



**KRISHNA NIDDANA & CO**  
**CHARTERED ACCOUNTANTS**

# CA KRISHNA NIDDANA'S PROFILE



**CA Krishna Niddana.**  
**B.Com, FCA, DISA,**  
**FAFD.**

Krishna Niddana is a Chartered Accountant and Founder partner of the firm “Krishna Niddana & Co., Chartered Accountants” and currently heading the litigation and representation, Audit and Review divisions of the firm. Has long standing experience of specializing in GST. Provided coaching services to 1000’s of students on GST. Engaged as Faculty at NACIN for training GST officers. Shared number of opinions to peers among the CA Fraternity and Business Fraternity. He also having Certificate Course on Concurrent Audit of Banks from ICAI. His corporate experience includes working as consultant in one of the Big 4 for SOX Audit.

His expertise includes –

- Representation for the GST Audit as per Section -65, GST summons as per section-70, Notices as per Section-73, 74,.
- Representation before Anti Evasion & Enforcement Department of GST.
- GSTR-9 & 9C review & Filing, GST Refunds.
- Forensic Audit and Fraud Detection Services.
- Statutory Audits, Tax Audits & Stock Audits.

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**THANK YOU**

**KRISHNA NIDDANA & CO.**  
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# Composition Levy



# Overview of the Composition Scheme

- The Composition levy is an alternative method of levy of tax designed for **small taxpayer** whose turnover is up to a prescribed limit.
- The objective of the composition scheme is to bring **simplicity** and to reduce **compliance cost**.
- It is Voluntary and Optional.

# Eligibility criteria for Composition Scheme

- A **registered person**
  - Whose aggregate turnover in **preceding** financial year
  - Didn't not exceed **150 Lakh rupees**, may opt for composition scheme and
  - Discharge tax on **concessional rates** as prescribed...**Section 10(1)**
  
  - **Note 1: 75 Lakh** turnover limit for special category states.
  - **Note 2: 50 Lakh** turnover limit for person exclusively providing services other than restaurant services...**Section 10(2A)**
- (Refer notification no. 14/2019 CT dated 07.03.2019 for more details)*

# Tax Rates under Composition Scheme

- In case of **Manufacturer**, the rate shall be **1%** of **Total Turnover** during the relevant period.
- In case of **Trader**, the rate shall be **1%** of **Taxable Turnover** during the relevant period.
- In case of **restaurant services**, the rate shall be **5%** of **Total Turnover** during the relevant period.
- In case of a person **exclusively providing services other than restaurant services**, the rate shall be **6%** of the turnover during the relevant period  
...**Section 10(2A)...****Notification 2/2019 CT dated 07.03.2019**
- **Note: Effective Rate i.e., 5% (2.5% CGST & 2.5% SGST)**

# Ineligibility criteria under Composition Scheme

- Supplier exclusively providing **Exempted Supplies**.
- Supplier engaged in **Inter State Supplies**.
- Manufacturer of **Ice Cream, Pan Masala, Tobacco, Aerated Waters, Fly Ash Bricks, Building Bricks, Roofing Tiles**.
- Supplier who is either **Casual Taxable person** or **Non-Resident Taxable Person**.
- ~~Person supplying any services through **Ecommerce operator** who is required to collect TCS under section 52...*Omitted by the Finance Act, 2023*~~  
*w.e.f.1-10-2023.*



# Marginal Service under Composition Scheme

- Manufacturer and Trader **may supply services along with goods** subject to following condition:
- The **value of services** should not exceed
- **10%** of the turnover in state in the preceding financial year or
- **Rs. 5 Lakh,**
- Whichever is **higher.**

# Conditions and Restriction for Composition Scheme

- Required to discharge **tax under RCM** wherever applicable.
- He is neither **Casual Taxable Person** nor a **Non-Resident Taxable Person**.
- Mention the above points in the Bill of Supply.
- Must not engaged in manufacturing of Ice Cream, Pan Masala, Tobacco, Aerated Waters, Fly Ash Bricks, Building Bricks, Roofing Tiles.

# Compliance under Composition Scheme

- Registration: Form **REG-01**  
***(Effective Date: Date from which registration is effective)***
- **Note:** The option to pay tax under composition levy shall be effective from the beginning of the FY and must be filed prior the commencement of FY.
- The option to pay tax under composition scheme **lapses** that day on which turnover exceeded the threshold limit.
- Composition Scheme to be adopted **uniformly** by all the registered person having the same PAN.

# Compliance under Composition Scheme

- Composition Scheme Supplier **cannot collect tax** from the recipients on supplies made by him.
- Composition Scheme Supplier **cannot issue tax invoice.**
- Composition Scheme Supplier shall **not** be entitled to any **Input Tax Credit.**
- If a taxable person has **paid** tax under the composition scheme though he was **not eligible** for the scheme, the person would be **liable to penalty** and the provisions of section 73 or 74 of the CGST Act shall be applicable for determination of tax and penalty.

# Compliance under Composition Scheme

- A person opting for composition scheme is required to furnish
- **Quarterly return in Form CMP-08 – 18<sup>th</sup> of subsequent month after the end of quarter** and
- **GSTR 4** is required to be filed on an **annual basis** by **30<sup>th</sup> day of April** following the relevant Financial Year.

**Thank you..**

**- Giriraj Mundada**

***GST  
Implications in  
E-Commerce  
Sector***



# *Definitions [CGST Act]*

- *Sec 2(44) - "**electronic commerce**" means the supply of goods or services or both, including digital products over digital or electronic network;*
- *Sec 2(45)- "**electronic commerce operator**" means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce;*



# *Business Model*

## **Inventory based business model**

- Where inventory of **goods and services is owned by e-commerce entity** and is sold to the consumers directly
- **EXAMPLE:**



## **Market place-based business model**

- Providing an information technology platform, on a digital and electronic network to **act as a facilitator between buyer and seller.**
- **EXAMPLE:**



# *Understanding GST implications on e-commerce*

## **Mainly applicable GST provisions for E-commerce:**

- *REGISTRATION*
- *LEVY AND COLLECTION OF TAX*
- *INVOICING*
- *INPUT TAX CREDIT*
- *RETURNS*
- *TAX COLLECTION AT SOURCE [TCS]*

# *Inventory based model*

- **REGISTRATION**

- *Sec 22 of CGST Act -Aggregate turnover exceeds specified threshold limit.*
  - *Regular scheme*
  - *Or*
  - *Composition scheme*



- **LEVY & COLLECTION**

- *Sec 9(1) of CGST Act Forward charge mechanism (CGST+SGST)*
- *Sec 5(1) of IGST Act Forward charge mechanism (IGST)*

# *Inventory based model*

- **RETURNS**

- *GSTR-1*
- *GSTR-3B*
- *GSTR-9*
- *GSTR-9C*

- **INVOICING**

- *Sec 31(1) of CGST Act-*
  - *Movement of goods* -before or at the time of removal of goods.
  - *No-movement of goods*-at the time of Delivery of goods to recipient.

**Note**-In case ECO and Customer belong to the *same state CGST and SGST* will be charged in the invoice, whereas if ECO and Customer belong to *different states IGST* will be charged in the invoice

# *Inventory based model*

- **TAX COLLECTED AT SOURCE**

- *Sec 52 of CGST Act-TCS shall be deducted when the **goods belonging to third party is supplied over e-platform** and consideration is received by LensKart. **NO TCS***

- **INPUT TAX CREDIT**

- *Subjected to **Sec 16 of CGST Act.***

# *Market place-based business model*

- *GST on e-Commerce Aggregator model. This is the model adopted by most top e-commerce entities like Flipkart, Swiggy, Amazon, Urban clap, and most of the others.*
- *In this E-Commerce operator will just **provide a platform** where **suppliers can register themselves and advertise their products to the customers**. In this case, ECOs will charge a fee/commission from the supplier for its services.*

# *Market place-based business model*

- *Goods and services supplied through E-commerce are Broadly classified into two categories*



## **Notified services**

- *Passenger transport services (by a radio-taxi, motor cab, maxi cab and motor cycle other than **omnibus**)*
- *Passenger transport services through **omnibus** (Except supplier is a **company**)*
- *Housekeeping services (Except supplier is liable to register)*
- *Restaurant services includes cloud kitchens (Except supplied from **specified premise**)*
- *Accommodation services (Except supplier is liable to **register**)*

## **Other Goods and Services**

# REGISTRATION

## Notified services

- Sec 24 of CGST Act - E-Commerce operator must **mandatorily obtain registration**.
- Sec 22 of CGST Act - **Voluntary registration** can be availed by the **actual supplier**.

*(Benefit of T/O limit is Available)*

## Other Goods and Services

- Sec 24 of CGST Act- **Compulsory registration** for the e-commerce operator
- Supplier

### Services

Sec 22 of CGST Act - **Voluntary registration** can be availed by the **actual supplier**.  
*(Benefit of T/O limit is Available)*

### Goods

Sec 24 of CGST Act- **Compulsory registration** for Person supplying goods through ECO **subjected to exception** specified under Sec 23 of CGST Act  
*(Benefit of T/O limit is Available subjected to conditions)*



# *LEVY & COLLECTION*

## **Notified services**

- *Sec 9(5) of CGST Act -ECO is liable to pay tax under Forward charge mechanism (CGST+SGST)*
- *Sec 5(5) of IGST Act -ECO is liable to pay tax under Forward charge mechanism (IGST) in hand of ECO*

## **Other Goods and Services**

- *Sec 9(1) of CGST Act Forward charge mechanism (CGST+SGST)*
- *Sec 5(1) of IGST Act Forward charge mechanism (IGST)*

# *RETURNS*

## **Notified services**

- *GSTR-1*
- *GSTR-3B*
- *GSTR-9*
- *GSTR-9C*

## **Other Goods and Services**

- *GSTR-1*
- *GSTR-3B*
- *GSTR-9*
- *GSTR-9C*
- *GSTR-8 has to be filed every month (TCS collected as well as details regarding the supplies) – ECO will file*

# *INVOICING*

## **Notified services**

- *Invoice – From ECO to Customer for services* **Sec 31(2) of CGST Act**

## **Other Goods and Services**

- *Invoice No.1 – From Supplier to Customer for Goods and services* **Sec 31(2) of CGST Act**
- *Invoice No.2 – From ECO to Suppliers for fees and commission*

# TAX COLLECTED AT SOURCE

## Notified services

- *No TCS shall be deducted*



**UrbanClap**

## Other Goods and Services

- **Sec 52 of CGST Act** -Every ECO shall collect an amount calculated @ **1%** (0.5% CGST + 0.5% SGST or 1% IGST) of the **net value of taxable supplies made through it by the other suppliers** where the consideration with respect to such supplies is to be calculated by the operator.
- Net value of taxable supplies of services do **not include the value of services supplied by the supplier through ECO as notified under Sec 9(5) of CGST Act,2017**

# *INPUT TAX CREDIT*

## **Notified services**

- *Sec 16 of CGST Act-No restriction in taking Credit.*

## **Other Goods and Services**

- *Sec 16 of CGST Act-No restriction in taking Credit.*

# *Who will pay the tax*

## **Notified services**

*ECO Located in taxable territory –ECO Liable*

*No Physical presence in taxable territory--  
Person representing ECO*

*Other wise –Person Appointed by ECO*

## **Other Goods and Services**

- Liable to pay tax ---Supplier
- TCS collection--- ECO







# GSTR-3B disclosure

*Details of e-commerce supplies under Section 9(5) of the CGST Act, including IGST & state/UT acts.*

Nature of Supplies	Total Taxable value	Integrated Tax	Central Tax	State/UT Tax	Cess
1	2	3	4	5	6
(i) Taxable supplies on which electronic commerce operator pays tax under sub-section (5) of section 9 [to be furnished by the electronic commerce operator]					
(ii) Taxable supplies made by the registered person through electronic commerce operator, on which electronic commerce operator is required to pay tax under sub-section (5) of section 9  [to be furnished by the registered person making supplies through electronic commerce operator].";					

*Thank you..*

**- Giriraj Mundada**

# **Input Tax Credit, GSTR 2A along with Relevant Circulars and Reversal of ITC**



# **Input Tax Credit**

# Input Tax Credit

## Vendor

*Taxable value : Rs. 1,00,000*  
*GST @18% : **Rs. 18,000***  
*Invoice value : Rs. 1,18,000*  
**[Input Tax]**  
**IGST, CGST, SGST, UTGST**

**Trader of A/c**



## Customer

*Taxable value : Rs. 1,50,000*  
*GST @18% : **Rs.27,000***  
*Invoice value : Rs. 1,77,000*  
**[Output Tax]**

*GST Liability?*

*Output Tax to be paid : Rs. 27,000*

**Input Tax Credit: : (Rs. 18,000)**

*Liability to be paid (Cash): Rs. 9,000*

# Food for thought?

*Whether GST payable under Reverse charge is an **'Input Tax'** or **'Output Tax'**?*



