mind that ITC is not available for goods used for personal use. Accordingly, the cost of goods is to be calculated and recorded in the books.

3. AS 3 / IND AS 7: CASH FLOW STATEMENTS –

The AS 3 deals with the provision of information about the historical changes in cash and cash equivalents of an enterprise by means of a Cash Flow Statement which classifies cash flows during the period from operating, investing and financing activities.

The Cash Flow Statement reports the cash flows during the period for the following activities:

- (i). **Operating activity:** Principal revenue producing activities and other activities that are not investing or financing activities.
- (ii). **Investing activity:** Acquisition and disposal of long-term assets and other investments not included in cash equivalents.
- (iii). **Financing activity:** Activities that result in changes in the size and composition of the owners' capital (including preference share capital in the case of a company) and borrowing.

However, out of the operating activities as stated above, the principal revenue producing activities and other activities that are not investing or financing activities, i.e. sale of goods or services or both will have GST implication except in a case where purely money is dealt with. This is because money is not goods as per the GGST Act(s).

Again, relating to investing activities, permanent transfer or disposal of business assets where input tax credit has been availed on such assets have been termed as an activity to be treated as supply even if made without consideration.

Furthermore, where financing activities are concerned, services by way of (a) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services) and (b) *inter se* sale or purchase of foreign currency amongst banks or authorized dealers of foreign exchange or amongst banks and such dealers are exempted from GST.

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

So, acquisition of capital, taking a loan, payment/receipt of interest or dividend will not attract GST, but any service charge or /processing fee incurred at the time of a loan will attract GST.

e.g.1: A business firm receives Rs. 10,00,000/- as dividend from its investments in share capital. This will be reflected in the cash flow statement as per AS 3 but will not have any GST implication.

e.g.2: A business firm borrows Rs. 10 crore from the bank for its business expansion. It pays Rs. 10 lakh as processing charge and starts repaying the loan with principal and interest components. Both the inflow of fund (as loan) and outflow (as EMI and processing charge) will be reflected in the cash flow statement as per AS 3 out of which, the firm has to pay GST only on the service charge part.

4. AS 4 / IND AS 10: CONTINGENCIES AND EVENTS OCCURRING AFTER THE BALANCE SHEET DATE –

A contingency is a condition or situation, the ultimate outcome of which, gain or loss, will be known or determined only on the occurrence or nonoccurrence, of one or more uncertain future events.

A contingent asset is a *potential* asset that is associated with a potential gain. The asset and gain are contingent because they are dependent upon some future event occurring or not occurring.

For example, Company X has filed a lawsuit claiming for Rs. 1 crore from another Company Y. Even if it is probable that Company A will win the lawsuit it cannot be held as certain till a favorable judgment is declared. Thus, the probable gain of Rs. 1 crore is a contingent asset and a contingent gain. As such, it will not be recorded in Company A's general ledger accounts until the lawsuit is settled.

As per AS 4, a contingency gain is reported only when realized/earned. If a specific event causing such gain occurs and the gain is realized, then only the gain is disclosed.

In terms of GST, in this case, the contingent gain of Rs. 1 crore will be against services provided by Company X to Company Y as agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act and will be subject to GST only after actual occurrence of the event.

Similarly, contingent Liability is that kind of a liability which is non-existent as on date, but it may become an actual liability in the future.

For example, a customer has filed a suit against the company for compensation. This can become an actual liability in the future if the firm loses the case. However, as on date, it is not a liability as the outcome is not known today. Now, let us assume that the company's legal department thinks that the claimant has a strong case, and the business estimates a Rs. 2 lakh loss if the firm loses the case.

Since this liability is estimated, the firm will disclose this liability in its books as a foot note below balance sheet.

Product warranties given by the company can also be considered a contingent liability, since there is no certainty about the exact number of units that will be returned by customers for repair or replacement.

5. AS 5/ IND AS 8 : NET PROFIT OR LOSS FOR THE PERIOD, PRIOR PERIOD ITEMS AND CHANGES IN ACCOUNTING POLICIES –

AS 5 mainly deals with the following items:

- (i). Net Profit or Loss for the Period – These can be categorized into Profit/Loss from ordinary activities and from extraordinary activities.
- (ii). Prior Period Items - While preparing the financial statements, there are certain items which actually correspond to prior accounting periods. The income or losses due to these items are a result of error or omission in the financial statements of the prior period. By nature, these items are not frequent.