# What is Input Tax?

- **Input tax [Section 2 (62)]** - *“input tax” in relation to a registered person, means the central tax, State tax, integrated tax or Union territory tax charged on any supply of goods or services or both made to him and includes—*
  - ❖ *the integrated goods and services tax charged on **import of goods**;*
  - ❖ *the tax payable under the provisions of sub-sections **(3) and (4) of section 9**;*
  - ❖ *the tax payable under the provisions of sub-sections **(3) and (4) of section 5** of the Integrated Goods and Services Tax Act;*
  - ❖ *the tax payable under the provisions of sub-sections (3) and (4) of section 9 of the respective State Goods and Services Tax Act; or*
  - ❖ *the tax payable under the provisions of sub-sections (3) and (4) of section 7 of the Union Territory Goods and Services Tax Act,*
  - ❖ *but does not include the tax paid under the composition levy;*

# What is Output Tax?

- **Output Tax [Section 2 (82)] -**

*“Output tax” in relation to a taxable person, means*

- ❖ *the tax chargeable under this Act on taxable supply of goods or services or both made by him or by his agent*
- ❖ *but excludes tax payable by him on reverse charge basis;*



# Definitions - Section 2

- **Input [Section 2(59)]** - *“input” means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business.*
- **Input services [Section 2(60)]** - *“input service” means any service used or intended to be used by a supplier in the course or furtherance of business.*
- **Capital goods Section 2(19)** - *“capital goods” means goods, the value of which is capitalized in the books of account of the person claiming the input tax credit and which are used or intended to be used in the course or furtherance of business;*
- **Input tax credit [Section 2 (63) ]:** *input tax credit” means the credit of input tax.*

# What is Input Tax Credit?

- **Input Tax Credit [Section 2 (63)]** – *"input tax credit" means the credit of input tax"*

**CGST Act  
2017**

**Chapter- V**

**Sections 16 to 21**

**CGST  
Rules  
2017**

**Chapter- V**

**Rule 36 to 45**

# Availment of credit



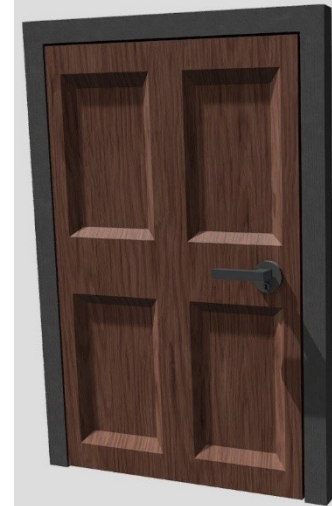
**Step-1:** *In the course or furtherance of business*



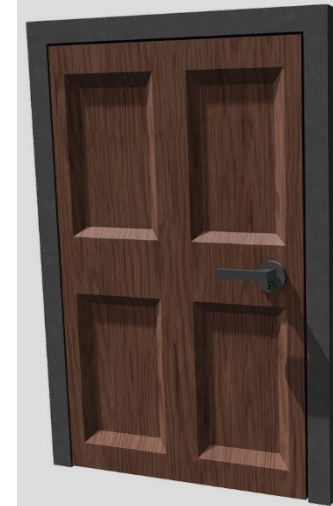
**Step-2:** *4 or 5 or 6 Conditions to be satisfied*



**Step-3:** *Used for making o/w taxable supplies*



**Step-4:** *Not a blocked credit*



**Step-5:** *Other conditions*



**Input Tax Credit**

# Business usage

- **Every registered person** *is entitled to take ITC on any supply of goods or services or both subject to restrictions.*
- *The supply of goods or services are used or intended to be used* **in the course or furtherance of the business.** *[Direct nexus with outward supply not essential.]*
- *Eligible credit can be availed on inputs, input services and capital goods*
- *Amount credited to ECL*
- *ITC on Inputs and Capital Goods is allowed in one installment*

# Conditions for availing ITC

1. Tax Invoice
2. Received G/S
3. Supplier paid taxes
4. Filed GSTR-3B

**1<sup>st</sup> July 2017**

4

**1<sup>st</sup> January 2022**

5. Supplier has included the details of Tax Invoice in his GSTR-1.

5

6

**1<sup>st</sup> October 2022**

6. Credit not restricted in GSTR-2B

# Conditions for availing ITC

## Condition-1: Possession of a Tax paying document

- ❖ *Tax invoice*
- ❖ *Self-invoice*
- ❖ *GST Debit note*
- ❖ *Bill of Entry*
- ❖ *ISD Invoice*

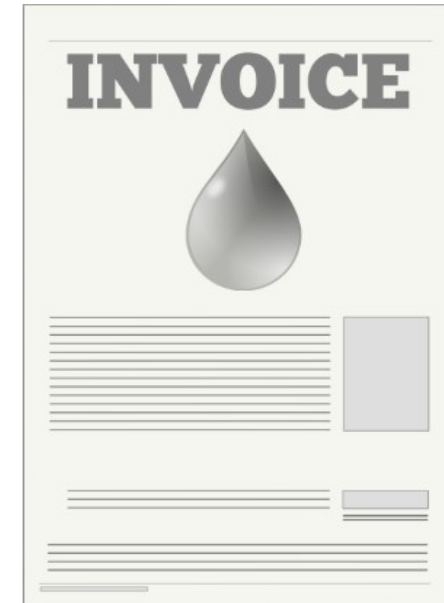
## Contents of Invoice: Rule 46 [19 particulars]

*Exception- 5 particulars*

*[Amt of tax, Description, Total value, GSTIN of supplier and recipient, Place of supply (in case of inter-state)]*

**E-invoice [QR code]**

**Soft copy/hardcopy of invoice: Sec 145 of CGST Act.**



# Conditions for availing ITC

## **Condition-2: Received goods or services**

- ❖ *Burden of proof on the person availing ITC*
- ❖ *[Hon'ble Supreme Court- Ecom Gill Coffee Trading Pvt Ltd (2023) 4 Centax 223 (S.C.)]*

## **Deemed receipt of goods or services:**

- ❖ *Goods are delivered by supplier to recipient on direction of registered person, whether acting as agent or otherwise, before or during movement of goods, either by transfer of documents of title to goods or otherwise*
- ❖ *Where services are provided by supplier to any person on direction of and on account of such registered person.*

# Conditions for availing ITC

**Condition 3:** *Tax paid to Government through cash/credit by supplier*

- ❖ *Calcutta HC- M/s. Gargo Traders [2023 (7) Centax 136 (cal.)]*
- ❖ *Madras HC- M/s D.Y. Beathel Enterprises*
- ❖ *Circular 183/15/2022-GST – FY 2017-18 and 2018-19*
- ❖ *[Karnataka HC- M/s Wipro]- 2019-20*
- ❖ *Circular 193/05/2023-GST dated 17<sup>th</sup> July 2023. [01.04.19 to 31.12.21]*

**Condition 4:** *Furnished the return GSTR-3B*



# Conditions for availing credit

**Condition 5:** *Invoice details should appear in GSTR-2B*

*16(2)(aa): The details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37 – **Rule 36(4)***

**Condition 6:** *Unrestricted credit in GSTR-2B*

*16(2)(b): The details of input tax credit in respect of the said supply communicated to such registered person under section 38 has not been restricted. **[Detailed in next slide]***

- *What are restricted credits? – different POS and filing post 16(4) time limit*

# Restricted Credits in GSTR-2B

*16(2)(b): The details of input tax credit in respect of the said supply communicated to such registered person under section 38 has not been restricted.*

## **Restricted credits in GSTR-2B:**

- ❖ *by any registered person within **such period** of taking **registration** as may be prescribed; or*
- ❖ *by any registered person, who has **defaulted in payment of tax** and where such default has continued for **such period** as may be prescribed; or*
- ❖ *by any registered person, the output tax payable by whom in accordance with the statement of outward supplies furnished by him under the said sub-section during such period, as may be prescribed, exceeds the output tax paid by him during the said period by such limit as may be prescribed; or [ **GSTR-1 > GSTR-3B**]*

# Restricted Credits in GSTR-2B

*(iv) by any registered person who, during such period as may be prescribed, has availed credit of input tax of an amount that exceeds the credit that can be availed by him in accordance with clause (a),*

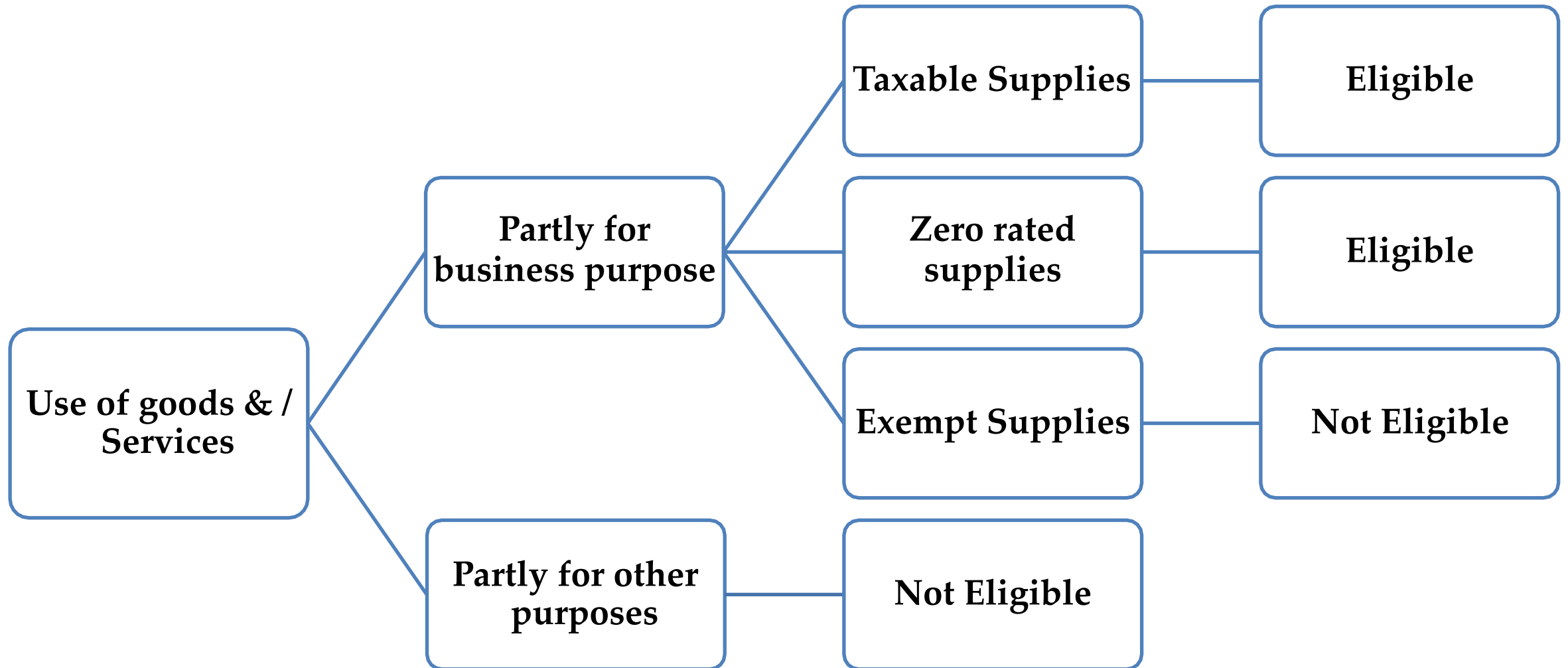
*by such limit as may be prescribed; or*

*(v) by any registered person, who has defaulted in discharging his tax liability in accordance with the provisions of sub-section (12) of [section 49](#) subject to such conditions and restrictions as may be prescribed;*

*or [Violation of Rule 86B]*

*(vi) by such other class of persons as may be prescribed.*

# Apportionment of credits & Blocked Credits



# Apportionment of credits

## Exempt supply for the purposes of ITC reversal

### Exempt Turnover (in General)

- *Nil-rated supplies*
- *Exempt Supplies*
- *Non-taxable supplies*

### Includes:

- *Outward turnover on which 'Recipient' liable to pay GST under RCM*
- *Transaction in securities*
- *Sale of land and sale of building [Para 5 of Schedule III]*
- *Supply of goods from Duty Free Shops at arrival terminal in international airports to the incoming passengers. [Para 8(a) of Schedule III] w.e.f. 01<sup>st</sup> Oct 2023*

### Excludes:

- *Services of accepting deposit, extending loans or advances where consideration is represented by way of interest/discount*
- *Value of sale of duty credit scrips - Inserted vide Notification No. 14/2022-CT dated. 05.07.2022*
- *Other Schedule III items.*

# Blocked Credit - Till Jan 2019 and thereafter

- 17(5) reads as “.....input tax credit shall not be available in respect of the following”

Sec	Old	New
(a)	All passenger transport motor vehicle – allowed only for specified purpose	MV upto 13 passengers – only for specified purpose- supply of MV/transport passengers/ training on driving MV; bigger vehicle – allowed
(b)	Goods transportation – allowed	No change
(ab)	Services incidental to MV- both views	Specifically disallowed for: general insurance, servicing, repair and maintenance of MV-except used for specified purpose <b>More than 13 capacity vehicle- service?</b> Allowed for supplier for whom such MV are not blocked + mfg of MV + reinsurance

# Blocked Credit - Impact of amendment

Sec	Old	New
(b) (i)	<p>food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery:</p> <p>Except when used for making further outward supply or composite or mixed supply</p>	<p>food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery:</p> <p>Except when used for making further outward supply or composite or mixed supply</p> <p>Where obligatory to provide to employee under any Law</p>
(iii) Now (b) (i)	<p>rent-a-cab, life insurance and health insurance Except where</p> <ul style="list-style-type: none"><li>•obligatory to provide under any Law or</li><li>•when used for making further outward supply or composite or mixed supply</li></ul> <p>(no reference of leasing, renting or hiring)</p>	<p>leasing, renting or hiring of motor vehicles, vessels or aircraft, life insurance and health insurance Except where</p> <ul style="list-style-type: none"><li>•obligatory to provide under any Law or</li><li>•when used for making further outward supply or composite or mixed supply</li></ul>

# Blocked Credit - Impact of amendment

Sec	Old	New
(ii) & (iv) Now (ii) & (iii)	<ul style="list-style-type: none"><li>• membership of a club, health and fitness centre</li><li>• travel benefits extended to employees on vacation such as leave or home travel concession;</li></ul>	<ul style="list-style-type: none"><li>• membership of a club, health and fitness centre</li><li>• travel benefits extended to employees on vacation such as leave or home travel concession except where <b>obligatory to provide to employee under any Law</b></li></ul>



# Other blocked credits

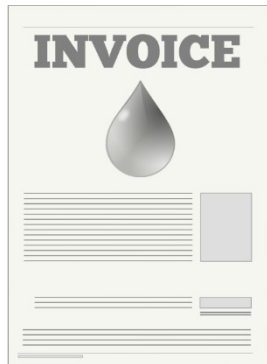
- *WCT service supplied for construction of IP [other than P&M]*
- *Except where input service for further supply of WCT service*
- *Goods/services received for construction of immovable property[other than P or M] on own account/for self use including when used in course furtherance of business*
- *Construction includes reconstruction, renovation, additions alteration, repairs to extent of capitalization to IP;*
- *P&M-means apparatus/equipment machinery fixed to earth by foundation/ structural support used to make outward supplies excludes L&B/civil structures, telecom towers and pipeline outside factory premise*

# Other blocked credits

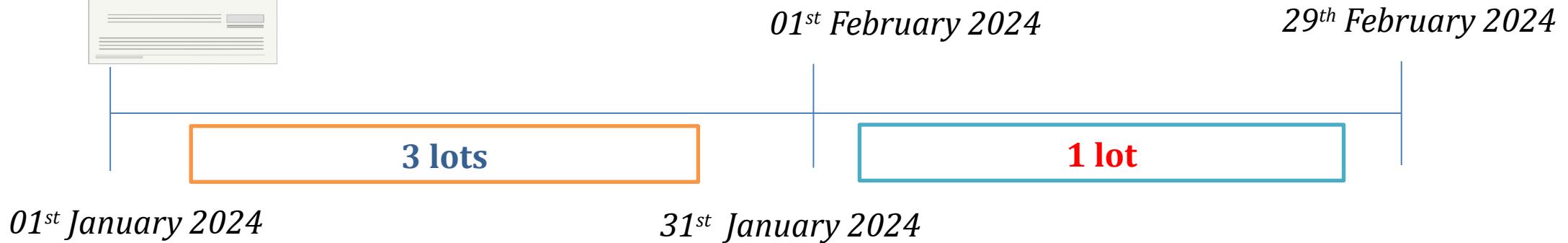
- *Goods/services on which composition tax paid*
- *Goods/services received by NRTP except on imported goods by him*
- *Goods/services used for personal consumption*
- *Goods lost/stolen/written off/disposed off gift/free samples*
- *Tax paid u/s*
  - *74-tax not paid/short paid by reason of fraud willful misstatement or suppression of facts*
  - *129-detention seizure release of goods in transit*
  - *130-confiscation goods/conveyances*
- *Expenses incurred relating to the obligations under corporate social responsibility referred to in section 135 of the Companies Act, 2013 [w.e.f. 01<sup>st</sup> October 2023]*

# Goods received in lots

- ❖ *The registered person shall be entitled to take credit upon receipt of the last lot or instalment*



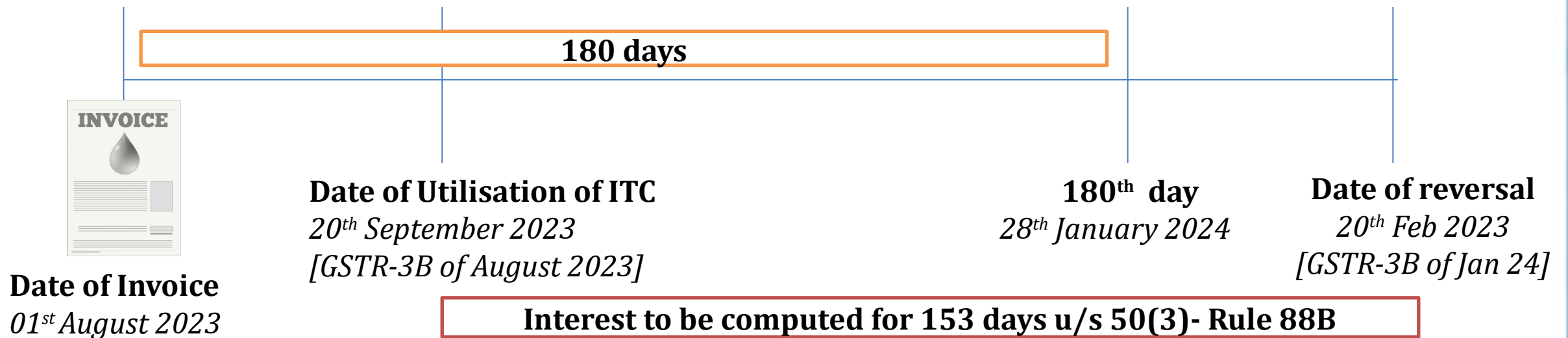
*Goods will be delivered in 4 lots  
Taxable value – Rs. 1lakh  
GST- Rs. 18,000*



**GST Credit is to be taken in the GSTR-3B of January 2024 or February 2024 ?**

# Fails to pay within 180 days

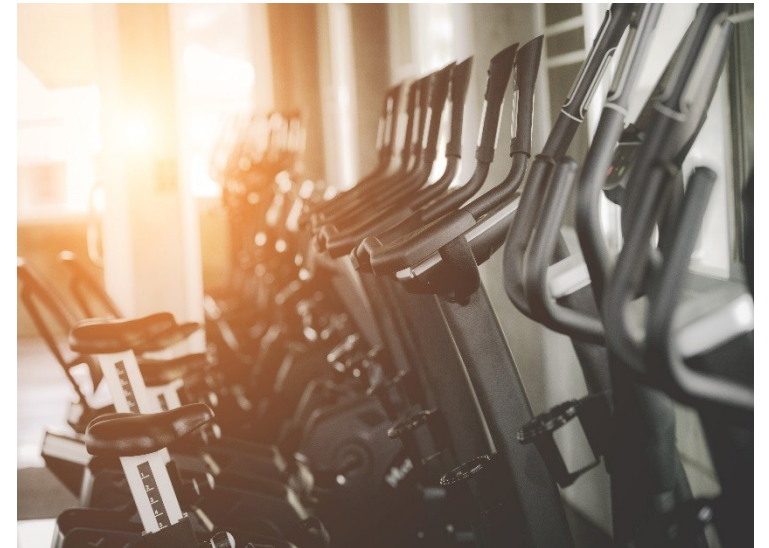
- Recipient fails to pay supplier amount towards value of supply and tax within 180 days from date of issue of invoice-add credit to output tax liability and pay with 18% interest
- Meaning of term “fails to pay”
- Reduce amount payable by financial credit note
- Reversal of credit – interest liability?
- Time limit of November for re-availment?



# ITC on capital goods?

*Whether the registered person is entitled to avail Input Tax Credit on Capital goods or Plant and machinery?*

<b>Depreciation claimed on Tax Component</b>	<b>Depreciation not claimed on Tax component</b>
<i>ITC not available</i>	<i>ITC available</i>
<i>Example: Cost of Machine = Rs. 1,00,000 GST = Rs. 18,000</i>	<i>Example: Cost of Machine = Rs. 1,00,000 GST = Rs. 18,000</i>
<i>Amount capitalized= Rs. 1,18,000 [Inc. of GST component]</i>	<i>Amount capitalized= Rs. 1,00,000 [Exc. Of GST component]</i>
<i>Depreciation on Rs. 1,18,000</i>	<i>Depreciation on Rs. 1,00,000</i>

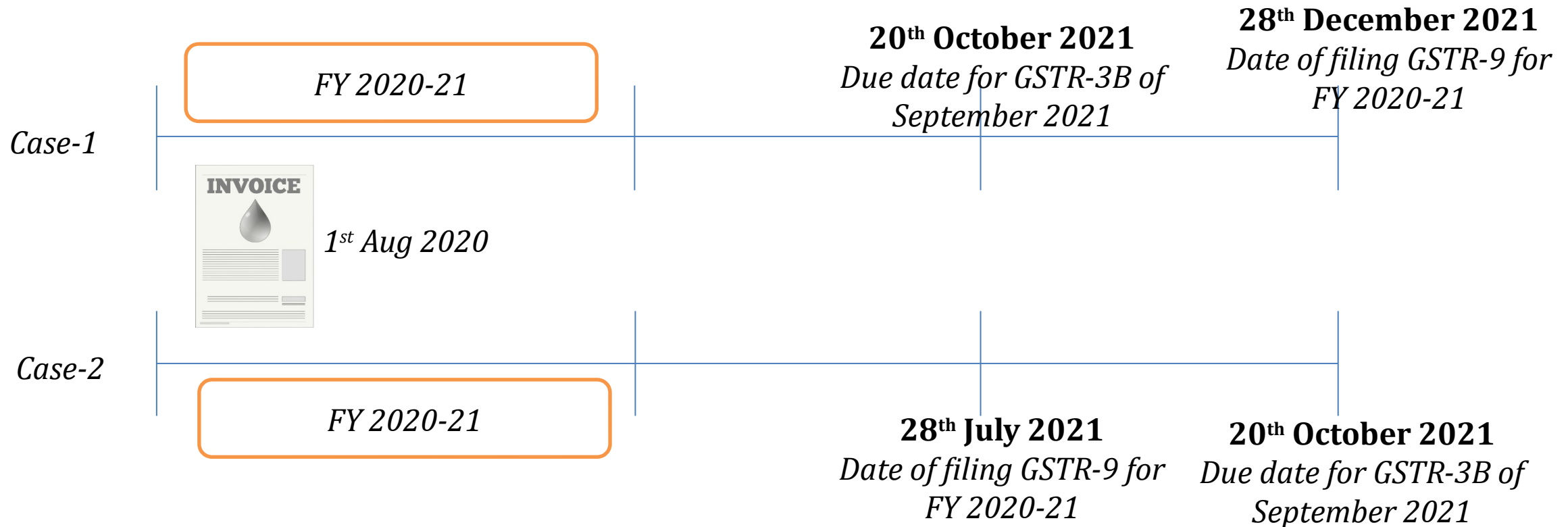


# Time limit for availing ITC?

From FY 2017-18 to FY 2020-21: [\[AP High Court- M/s Thirumala Konda Plywoods\]](#)

*ITC shall be claimed earliest of the following:*

- *Due date for filing GSTR-3B of September month following the end of FY.*
- *Date of filing of Annual return for the relevant Financial Year*

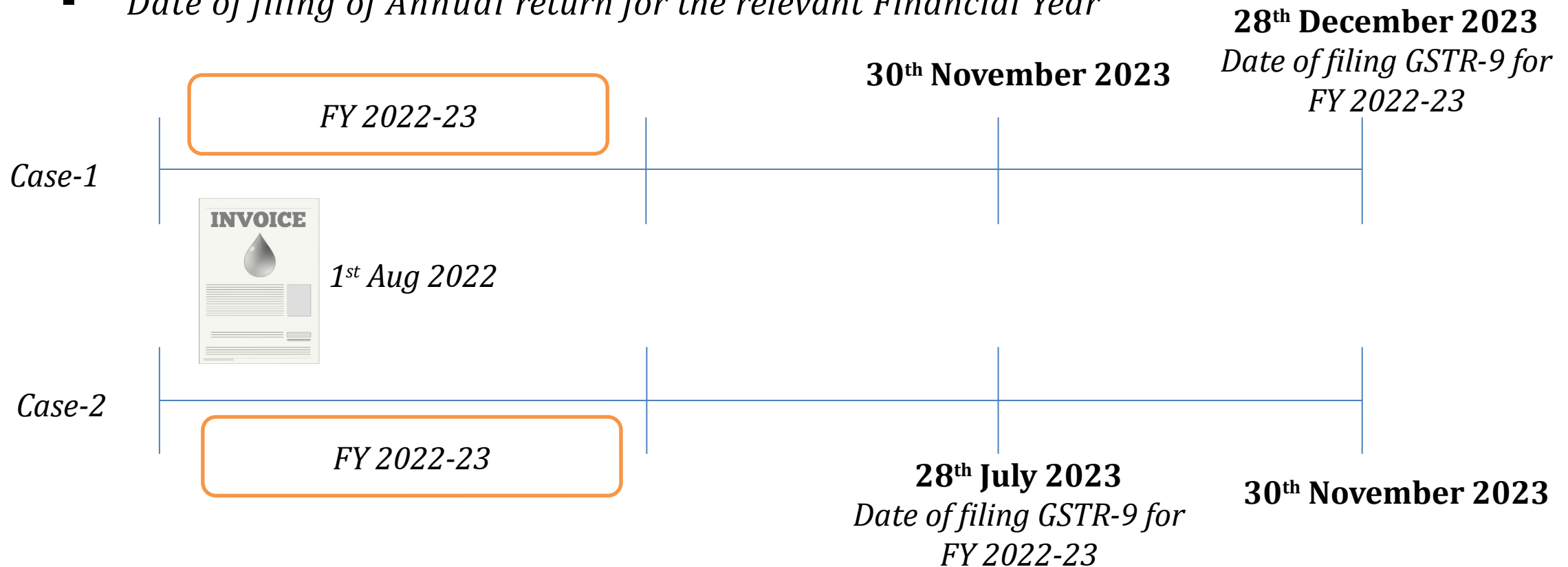


# Time limit for availing ITC?

**From FY 2021-22 onwards:**

*ITC shall be claimed earliest of the following:*

- *30<sup>th</sup> November following the end of Financial Year*
- *Date of filing of Annual return for the relevant Financial Year*