Now, Profit or loss from ordinary activities is such which arise in the normal course of business, i.e. they are a part of business and related activities. Examples: Profit/loss on sale of goods, services.

Profit or loss from extraordinary activities is such which do not arise under the normal course of business. These activities do not occur regularly. Example: – Profit on sale of fixed assets, Loss due to theft.

As, profit out of normal business activities have GST implication, the point of concern can be whether the goods/services dealt with are exempted or taxable and whether the turnover for which such profit element has been disclosed is at par with the Turnover on which GST liabilities have been fulfilled or not.

Similar is the case for profit out of extraordinary activities. Even if such activities are extraordinary, they will form a part of the Turnover for GST Audit and accordingly tax should be paid.

However, it may be stated that permanent transfer/disposal of fixed assets will be treated as supply even if made without consideration where input tax credit has been availed on such assets.

Again, availment of ITC will be blocked for goods lost, stolen, destroyed, written off.

So, any profit/loss arising out of extraordinary events will indicate a counter-check of such transactions from the GST angle.

Furthermore, there are certain estimates which are used while preparing the financial statements for any period. For example estimate on the useful life of machinery, estimate on the realizable value of an item in inventory. At times, these estimates are required to be revised due to any reason Accounting policies are the accounting principles and method of applying those principles while preparing the financial statements. A change in accounting policy should be undertaken only in two cases: (i) If the change is required by law or accounting standard; or (ii) If the change helps in better presentation of financial statements

Any change in an accounting policy which has a substantial/material effect is also disclosed as per AS 5.

e.g. 1, There was a theft of goods in the warehouse of ABC Pvt. Ltd. in the 2018-19 amounting to Rs. 40 lakh. The same has been detected in the year 2019-20 at the time of physical verification of inventory. The theft is not expected to take place on a frequent or regular basis and is not in a normal course of business of ABC Pvt. Ltd. Thus, the same qualifies to be an extraordinary item. Also, the theft took place in the financial year 2018-19 but was discovered in 2019-20. This suggests that although the loss related to prior period, it was not shown and the profit was overstated by such amount i.e. Rs. 40 lakh. While taking the effect of such loss in the current year, this is a prior period item. Thus, such loss will be disclosed in the current year's financial statements as per AS 5. Accordingly, appropriate ITC already enjoyed on such goods is to be reversed as per GST Laws.

e.g. 2, the rate of depreciation of a particular asset is changed from 7% to 10% due to a statutory change. The business firm charges depreciation in his books which is inclusive of GST. Such tax portion depreciated is not entitled for ITC. Accordingly in the changed scenario where the depreciation amount will be enhanced as per AS 5, the amount of ITC reversal will also increase as per the GST Laws.

6. AS 6 & 10/ IND AS 16: PROPERTY, PLANT AND EQUIPMENT (PPE) & DEPRECIATION ACCOUNTING AND ACCOUNTING FOR FIXED ASSETS -

As per AS 6 & 10, at the time of recognition, an item of property, plant and equipment (PPE) that qualifies for recognition as an asset should be measured at its cost.

Elements of cost include Purchase cost i.e. purchase price including import duties after deducting applicable discounts/rebates + Directly attributable and necessary costs to bring the asset to the location and condition necessary for it to be operating + costs of dismantling and restoration.

Some examples of directly attributable costs are – (i) Costs of employee benefits arising directly from the construction or acquisition of the item of PPE; (ii) Costs of site preparation; (iii) Initial delivery and handling costs; (iv) Installation and assembly costs; (v) Professional fees; (vi) Costs of testing whether the asset is functioning properly, after deducting the net proceeds from selling any items produced while bringing the asset to that location and condition (such as samples produced when testing equipment) Administration and other general overhead expenses are usually excluded from the cost of fixed assets because they do not relate to a specific fixed asset. However, in some circumstances, such expenses as are specifically attributable to the construction of a project or to the acquisition of a fixed asset or bringing it to its working condition, may be included as part of the cost of the construction project or as part of the cost of the fixed asset.

In this case, three sections of the GST laws, viz. S. 16(1), S. 16(3) and S. 17(5) need to be referred to. S. 16(1) of the GGST Act(s) mandates that to enjoy ITC on the asset (i.e. PPE in terms of the AS), the related goods or services or both need to be of the nature of being used or intended to be used in the course or furtherance of business. This is also to mention that business is also defined in the GST Laws.