# Principles of ITC

- *System for a NEAR seamless flow of credit*
- *Extends to inter-State supplies*
- *Credit utilization would be as follows:*

Credit of:	Allowed for Payment of		
	IGST	CGST	SGST
IGST	✓ (1)	✓ (2)	✓ (3)
CGST	✓ (2)	✓ (1)	
SGST	✓ (2)		✓ (1)

*\*The numbers represent the order of utilization of credit*



## Utilization of ITC - Amendment Act [S. 49A] r.w Rule 88A

Credit of	Allowed for payment of		
	IGST	CGST	SGST / UTGST
IGST	(1)	(2) / (3)	(2) / (3)

- *CGST and SGST ITC can be utilised only after the input tax credit available on account of IGST has first been utilized fully towards the payment of IGST*
- *Amount remaining - utilized towards the payment of CGST & SGST /UTGST as the case may be, **IN ANY ORDER***
- *Inserted vide notification 16/2019-CT dt. 29.03.2019.*

**Circular No 192/04/2023-GST** dated 17th July 2023 -Total input tax credit available in electronic credit ledger, under the heads of IGST, CGST and SGST taken together.

# Tips for optimisation of ITC availment

- *Ensure GST registration taken during set up stage-to enable smooth availment of credit*
- *Goods/services supplied by GST registered vendors*
- *Correct tax is charged by vendor*
- *Tax invoice to be addressed to recipient name and address +GSTIN + place of supply-  
correctly given*
- *Reduced procurements from composition dealers*
- *Ensure that the vendors are compliant – filing returns and paying taxes on time*
- *IRN is generated and QR code is mentioned*

# Common errors

- *Credit on air travel/hotel accommodation*
- *Credit on the inputs/capital goods say- machines proposed to be used for the supply of taxable goods/services in future*
- *RCM credit - when to avail*
- *Time limit to avail RCM paid on unregistered vendor procurement*
- *Wrong disclosure in GSTR-3B*
- *ITC on plant and machinery*

# **GSTR 2A and relevant circulars**

- *GSTR 2A is a system generated statement of inward supplies for a recipient to view.*

## **Characteristics of GSTR 2A**

- *It is a Dynamic Report i.e. details uploaded by vendors are updating to such a month without utilizing a cut-off date.*
- *Entries comes from GSTR 1, GSTR 5, GSTR 6, GSTR 7, GSTR 8, ICEGATE system – BoE details recently updated.*
- *Difficult to use it for reconciliation as it is dynamic report which changes every time depending on the filing date of the vendor.*
- *It is available from July 2017 onwards for view purpose.*

# Circular 183/15/2022-GST dated 27<sup>th</sup> December 2022

- ✓ *ITC restrictions regarding availment of ITC were provided under rule 36(4) of CGST Rules, 2017 w.e.f 9<sup>th</sup> Oct 2019.*
- ✓ *Various representations have been made seeking clarifications regarding the manner of dealing discrepancies between GSTR 2A and GSTR 3B for FY 2017-18 and FY 2018-19.*

*Scenarios covered under the said circular:*

<b>Scenario</b>	<b>Clarification</b>
<i>Form GSTR-1 not filed but GSTR 3B filed</i>	<i>Procedure explained below</i>
<i>Form GSTR-1 and GSTR 3B filed but failed to disclose particular supply in GSTR-1</i>	
<i>Reported in B2C instead of B2B Supplies</i>	
<i>Declared supplies under wrong GSTIN</i>	

## **Procedure to be followed for the above scenarios**

- Proper officer shall seek invoices which are not appearing in GSTR 2A but availed in GSTR 3B*
- He shall ascertain fulfilment of the conditions of Section 16 of CGST Act in respect of said ITC*
  - He is in possession of a tax invoice or debit note.*
  - He received goods or services or both*
  - He has made payment for the amount along with tax to the supplier*
  - Whether said ITC has been availed within the time period specified under section 16(4) of the CGST Act*
- With respect to whether supplier has paid tax to the government following procedure to be adopted:*
  - Certificate to be obtained declaring the taxes has been paid by the supplier from*
    - *Supplier in case ITC is less than Rs. 5 lakhs*
    - *CA/CMA Certificate in case ITC is more than Rs. 5 Lakhs*

# Circular 193/05/2023-GST dated 17<sup>th</sup> July 2023

- ✓ *Clarifies discrepancies between GSTR 3B and GSTR 2A for the period from 1<sup>st</sup> April 2019 to 31<sup>st</sup> December 2021 in terms of Rule 36(4) of the CGST Rules, 2017.*
- ✓ *Deviation between GSTR-2A and ITC availed can not be more than limit prescribed below.*

Period	% percentage of deviation
<i>09-10-2019 to 31-12-2019</i>	<i>20%</i>
<i>01-01-2020 to 31-12-2020</i>	<i>10%</i>
<i>01-01-2021 to 31-12-2021</i>	<i>5%</i>
<i>01-01-2022 to 31-12-2022</i>	<i>0</i>



# Reversal of ITC

**Section 17(1):** *Good or Services or both used partly for business and partly for other purposes, credit shall be restricted to so much of the input tax as is attributable to the purposes of his business*

**Section 17(2):** *Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies and partly for effecting exempt supplies credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero- rated supplies.*

**Sections 17(6)** *The Government May prescribe the manner in which the credit referred to in Sub-Section(1) and (2) may be attributed*

# Rule 42 of the CGST Rules, 2017

*Rule 42 of the CGST Rules, 2017, pertains to the manner of determination of input tax credit (ITC) in respect of inputs or input services and the reversal thereof.*

*Important definitions before drilling to the procedure for reversal:*

- **T:** Total input tax credit on inputs and input services.
- **T1:** Input tax credit attributable to inputs and input services intended for non-business purposes.
- **T2:** Input tax credit attributable to inputs and input services intended for exempt supplies.
- **T3:** Input tax credit attributable to inputs and input services ineligible under Section 17(5).
- **C1:** Credit attributable to business purposes and taxable supplies including zero-rated supplies ( $T - (T1 + T2 + T3)$ ).
- **T4:** Credit attributable to exempt supplies out of common credit (proportional to the exempt supplies).
- **D1:** Amount of input tax credit attributable to exempt supplies.
- **D2:** Amount of input tax credit attributable to non-business purposes.
- **C2:** Eligible input tax credit ( $C1 - D1 - D2$ ).

## **Calculation of ITC**

**Monthly Calculation:** *The registered person must calculate D1 and D2 every month*

**Annual Calculation:** *An annual calculation must also be done, and any excess credit claimed must be reversed.*

### **Special Provisions:**

**Banking and Financial Institutions:** *They may opt to reverse 50% of the eligible credit on inputs and input services.*

**No Double Reversal:** *No need for double reversal if the credit has already been reversed once under other provisions.*

# Rule 43 of the CGST Rules, 2017

*Rule 43 of the CGST Rules, 2017, pertains to the manner of determination of input tax credit (ITC) in respect of capital goods and the reversal thereof.*

*Important **definitions** before drilling to the procedure for reversal:*

**A:** *Input tax credit on capital goods used or intended to be used exclusively for non-business purposes or for effecting exempt supplies (not eligible for credit).*

**B:** *Input tax credit on capital goods used or intended to be used exclusively for taxable supplies including zero-rated supplies (eligible for credit).*

**C:** *Input tax credit on capital goods that are used for both non-business and business purposes or for both exempt and taxable supplies.*

## **Distribution of ITC on Common Capital Goods:**

**Tc:** *Total input tax on common capital goods.*

**Tm:** *ITC attributable to a tax period on common capital goods ( $Tc / 60$ ).*

**Tr:** *Aggregate of Tm credited to electronic credit ledger for common capital goods.*

## **Calculation of Reversal Amount**

- **Te:** *ITC attributable to exempt supplies out of Tm (to be calculated monthly).*
- **Te =  $(E/F) * Tm$** 
  - **E:** *Aggregate value of exempt supplies during the tax period.*
  - **F:** *Total turnover during the tax period.*

*Note: Year end re calculation must be carried out for any short reversal or short availment*

# THANK YOU



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# **Input Tax Credit, GSTR 2A along with Relevant Circulars and Reversal of ITC**





# **Input Tax Credit**

# Input Tax Credit

## Vendor

*Taxable value : Rs. 1,00,000*  
*GST @18% : **Rs. 18,000***  
*Invoice value : Rs. 1,18,000*  
**[Input Tax]**  
**IGST, CGST, SGST, UTGST**

**Trader of A/c**



## Customer

*Taxable value : Rs. 1,50,000*  
*GST @18% : **Rs.27,000***  
*Invoice value : Rs. 1,77,000*  
**[Output Tax]**

*GST Liability?*

*Output Tax to be paid : Rs. 27,000*

**Input Tax Credit: : (Rs. 18,000)**

*Liability to be paid (Cash): Rs. 9,000*

# Food for thought?

*Whether GST payable under Reverse charge is an **'Input Tax'** or **'Output Tax'**?*



# What is Input Tax?

- **Input tax [Section 2 (62)]** - *“input tax” in relation to a registered person, means the central tax, State tax, integrated tax or Union territory tax charged on any supply of goods or services or both made to him and includes—*
  - ❖ *the integrated goods and services tax charged on **import of goods**;*
  - ❖ *the tax payable under the provisions of sub-sections **(3) and (4) of section 9**;*
  - ❖ *the tax payable under the provisions of sub-sections **(3) and (4) of section 5** of the Integrated Goods and Services Tax Act;*
  - ❖ *the tax payable under the provisions of sub-sections (3) and (4) of section 9 of the respective State Goods and Services Tax Act; or*
  - ❖ *the tax payable under the provisions of sub-sections (3) and (4) of section 7 of the Union Territory Goods and Services Tax Act,*
  - ❖ *but does not include the tax paid under the composition levy;*

# What is Output Tax?

- **Output Tax [Section 2 (82)] -**

*“Output tax” in relation to a taxable person, means*

- ❖ *the tax chargeable under this Act on taxable supply of goods or services or both made by him or by his agent*
- ❖ *but excludes tax payable by him on reverse charge basis;*

# Definitions - Section 2

- **Input [Section 2(59)]** - *“input” means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business.*
- **Input services [Section 2(60)]** - *“input service” means any service used or intended to be used by a supplier in the course or furtherance of business.*
- **Capital goods Section 2(19)** - *“capital goods” means goods, the value of which is capitalized in the books of account of the person claiming the input tax credit and which are used or intended to be used in the course or furtherance of business;*
- **Input tax credit [Section 2 (63) ]:** *input tax credit” means the credit of input tax.*

# What is Input Tax Credit?

- **Input Tax Credit [Section 2 (63)]** – *"input tax credit" means the credit of input tax"*

**CGST Act  
2017**

**Chapter- V**

**Sections 16 to 21**

**CGST  
Rules  
2017**

**Chapter- V**

**Rule 36 to 45**

# Availment of credit



**Step-1:** *In the course or furtherance of business*



**Step-2:** *4 or 5 or 6 Conditions to be satisfied*



**Step-3:** *Used for making o/w taxable supplies*



**Step-4:** *Not a blocked credit*



**Step-5:** *Other conditions*



**Input Tax Credit**



# Business usage

- **Every registered person** *is entitled to take ITC on any supply of goods or services or both subject to restrictions.*
- *The supply of goods or services are used or intended to be used* **in the course or furtherance of the business.** *[Direct nexus with outward supply not essential.]*
- *Eligible credit can be availed on inputs, input services and capital goods*
- *Amount credited to ECL*
- *ITC on Inputs and Capital Goods is allowed in one installment*

# Conditions for availing ITC

1. Tax Invoice
2. Received G/S
3. Supplier paid taxes
4. Filed GSTR-3B

**1<sup>st</sup> July 2017**

4

**1<sup>st</sup> January 2022**

5. Supplier has included the details of Tax Invoice in his GSTR-1.

5

6

**1<sup>st</sup> October 2022**

6. Credit not restricted in GSTR-2B

# Conditions for availing ITC

## Condition-1: Possession of a Tax paying document

- ❖ *Tax invoice*
- ❖ *Self-invoice*
- ❖ *GST Debit note*
- ❖ *Bill of Entry*
- ❖ *ISD Invoice*

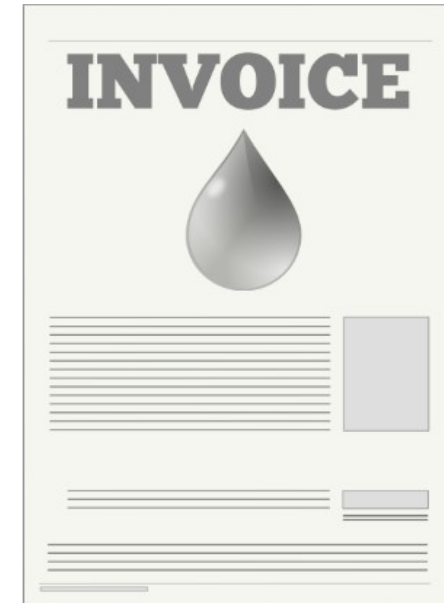
## Contents of Invoice: Rule 46 [19 particulars]

*Exception- 5 particulars*

*[Amt of tax, Description, Total value, GSTIN of supplier and recipient, Place of supply (in case of inter-state)]*

**E-invoice [QR code]**

**Soft copy/hardcopy of invoice: Sec 145 of CGST Act.**



# Conditions for availing ITC

## **Condition-2: Received goods or services**

- ❖ *Burden of proof on the person availing ITC*
- ❖ *[Hon'ble Supreme Court- Ecom Gill Coffee Trading Pvt Ltd (2023) 4 Centax 223 (S.C.)]*

## **Deemed receipt of goods or services:**

- ❖ *Goods are delivered by supplier to recipient on direction of registered person, whether acting as agent or otherwise, before or during movement of goods, either by transfer of documents of title to goods or otherwise*
- ❖ *Where services are provided by supplier to any person on direction of and on account of such registered person.*

# Conditions for availing ITC

**Condition 3:** *Tax paid to Government through cash/credit by supplier*

- ❖ *Calcutta HC- M/s. Gargo Traders [2023 (7) Centax 136 (cal.)]*
- ❖ *Madras HC- M/s D.Y. Beathel Enterprises*
- ❖ *Circular 183/15/2022-GST – FY 2017-18 and 2018-19*
- ❖ *[Karnataka HC- M/s Wipro]- 2019-20*
- ❖ *Circular 193/05/2023-GST dated 17<sup>th</sup> July 2023. [01.04.19 to 31.12.21]*

**Condition 4:** *Furnished the return GSTR-3B*

# Conditions for availing credit

**Condition 5:** *Invoice details should appear in GSTR-2B*

*16(2)(aa): The details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37 – **Rule 36(4)***

**Condition 6:** *Unrestricted credit in GSTR-2B*

*16(2)(b): The details of input tax credit in respect of the said supply communicated to such registered person under section 38 has not been restricted. **[Detailed in next slide]***

- *What are restricted credits? – different POS and filing post 16(4) time limit*

# Restricted Credits in GSTR-2B

*16(2)(b): The details of input tax credit in respect of the said supply communicated to such registered person under section 38 has not been restricted.*

## **Restricted credits in GSTR-2B:**

- ❖ *by any registered person within **such period** of taking **registration** as may be prescribed; or*
- ❖ *by any registered person, who has **defaulted in payment of tax** and where such default has continued for **such period** as may be prescribed; or*
- ❖ *by any registered person, the output tax payable by whom in accordance with the statement of outward supplies furnished by him under the said sub-section during such period, as may be prescribed, exceeds the output tax paid by him during the said period by such limit as may be prescribed; or [ **GSTR-1 > GSTR-3B**]*

# Restricted Credits in GSTR-2B

*(iv) by any registered person who, during such period as may be prescribed, **has availed credit of input tax of an amount that exceeds the credit that can be availed by him in accordance with clause (a),***

*by such limit as may be prescribed; or*

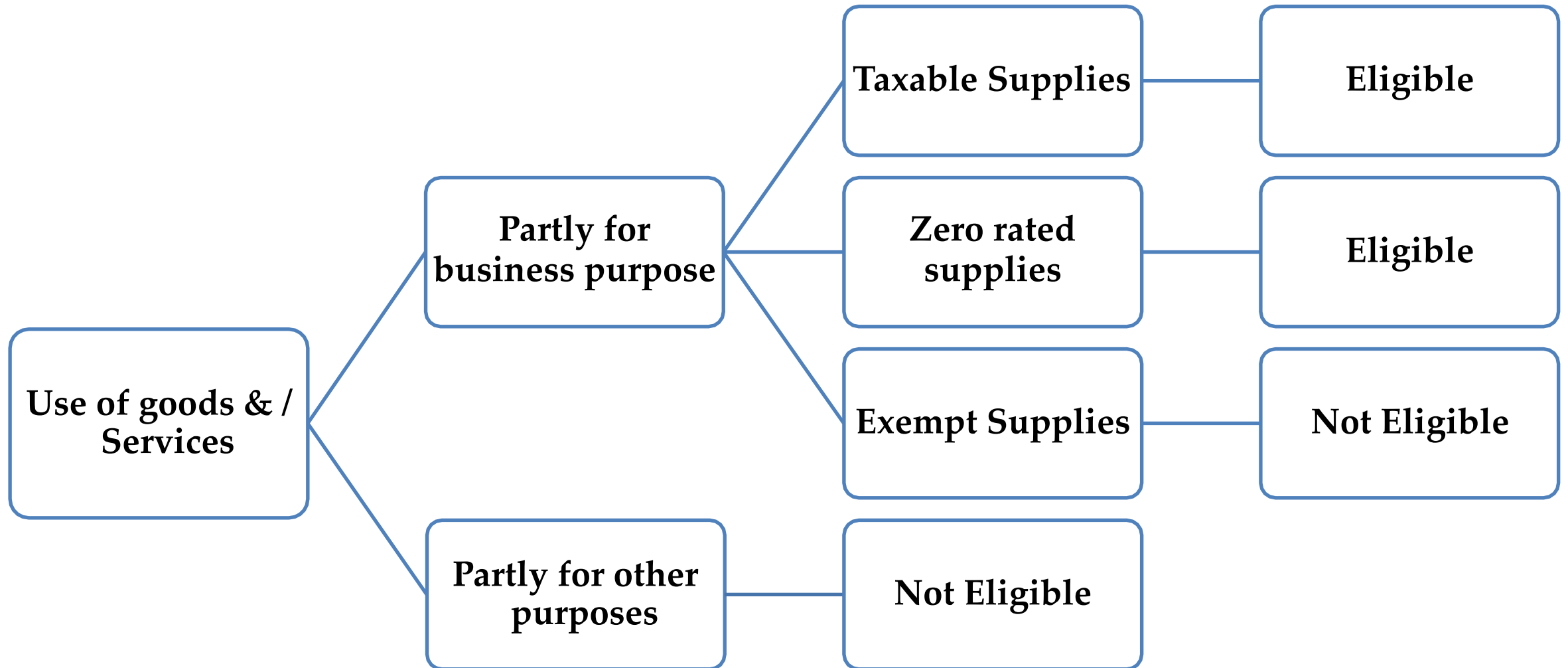
*(v) by any registered person, who has defaulted in discharging his tax liability in accordance with the provisions of sub-section (12) of [section 49](#) subject to such conditions and restrictions as may be prescribed;*

*or **[Violation of Rule 86B]***

*(vi) by such other class of persons as may be prescribed.*



# Apportionment of credits & Blocked Credits



# Apportionment of credits

## Exempt supply for the purposes of ITC reversal

### Exempt Turnover (in General)

- *Nil-rated supplies*
- *Exempt Supplies*
- *Non-taxable supplies*

### Includes:

- *Outward turnover on which 'Recipient' liable to pay GST under RCM*
- *Transaction in securities*
- *Sale of land and sale of building [Para 5 of Schedule III]*
- *Supply of goods from Duty Free Shops at arrival terminal in international airports to the incoming passengers. [Para 8(a) of Schedule III] w.e.f. 01<sup>st</sup> Oct 2023*

### Excludes:

- *Services of accepting deposit, extending loans or advances where consideration is represented by way of interest/discount*
- *Value of sale of duty credit scrips - Inserted vide Notification No. 14/2022-CT dated. 05.07.2022*
- *Other Schedule III items.*

# Blocked Credit - Till Jan 2019 and thereafter

- 17(5) reads as “.....input tax credit shall not be available in respect of the following”

Sec	Old	New
(a)	All passenger transport motor vehicle – allowed only for specified purpose	MV upto 13 passengers – only for specified purpose- supply of MV/transport passengers/ training on driving MV; bigger vehicle – allowed
(b)	Goods transportation – allowed	No change
(ab)	Services incidental to MV- both views	Specifically disallowed for: general insurance, servicing, repair and maintenance of MV-except used for specified purpose <b>More than 13 capacity vehicle- service?</b> Allowed for supplier for whom such MV are not blocked + mfg of MV + reinsurance

# Blocked Credit - Impact of amendment

Sec	Old	New
(b) (i)	<p>food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery:</p> <p>Except when used for making further outward supply or composite or mixed supply</p>	<p>food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery:</p> <p>Except when used for making further outward supply or composite or mixed supply</p> <p>Where obligatory to provide to employee under any Law</p>
(iii) Now (b) (i)	<p>rent-a-cab, life insurance and health insurance Except where</p> <ul style="list-style-type: none"><li>•obligatory to provide under any Law or</li><li>•when used for making further outward supply or composite or mixed supply</li></ul> <p>(no reference of leasing, renting or hiring)</p>	<p>leasing, renting or hiring of motor vehicles, vessels or aircraft, life insurance and health insurance Except where</p> <ul style="list-style-type: none"><li>•obligatory to provide under any Law or</li><li>•when used for making further outward supply or composite or mixed supply</li></ul>

# Blocked Credit - Impact of amendment

Sec	Old	New
(ii) & (iv) Now (ii) & (iii)	<ul style="list-style-type: none"><li>• membership of a club, health and fitness centre</li><li>• travel benefits extended to employees on vacation such as leave or home travel concession;</li></ul>	<ul style="list-style-type: none"><li>• membership of a club, health and fitness centre</li><li>• travel benefits extended to employees on vacation such as leave or home travel concession except where <b>obligatory to provide to employee under any Law</b></li></ul>

# Other blocked credits

- *WCT service supplied for construction of IP [other than P&M]*
- *Except where input service for further supply of WCT service*
- *Goods/services received for construction of immovable property[other than P or M] on own account/for self use including when used in course furtherance of business*
- *Construction includes reconstruction, renovation, additions alteration, repairs to extent of capitalization to IP;*
- *P&M-means apparatus/equipment machinery fixed to earth by foundation/ structural support used to make outward supplies excludes L&B/civil structures, telecom towers and pipeline outside factory premise*

# Other blocked credits

- *Goods/services on which composition tax paid*
- *Goods/services received by NRTP except on imported goods by him*
- *Goods/services used for personal consumption*
- *Goods lost/stolen/written off/disposed off gift/free samples*
- *Tax paid u/s*
  - *74-tax not paid/short paid by reason of fraud willful misstatement or suppression of facts*
  - *129-detention seizure release of goods in transit*
  - *130-confiscation goods/conveyances*
- *Expenses incurred relating to the obligations under corporate social responsibility referred to in section 135 of the Companies Act, 2013 [w.e.f. 01<sup>st</sup> October 2023]*

# Goods received in lots

- ❖ *The registered person shall be entitled to take credit upon receipt of the last lot or instalment*



*Goods will be delivered in 4 lots*  
*Taxable value – Rs. 1lakh*  
*GST- Rs. 18,000*

*01<sup>st</sup> February 2024*

*29<sup>th</sup> February 2024*

*01<sup>st</sup> January 2024*

*31<sup>st</sup> January 2024*

**3 lots**

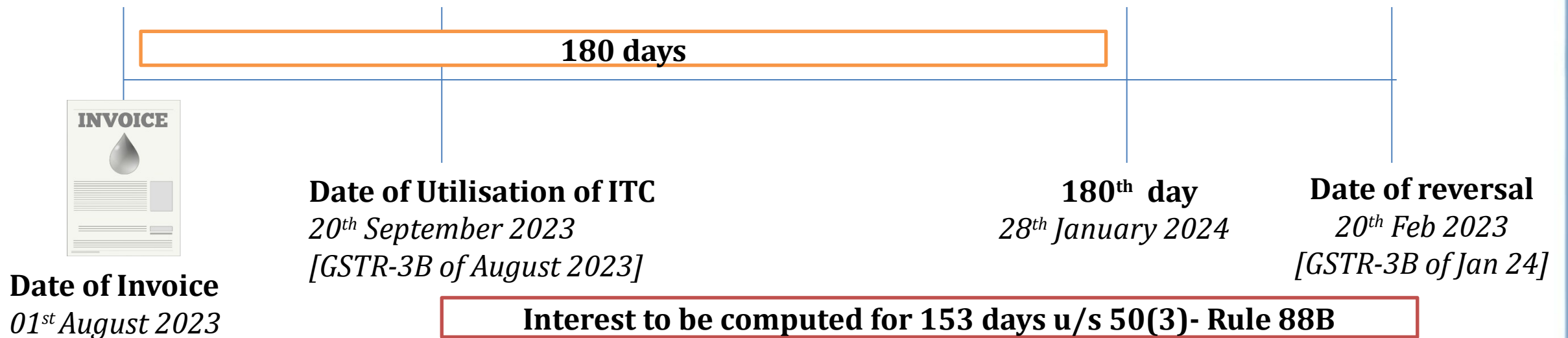
**1 lot**

**GST Credit is to be taken in the GSTR-3B of January 2024 or February 2024 ?**



# Fails to pay within 180 days

- Recipient fails to pay supplier amount towards value of supply and tax within 180 days from date of issue of invoice-add credit to output tax liability and pay with 18% interest
- Meaning of term “fails to pay”
- Reduce amount payable by financial credit note
- Reversal of credit – interest liability?
- Time limit of November for re-availment?