At the same time, S. 17(5), lays down conditions where ITC is not available.

So, although an asset may be booked and accordingly depreciated as per AS 6 & 10, the same may not qualify for ITC.

e.g. Company X manufacturing processed food receives works contract service for constructing a warehouse. The same property will be recognized in the books as per AS 6 & 10, but ITC on the same will not be available as per Sec. 17(5) of the GGST Act(s).

Now, as per AS 6 & 10, the cost of Fixed Assets is the amount of cash paid or the fair value of the other considerations given to acquire an asset at the time of its acquisition or construction. Where applicable, that amount recorded as per the books may be the amount attributable to that asset when initially acquired in accordance with the specific requirement of other Indian accounting standard.

From the GST perspective, as per Section 16(3) where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income-tax Act, 1961, the input tax

credit on the said tax component shall not be allowed. In nutshell, Input tax credit shall not be allowed on the tax component of the cost of capital goods and plant and machinery if depreciation on such tax component has been claimed under the provisions of the Income Tax Act, 1961.

7. AS 7/ IND AS 11: CONSTRUCTION CONTRACT -

AS 7 Construction Contract describes the accounting treatment of the revenue and of a construction contract. There are different types of construction contract like fixed price contract, cost-plus contract etc. Fixed price contract is very common where the contract between the contractee and contractor is agreed against a fixed price. In some cases, there may be a clause of escalation in the contract which is mutually agreed for various reasons like increase of the cost of raw materials, delay in completion etc.

Divisible contract and indivisible contract: In divisible contract the elements of each contracts are clearly segregated. But in indivisible contract both the contractor and contractee agree lump-sum consideration for the entire contract. The word "Turnkey" is commonly used in the construction industry in case of indivisible contract. It represents an indivisible composite contract with "single point Turnkey responsibility". According to this single point turnkey responsibility the Contractor undertakes all the things necessary for the project implementation from design to procurement of materials and construction of Works, from inception to completion, and makes ready for the use of the Owner. Here, only one entity takes the total responsibility for design, supply and execution of a project and provides a fully-equipped facility, ready for operation "at the 'turn of the key'".

Revenue of a contract and costs of a contract are two important areas for the audit officers. Revenue of a contract includes agreed initial revenue as well as revenue from escalation. In cost plus remuneration or cost plus a margin type of agreement both the cost and the remuneration and percentage amount on such cost will form part of revenue. Even claim of incentive for completion of project before time or for various reasons will also form part of revenue. The treatment of such revenue may vary in GST.

e.g.1: A contractor received mobilization advance of Rs.50 lakh on 30.08.2017. it will form part of GST revenue. The time of supply is the date of raising receipt voucher or 30.08.2017 whichever is earlier. If, this advance is adjusted with any

RA bill within one year it will be treated as liability of the contractor though it is a revenue in GST.

e.g.2: A contractor maintaining books as per AS 7 booked revenue for FY 2017-18 for Rs.1.5 Cr for which revenue accrued on 25.11.2017 but no invoice is generated (commonly known as unbilled revenue). Whether it will be part of GST Turnover for the FY 2017-18?

Yes, it will be part of GST turnover. As per provisions of sec 13 read with sec 31 and rule 47 the time of supply of this service in this case is the date of payment or provision of service whichever is earlier. Provision of service is made on 25.11.2017. As per provisions of rule 47 the contractor was supposed to raise invoice within 30 days of provision of service. But, he failed. So, 25.11.2017 is the time of supply.

e.g.3: A contractor received incentive of Rs.55 Lakh due to completion of construction project before the agreed time. Whether it will be part Turnover in GST? Then which type of supply is this?

Yes, it will form part of turnover in GST, since there is a supply of service. But, this is not any construction service. This is nothing but 'agreeing to the obligation to do an act' which is a kind of service as per 5 (e) of Sch. II under sec 7 of the GGST Act.

e.g.4: There may be situation when the contractee may claim penalty from the contractor for various reasons like delay in completion, inferior quality of works, construction machinery used not as per specification of the agreement etc. Whether this penalty will also be part of turnover in GST? If so, then what kind of service is it and who is the supplier of service?

Yes, it will form part of turnover in GST, since there is a supply of service. But, this is not any construction service. This service is nothing but 'agreeing to the obligation to tolerate an act' which is a kind of service as per 5 (e) of Sch. II under sec 7 of the GGST Act. The contractee is the supplier of such service to the contractor in this case.