# ITC on capital goods?

*Whether the registered person is entitled to avail Input Tax Credit on Capital goods or Plant and machinery?*

<b>Depreciation claimed on Tax Component</b>	<b>Depreciation not claimed on Tax component</b>
<i>ITC not available</i>	<i>ITC available</i>
<i>Example: Cost of Machine = Rs. 1,00,000 GST = Rs. 18,000</i>	<i>Example: Cost of Machine = Rs. 1,00,000 GST = Rs. 18,000</i>
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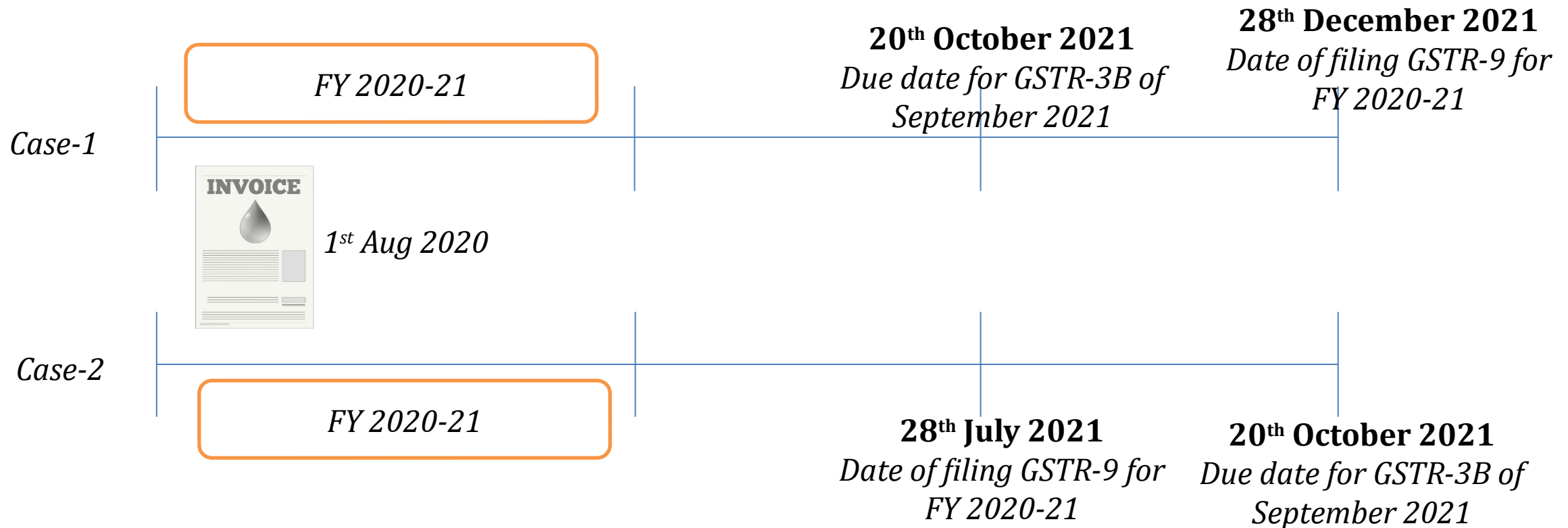


# Time limit for availing ITC?

From FY 2017-18 to FY 2020-21: [\[AP High Court- M/s Thirumala Konda Plywoods\]](#)

*ITC shall be claimed earliest of the following:*

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- *Date of filing of Annual return for the relevant Financial Year*

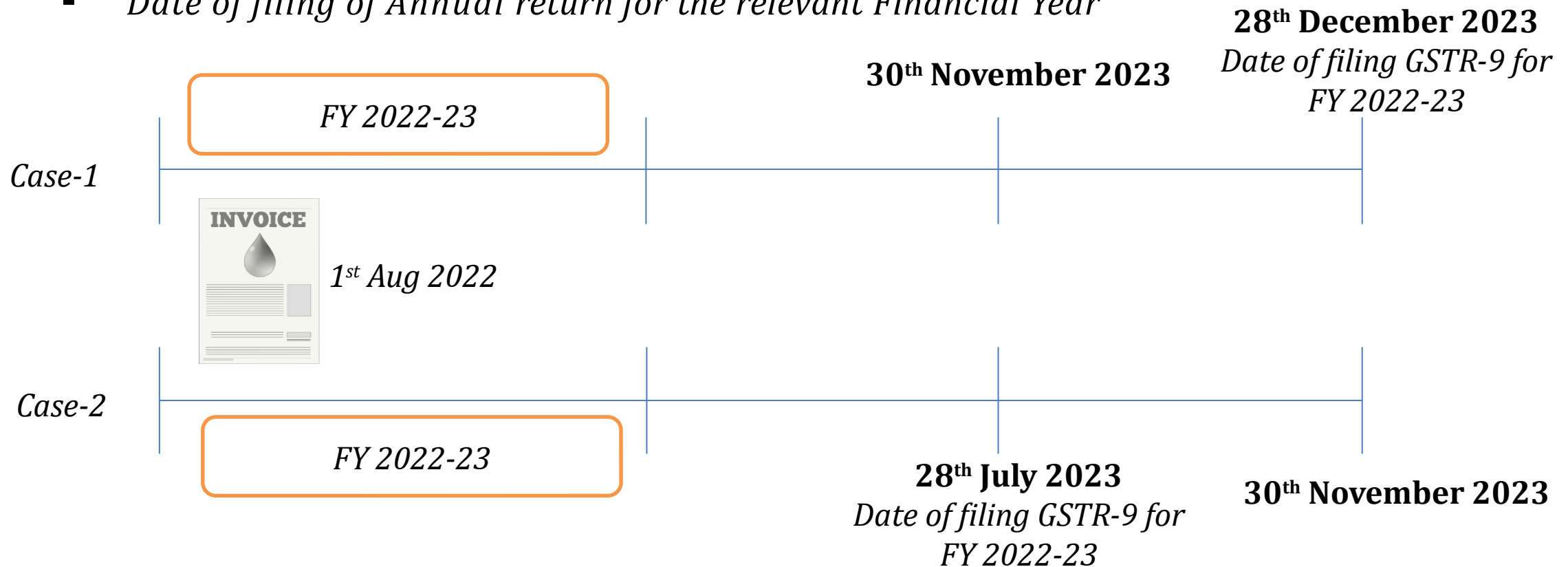


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*\*The numbers represent the order of utilization of credit*

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- *It is a Dynamic Report i.e. details uploaded by vendors are updating to such a month without utilizing a cut-off date.*
- *Entries comes from GSTR 1, GSTR 5, GSTR 6, GSTR 7, GSTR 8, ICEGATE system – BoE details recently updated.*
- *Difficult to use it for reconciliation as it is dynamic report which changes every time depending on the filing date of the vendor.*
- *It is available from July 2017 onwards for view purpose.*

# Circular 183/15/2022-GST dated 27<sup>th</sup> December 2022

- ✓ *ITC restrictions regarding availment of ITC were provided under rule 36(4) of CGST Rules, 2017 w.e.f 9<sup>th</sup> Oct 2019.*
- ✓ *Various representations have been made seeking clarifications regarding the manner of dealing discrepancies between GSTR 2A and GSTR 3B for FY 2017-18 and FY 2018-19.*

*Scenarios covered under the said circular:*

<b>Scenario</b>	<b>Clarification</b>
<i>Form GSTR-1 not filed but GSTR 3B filed</i>	<i>Procedure explained below</i>
<i>Form GSTR-1 and GSTR 3B filed but failed to disclose particular supply in GSTR-1</i>	
<i>Reported in B2C instead of B2B Supplies</i>	
<i>Declared supplies under wrong GSTIN</i>	

## **Procedure to be followed for the above scenarios**

- Proper officer shall seek invoices which are not appearing in GSTR 2A but availed in GSTR 3B*
- He shall ascertain fulfilment of the conditions of Section 16 of CGST Act in respect of said ITC*
  - He is in possession of a tax invoice or debit note.*
  - He received goods or services or both*
  - He has made payment for the amount along with tax to the supplier*
  - Whether said ITC has been availed within the time period specified under section 16(4) of the CGST Act*
- With respect to whether supplier has paid tax to the government following procedure to be adopted:*
  - Certificate to be obtained declaring the taxes has been paid by the supplier from*
    - *Supplier in case ITC is less than Rs. 5 lakhs*
    - *CA/CMA Certificate in case ITC is more than Rs. 5 Lakhs*

# Circular 193/05/2023-GST dated 17<sup>th</sup> July 2023

- ✓ *Clarifies discrepancies between GSTR 3B and GSTR 2A for the period from 1<sup>st</sup> April 2019 to 31<sup>st</sup> December 2021 in terms of Rule 36(4) of the CGST Rules, 2017.*
- ✓ *Deviation between GSTR-2A and ITC availed can not be more than limit prescribed below.*

Period	% percentage of deviation
<i>09-10-2019 to 31-12-2019</i>	<i>20%</i>
<i>01-01-2020 to 31-12-2020</i>	<i>10%</i>
<i>01-01-2021 to 31-12-2021</i>	<i>5%</i>
<i>01-01-2022 to 31-12-2022</i>	<i>0</i>

# Reversal of ITC

**Section 17(1):** *Good or Services or both used partly for business and partly for other purposes, credit shall be restricted to so much of the input tax as is attributable to the purposes of his business*

**Section 17(2):** *Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies and partly for effecting exempt supplies credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero- rated supplies.*

**Sections 17(6)** *The Government May prescribe the manner in which the credit referred to in Sub-Section(1) and (2) may be attributed*

# Rule 42 of the CGST Rules, 2017

*Rule 42 of the CGST Rules, 2017, pertains to the manner of determination of input tax credit (ITC) in respect of inputs or input services and the reversal thereof.*

*Important definitions before drilling to the procedure for reversal:*

- **T:** Total input tax credit on inputs and input services.
- **T1:** Input tax credit attributable to inputs and input services intended for non-business purposes.
- **T2:** Input tax credit attributable to inputs and input services intended for exempt supplies.
- **T3:** Input tax credit attributable to inputs and input services ineligible under Section 17(5).
- **C1:** Credit attributable to business purposes and taxable supplies including zero-rated supplies ( $T - (T1 + T2 + T3)$ ).
- **T4:** Credit attributable to exempt supplies out of common credit (proportional to the exempt supplies).
- **D1:** Amount of input tax credit attributable to exempt supplies.
- **D2:** Amount of input tax credit attributable to non-business purposes.
- **C2:** Eligible input tax credit ( $C1 - D1 - D2$ ).



## **Calculation of ITC**

**Monthly Calculation:** *The registered person must calculate D1 and D2 every month*

**Annual Calculation:** *An annual calculation must also be done, and any excess credit claimed must be reversed.*

### **Special Provisions:**

**Banking and Financial Institutions:** *They may opt to reverse 50% of the eligible credit on inputs and input services.*

**No Double Reversal:** *No need for double reversal if the credit has already been reversed once under other provisions.*

# Rule 43 of the CGST Rules, 2017

*Rule 43 of the CGST Rules, 2017, pertains to the manner of determination of input tax credit (ITC) in respect of capital goods and the reversal thereof.*

*Important **definitions** before drilling to the procedure for reversal:*

**A:** *Input tax credit on capital goods used or intended to be used exclusively for non-business purposes or for effecting exempt supplies (not eligible for credit).*

**B:** *Input tax credit on capital goods used or intended to be used exclusively for taxable supplies including zero-rated supplies (eligible for credit).*

**C:** *Input tax credit on capital goods that are used for both non-business and business purposes or for both exempt and taxable supplies.*

## **Distribution of ITC on Common Capital Goods:**

**Tc:** *Total input tax on common capital goods.*

**Tm:** *ITC attributable to a tax period on common capital goods ( $Tc / 60$ ).*

**Tr:** *Aggregate of Tm credited to electronic credit ledger for common capital goods.*

## **Calculation of Reversal Amount**

- **Te:** *ITC attributable to exempt supplies out of Tm (to be calculated monthly).*
- **Te =  $(E/F) * Tm$** 
  - **E:** *Aggregate value of exempt supplies during the tax period.*
  - **F:** *Total turnover during the tax period.*

*Note: Year end re calculation must be carried out for any short reversal or short availment*

# THANK YOU

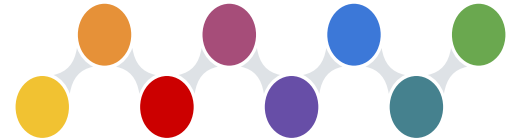


[manindar@mnaca.in](mailto:manindar@mnaca.in)  
[subbareddy@hnaindia.com](mailto:subbareddy@hnaindia.com)

# REGISTRATIONS UNDER THE GST ACT, DOCUMENTS, ACCOUNTS & RECORDS, PAYMENT OF TAXES

---

CA Arpan Bohra



- Introduction
- Various Registrations under GST Act
- Documents, Accounts and Records
- Payment of Taxes
- Conclusion
- Q&A

# Example

Arpan Sold goods to Allu Arjun worth Rupees 10,00,000/- + 180000/- (18% GST)



Goods Sold



# Registrations

[www.arpanbohra.co.in](http://www.arpanbohra.co.in)



1. Chapter VI
2. Section 22-30 of the CGST Act 2017
3. Person liable & not liable for registration
4. Cases where Compulsory registration is required
5. Special Provisions
6. Amendment
7. Cancellation, Suspension and Revocation of Registration



# Person liable for registration

**Every supplier** shall be liable to be registered under this act, if his **aggregate turnover** in a financial year **exceeds twenty lakh rupees.**

1<sup>st</sup> Proviso – Special Category States (10 lakhs)

2<sup>nd</sup> Proviso – Special Category States (10 lakhs to 20 lakhs)

3<sup>rd</sup> Proviso – Other States ( 20 lakhs to 40 lakhs)\*\*

\*\*exclusively in the supply of goods

\*\*\* only exemption deposit/loans & adv – interest or discount

# Person liable for registration

STATES	LIMIT	LIMIT
	EXCLUSIVE SUPPLY OF GOODS	OTHERWISE
(1) MANIPUR / MIZORAM / NAGALAND / TRIPURA	10 LAC	10 LAC
(2) ARUNACHAL PRADESH / MEGHALAYA / SIKKIM / UTTARAKHAND / PUDUCHERRY / TELANGANA	20 LAC	20 LAC
(3) OTHER STATES	40 LAC	20 LAC

## **Following persons shall not be liable for registration**

- a. Exclusively engaged in goods or services or both that are
  - not liable to tax or
  - wholly exempt
- b. An agriculturist, to the extent of supply of produce of cultivation land

# Compulsory Registration

1. **Inter-State**  
Taxable supply

2. **Casual Taxable**  
persons making taxable  
supply

3. Person Required to  
pay tax under **Reverse  
Charge**

4. Required to pay tax  
under **sub-section (5)  
of section 9**

5. **NR** Taxable persons  
making Taxable supply

6. Required to **deduct**  
**tax** under section 51

7. Making taxable supply  
as an **Agent or  
otherwise**

8. **Input Service  
Distributor**

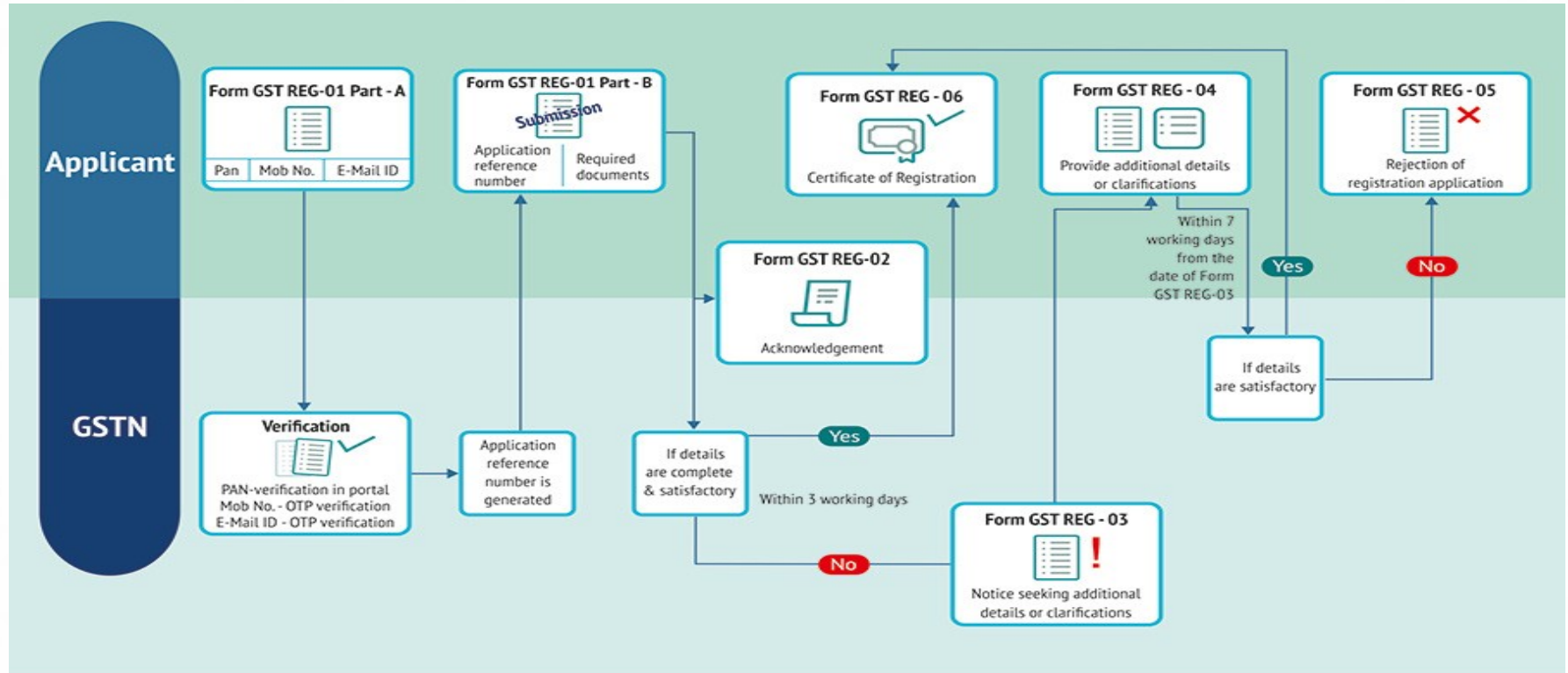
9. Every **Electronic  
commerce operator**

10. Supplier of **OIDAR  
services** from outside India  
to a to a person in India o/t  
Registered person

11. Other than supplies specified  
under **sub-section (5) of section 9**  
such e-commerce operator who is  
required to collect tax at source under  
sec-52

12. class of persons as  
may be notified by the  
**Govt – Council  
recommendation**

# Procedure for registration (S.25)



# Procedure for registration (S.25)

## CASUAL TAXABLE PERSON:

- Registration for individuals or businesses with no fixed place of business in a particular state.
- Temporary registration for a limited period.
- Requires advance deposit of estimated tax liability.
- To register at least 5 days prior to commencement of Business
- Form REG -01

## NON-RESIDENT TAXABLE PERSON:

- Registration for foreign entities supplying goods/services in India.
- Temporary registration, similar to Casual Taxable Person.
- Requires advance tax deposit.
- To register at least 5 days prior to commencement of Business
- Form REG -01

# Procedure for registration (S.25)

## INPUT SERVICE DISTRIBUTORS:

- Mechanism to distribute CGST and IGST credits among branches with the same PAN.
- Requires separate registration.

## E-COMMERCE OPERATORS:

- Mandatory registration for all e-commerce operators.
- Responsible for collecting and remitting tax on behalf of sellers



- **Deemed Registration – 30 days**
- **Amendment to Registration (Core Field / Non Core Field)**

# Cancellation of Registration

- **Cancellation of registration**

- Business Discontinued, transferred, amalgamated, demerged or dispose of;
- Change in Constitution of business;
- No longer liable to be registered (sec 22, 24, voluntary opt out)
- **During pendency – suspension**
- **May cancel from such date or retrospective date (Sec 29(2))**
- Contravened the provisions of the Act
- Sec 10 – Not filed the returns beyond three months
- Other Registered person – beyond 6 Months
- Fraud, Willful Misstatement or suppression of Facts

# Cancellation of Registration

- **Cancellation – shall not effect liability**
- **On cancellation – pay an amount equalant to**
  - Inputs – stock, WIP
  - P&M, Capital goods – Input reduced by such percentage or tax on value as prescribed under Sec 15 (w.e.h)

# Revocation of Registration

- Cancelled by Proper Officer
- 30 days from date of cancellation order
  - + 30day by ADC/JC
  - ++ 30 days by Commissioner

# Practical Insights on Registration

- Regular Vs Composition
- In Regular - Now or Later
- Appeal if registration got rejected

- **Aryan Timber Store v. Sale Tax Officer [Writ Petition (Civil) No. 628 of 2024 dated January 18, 2024] - Delhi High Court**

GST Registration of an registered person cannot be canceled with retrospective effect mechanically merely because the returns were not filed

- SanjoyNath v. Union of India [WP No. 6366 of 2023 dated November 29, 2023] - Guwahati High Court**

GST Registration be restored if the registered person files pending returns and pays the taxes along with interest and penalty

# DOCUMENTS, ACCOUNTS & RECORDS

# Introduction

- Documents (Section 31 to 34)
- Accounts & Records (35 to 36)



# Documents under GST

## ❑ Invoices:

- Tax Invoice
- Bill of Supply
- Debit and Credit Notes

## ❑ Other Documents:

- Delivery Challan
- Receipt Voucher
- Payment Voucher

## ❑ Format and Details:

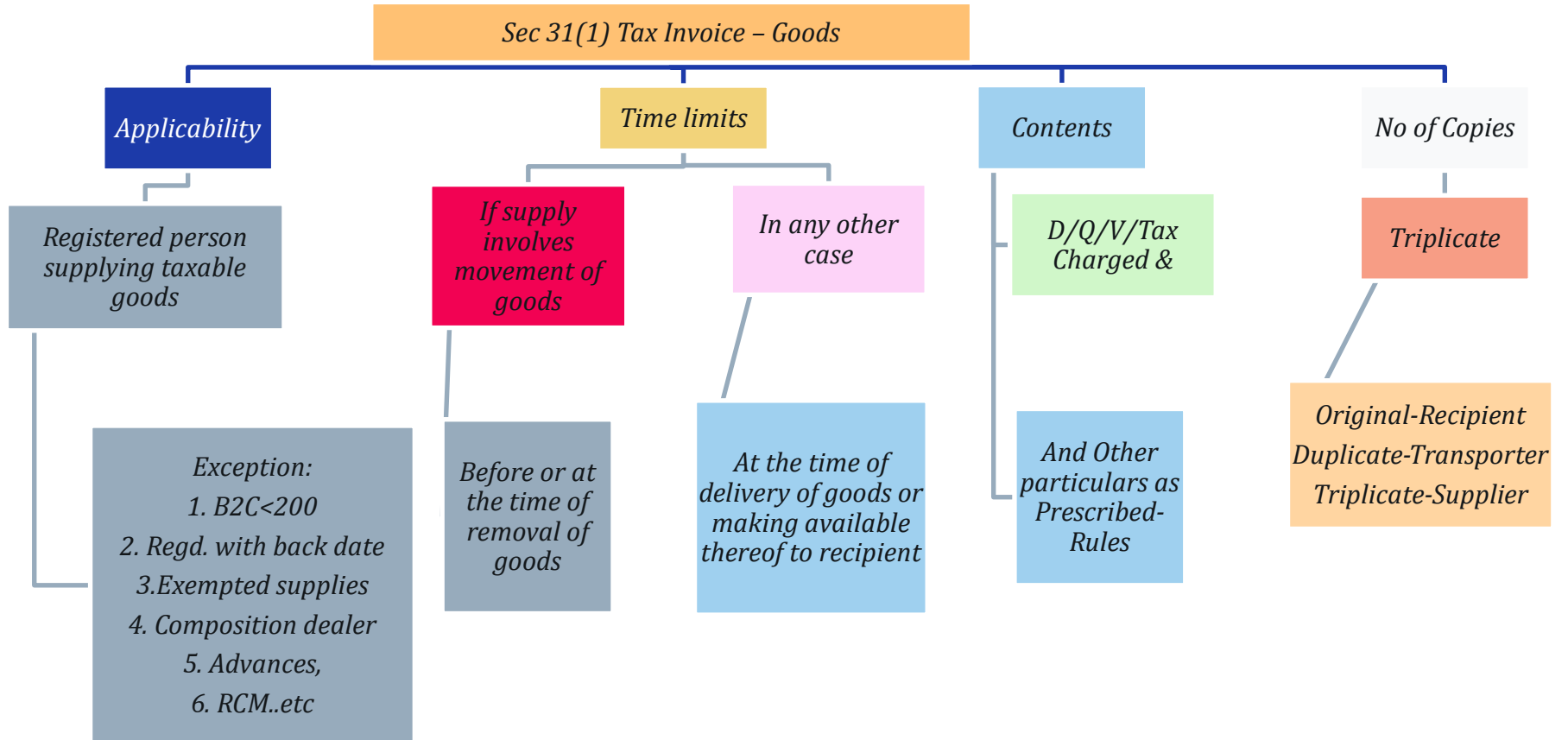
- GSTIN of supplier and recipient
- HSN/SAC codes
- Description of goods/services
- Rate and amount of tax