Work-in-progress – As per AS 7 when a contractor incurs costs that relate to future activity in a contract. Such costs are recognized as an asset if it is probable that they will be recovered.

In such cases the RTP as a contractor eligible to claim ITC on such costs subject to fulfillment of conditions and restrictions of the Acts and Rules made there under.

8. AS 13/ IND AS 40: ACCOUNTING FOR INVESTMENTS –

A business entity may have investments for various diverse reasons such as, operations, where the assessment of the performance of the business may largely, or solely, depend on the results of such investment activity.

Some investments are intangible e.g., shares while others exist in a physical form e.g., land & buildings. By nature, an investment may be in the form of a debt, other than a short- or long-term loan or a trade debt, representing a monetary amount owing to the holder and usually bearing interest. Again, it may be in the form of results and net assets of an enterprise such as equity shares.

As per this AS 13, the financial accounts are required to disclose the acquisition and disposal of all the investments.

Accordingly, the P/L A/c is required to include the following items:

- Income from interest & dividends;
- Profits and losses on disposal of current investments;
- Profits and losses on disposal of investments;

Now, as money is not covered under goods as per the GST Act(s).

Again, relating to investing activities, permanent transfer or disposal of business assets where input tax credit has been availed on such assets have been termed as an activity to be treated as supply even if made without consideration.

Furthermore, where financing activities are concerned, services by way of (a) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services) and (b) inter se sale or purchase of foreign currency amongst banks or authorized dealers of foreign exchange or amongst banks and such dealers are exempted from GST.

As per the GST Laws, interest means interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other

similar right or obligation) but does not include any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilized.

So, acquisition of capital, taking a loan, payment/receipt of interest or dividend will not attract GST, but any service charge or /processing fee incurred at the time of a loan will attract GST.

9. AS 15/ IND AS 19: EMPLOYEE BENEFITS –

The objective of this Standard is to prescribe the accounting treatment and disclosure for employee benefits in the books of employer except employee share-based payments.

Employee benefits are all forms of consideration given by an enterprise in exchange for service rendered by employees. This may be in the form of long/short term employee benefits, post-employment benefits, termination/retirement benefits etc.

Now, as per entry no. 1 of Schedule III, Services by an employee to the employer in the course of or in relation to his employment, is an activity which is treated neither as a supply of goods nor as a supply of services. Thus the employee benefits provided to an employee and recorded as per AS 15, does not come under the purview of GST.

e.g. 1, Mr. A receives an arrear payment of Rs. 70,000/- after retiring from Company X. Here, the expense will be recorded as post-employment benefit as per AS 15. From the GST perspective it may be said that, although at the time of recording of such expense, there exists no employer-employee relation between A & X, the said expense will not attract any GST as it is an accrued expense for Company X in terms of employer-employee relation only.

The guiding factor in this case will be the term “employee”. If the expenses are borne on a person who is not an employee as per the pay-roll, the same will be treated as a consideration paid against receipt of supply of services from that person.

e.g. 2, Salary paid to a full-time Director of a company is a consideration paid to him out of employer-employee relationship. Hence such will not attract GST. But, remuneration paid to independent director and remuneration other than salary

to employee director (such as, sitting fees) are not considerations out of employer-employee relationship. Hence, such will be treated as consideration paid against receipt of supply of services as per the GST Act(s) and will be taxable @ 18%.

Furthermore, as per the provision to entry no. 2 of Schedule I, gifts of value upto Rs. 50,000/- in a financial year by an employer to an employee shall not be treated as supply of goods or services or both. Otherwise, such gift whose value exceeds Rs. 50,000/- will be treated as a supply even though made without a consideration.

e.g. 3, Company X gives a mobile phone worth Rs. 25000/- to each member of its sales team as a gift in 2018-19. This will not be treated as a supply. But if the same Company X gives a high-end laptop worth Rs. 60,000/- to the head of the sales team, the same will be treated as a supply.

10. AS 16/ IND AS 23: BORROWING COSTS –

This Standard is applied in accounting for borrowing costs. Borrowing costs are interest and other costs incurred by an enterprise in connection with the borrowing of funds. This includes:

- Interest and commitment charges on borrowings
- Discounts and premiums related to borrowings
- Ancillary costs incurred in connection with arrangement of borrowings
- Finance charges in respect of assets acquired under finance lease
- Exchange differences arising from foreign currency borrowings to the extent they are regarded as adjustment to interest costs.

In this case, this is to mention that detailed discussions regarding GST implication on interests, other financial fees (processing fees etc) and that on foreign exchange have already been made in Paras 3 & 9 respectively.

11. AS 17/ IND AS 108: SEGMENT REPORTING –

The objective of this Standard is to establish principles for reporting financial information, about the different types of products and services an enterprise produces and the different geographical areas in which it operates.

If a single financial report contains both consolidated financial statements and the separate financial statements of the parent, segment information needs to be presented only on the basis of the consolidated financial statements.

Here, the concept of related person and distinct person comes in under the GST Laws.

As per entry no. 2 of Schedule I, Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business is an activity to be treated as supply even if made without any consideration.

In the explanation provided to Section 15(5) of the GGST Act(s), persons will be “related” if:

- such persons are officers or directors of one another’s businesses;
- such persons are legally recognized partners in business;
- such persons are employer and employee;
- any person directly or indirectly owns, controls or holds 25% or more of the outstanding voting stock or shares of both of them;
- one of them directly or indirectly controls the other;
- both of them are directly or indirectly controlled by a third person;
- together they directly or indirectly control a third person; or
- they are members of the same family.

Again, as per Section 25(4) of the GGST Act(s), a person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as “distinct persons”.

This means that two separate branches, or cost centers, or business segments (as per AS 17) of the same Company having two different GST registration numbers will be treated as related and distinct persons.

In this case, if such segmented accounting happen to be of two different cost centers having one single GST registration, special care needs to be taken to ensure that the summation of the segmented accounts have been duly reported in the GST Returns under the single registration and accordingly tax liability has been discharged.

12. AS 20/ IND AS 33: EARNINGS PER SHARE –

AS 20 prescribes principles for the determination and presentation of earnings per share for comparison of performance among different enterprises for the same period and among different accounting periods for the same enterprise.

In common parlance, earnings from shares means dividend. The term 'dividend' has not been defined under the GST law. However, Section 2(35) of the Companies Act, 2013 defines the term 'dividend' to include any interim dividend. It is an inclusive and not an exhaustive definition. In common parlance, 'dividend' means the profits of a company, not retained in the business but distributed among the shareholders in proportion to the amount paid-up on the shares held by them.

The Supreme Court in CIT vs. Girdhardas & Co. (Private) Ltd. [1967 SCR (1) 777] observed that the expression "dividend" has two meanings-

- As applied to a company which is a going concern, it ordinarily means the portion of the profits of the company which is allocated to the holders of shares in the company.
- In case of a winding up, it means a division of the realized assets among the creditors and contributories according to their respective rights.

Now, as per S. 2(52) of the GGST Acts, "goods" means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply.

Thus, dividend Income may be treated as not being in the ambit of GST as such is a money income and money is excluded from goods.

Also, Section 17(3) of the GGST Act provides that the value of exempt supply under Section 17(2) shall be as prescribed and shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.

It is pertinent to note that Section 2(101) of the said Acts provides that "securities" shall have the same meaning as assigned to it in Section 2(h) of the Securities Contracts (Regulation) Act. The term 'dividend' in itself is not included in the said definition. However, it becomes relevant to examine if the earning of dividend on account of holding shares (qualifying as 'security' under the

definition) is in any manner connected to the expression, “transaction in security”.

The above examples and discussion on accounting standards are indicative only. Audit officer may go through other accounting standards also if required.



IMPORTANT

- **Disclaimer: The Manual is just an effort to synchronize the audit/ scrutiny process. It is not a legal document conferring rights and not a source of legal interpretation. The manual does not deal with legal interpretations and rulings on GST matters. Future changes in the GGST Act, 2017 and the rules made thereunder, administrative policies and procedures may require changes to this manual. This is work of collation from different sources and is for educational and training purposes only. This is for internal use by the officers of the Department only.**
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- The aim of preparing this “Model GST Audit Manual, 2022” is to create an extensive and comprehensive document with a holistic approach of GST Audit that will facilitate the Audit Officers of Gujarat. Though, extensive care has been taken in the course of preparation of this document, there still may be errors or mistakes. In case any such error/mistake is detected, such may be communicated to the audit branch at ic-audit-gstn@gujarat.gov.in or mjanis9@gmail.com for rectification.
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This document is prepared for the officials of State Tax department on GST Audit.