# List of Documents

- Tax invoice
- Bill of supply
- Tax invoice-cum- Bill of supply
- Revised invoice
- Debit note
- Credit note
- Receipt voucher
- Refund voucher
- Self invoice
- Payment voucher
- Delivery challan

# Tax Invoice



# Tax Invoice

## Sec 31(2) Tax Invoice – Services

### Applicability

Registered person  
supplying taxable  
Services

Exception:

1. B2C < 200
2. Regd. with back date
3. Exempted supplies
4. Composition dealer
5. Advances,
6. RCM..etc

### Time limits

Before or after the provision of  
Service but  
**within 30 days**  
from date of completion

**Exception:**  
45 days in case of  
I/B/FI/NBFC

### Contents

D/Q/V/Tax  
Charged &

And Other  
particulars as  
Prescribed- Rules

### No of Copies

Duplicate

Original-Recipient  
Duplicate-Supplier

# Content – General (Rule 46)

<i>GSTIN of Supplier</i>	<i>Consecutive serial number &amp; date of Issue</i>	<i>GSTIN of Recipient, if registered</i>	<i>Name and address of recipient if unregistered</i>	<i>HSN</i> <ul style="list-style-type: none"><li>• <math>AT \leq 5 Cr</math> – B2B Yes, B2C optional</li><li>• <math>&gt; 5 Cr</math> - Yes</li></ul>
<i>Description of goods or services</i>	<i>Quantity in case of goods</i>	<i>Total value of supply</i>	<i>Taxable value</i>	<i>Tax rate- CGST, SGST, IGST &amp; Cess</i>
<i>Amount of tax charged</i>	<i>Place of supply</i>	<i>Address of delivery where different than place of supply</i>	<i>Tax payable on RCM</i>	<i>Signature of authorised signatory.</i>

# Tax Invoice

**Details of Supplier**

 GSTIN  
 Name  
 Address

	Original for Recipient
	Duplicate for Transporter
	Triplicate for Supplier

State

Serial No.:

Date:

**Details Of Recipient (Billed To)**

 Name  
 Address  
 State  
 State code  
 GSTIN / UIN :

**Details Of Consignee (Shipped to)**

 Name  
 Address  
 State  
 State code  
 GSTIN / UIN

Place of Supply (in case of inter state):

Whether Tax payable under Reverse charge basis ?

Yes/No

S.No.	Description	HSN/SAC	Qty/ Units	Total Value	Discount/Abatement	Taxable Value	CGST		SGST		IGST		Cess	
							Rate	Amt	Rate	Amt	Rate	Amt	Rate	Amt
1														
Total														

Total Invoice Value (In Figure)

 Rs. 0

For \_\_\_\_\_

Total Invoice Value (In Words) Rupee \_\_\_\_\_

Only

Authozied Signatory

# Introduction

For **Exports and Supplies to SEZ**, the following statements should be added:

**Exports:**

“Supply meant for export on payment of integrated tax” or

“Supply meant for export under bond or letter of undertaking without payment of integrated tax”,

**Supplies to SEZ:**

“Supply to SEZ unit or SEZ developer for authorised operations on payment of integrated tax”

“Supply to SEZ unit or SEZ developer for authorised operations under bond or letter of undertaking without payment of integrated tax”,

Further, in leu of name and address of delivery with state code etc,

- i. name and address of the recipient;
- ii. address of delivery; and
- iii. name of the country of destination:

# Tax Invoice

**"Supply meant for export on payment of Integrated Tax"**  
or

**"Supply meant for export under Bond/LUT without payment of Integrated Tax"**

**Details of Supplier**

GSTIN  
Name  
Address

Original for Recipient
Duplicate for Transporter
Triplicate for Supplier

State

Serial No.:

Date:

**Details Of Recipient (Billed To)**

Name  
Address

**Delivery address**

Address  
  
Country

S.No.	Description	HSN/SAC	Qty/ Units	Total Value	Discount/ Abament	Taxable Value	CGST		SGST		IGST		Cess	
							Rate	Amt	Rate	Amt	Rate	Amt	Rate	Amt
Total														

Total Invoice Value (In Figure)

Rs. \_\_\_\_\_

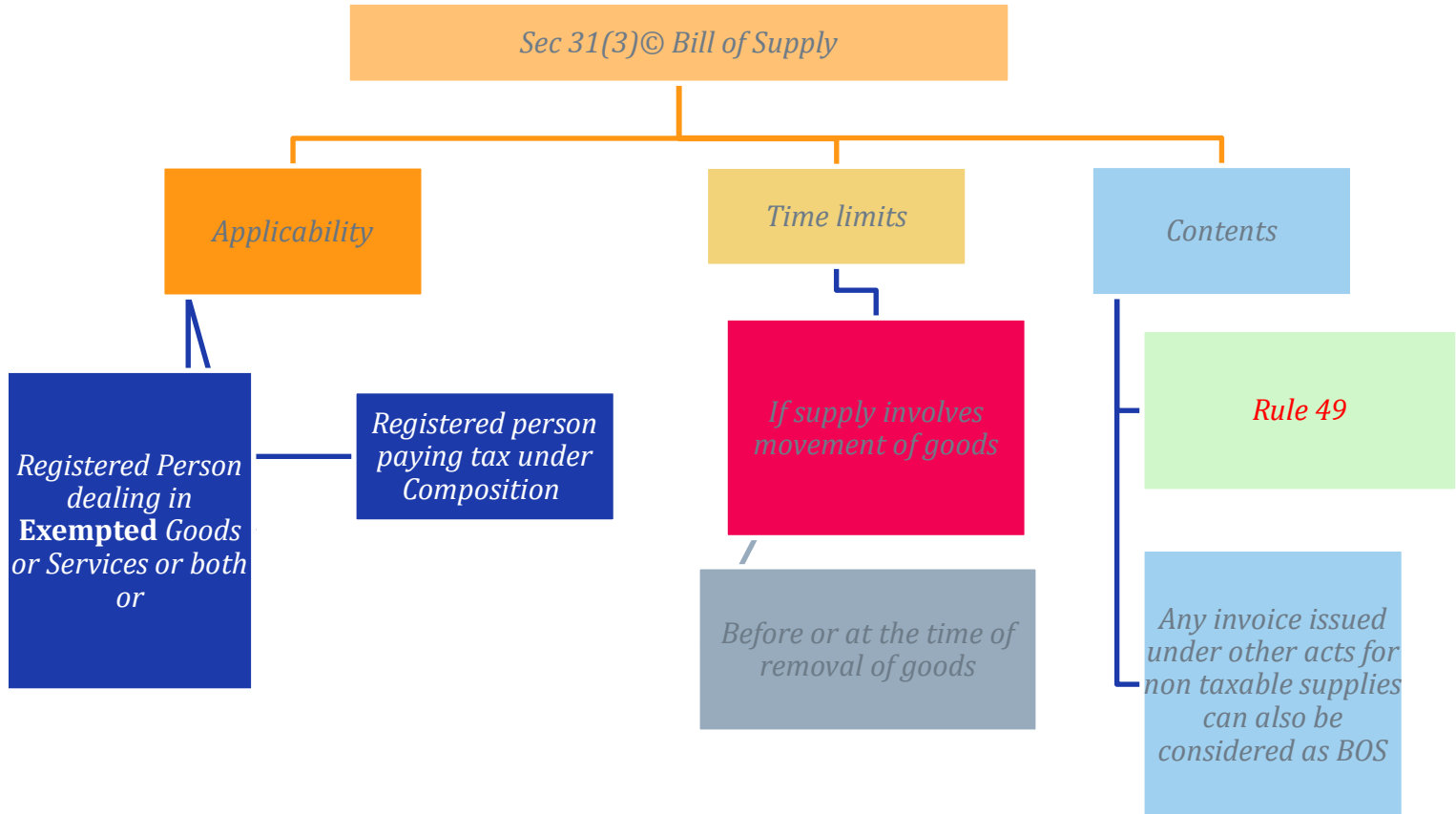
For \_\_\_\_\_

Total Invoice Value (In Words) Rupee \_\_\_\_\_

Only

Authozied Signatory





# Bill Of Supply

Composition Taxable Person, not eligible to collect tax on supplies

## Details of Supplier

Serial No.:

Date:

GSTIN

Name

Address

State

## **Details Of Recipient (Billed To)**

Name

Address

State

State Code

GSTIN / UIN :

## **Details Of Consignee (Shipped to)**

Name

Address

State

State Code

Place of Supply (in case of inter state):

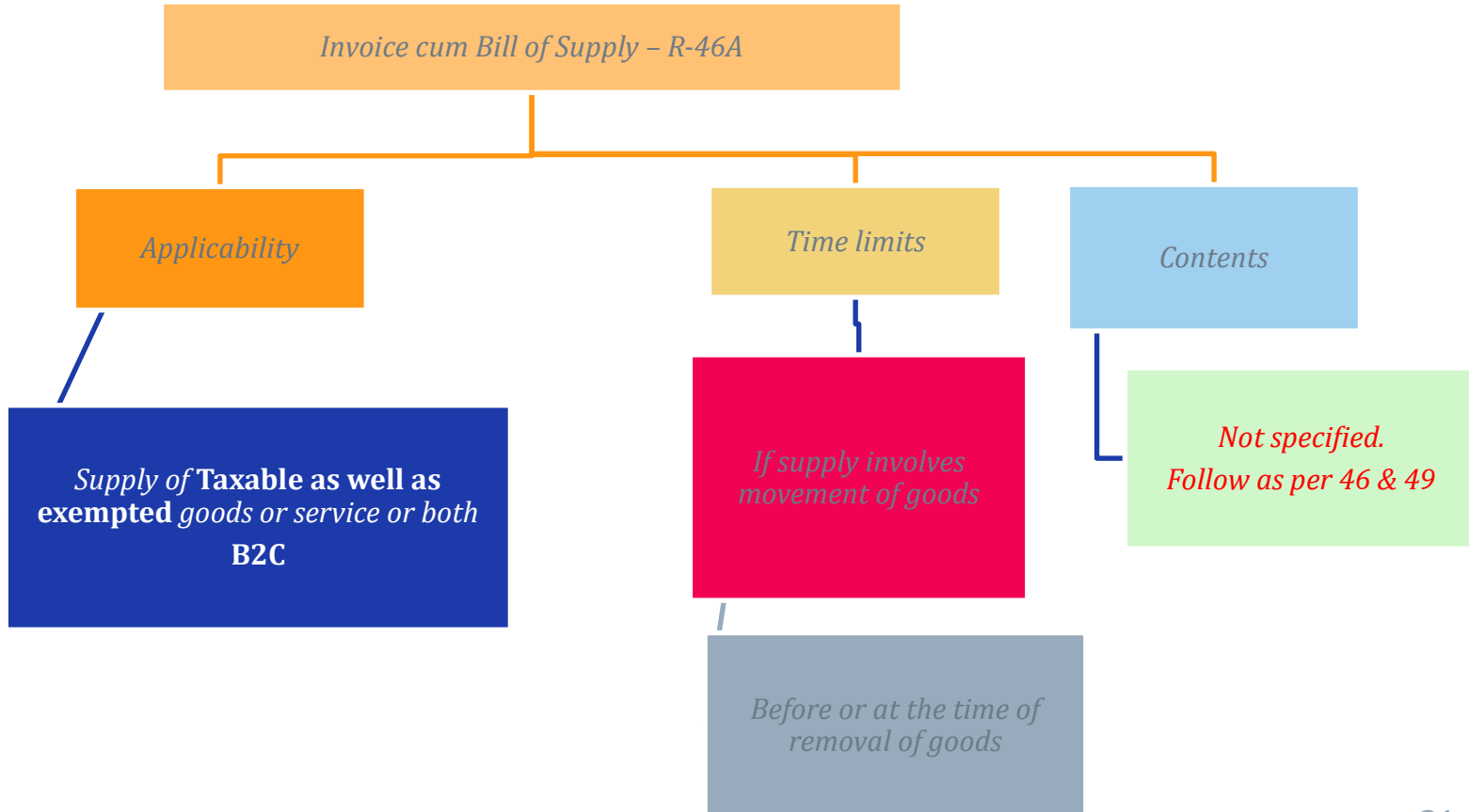
S.No.	Description	HSN / SAC	Qty/ Unit	Rate	Amount	Less: Discount	Value Of Supply
Total:							

Total Value (In Figure) Rs. \_\_\_\_\_

Total Value (In Words) Rupees \_\_\_\_\_  
\_\_\_\_\_ Only.

For \_\_\_\_\_

Authorized Signatory



# Invoice-cum-Bill of Supply

## Details of Supplier

GSTIN  
Name  
Address

	Original for Recipient
	Duplicate for Transporter
	Triplicate for Supplier

State

Serial No.:

Date:

## **Details Of Recipient (Billed To)**

Name  
Address  
State  
State code

## **Details Of Consignee (Shipped to)**

Name  
Address  
State  
State code

Place of Supply (in case of inter state):

Whether Tax payable under Reverse charge basis ? Yes/No

S.No.	Description	HSN/SAC	Qty/ Units	Total Value	Discount/ Abament	Taxable Value	CGST		SGST		IGST		Cess	
							Rate	Amt	Rate	Amt	Rate	Amt	Rate	Amt
Total														

Total Invoice Value (In Figure)

Rs. \_\_\_\_\_

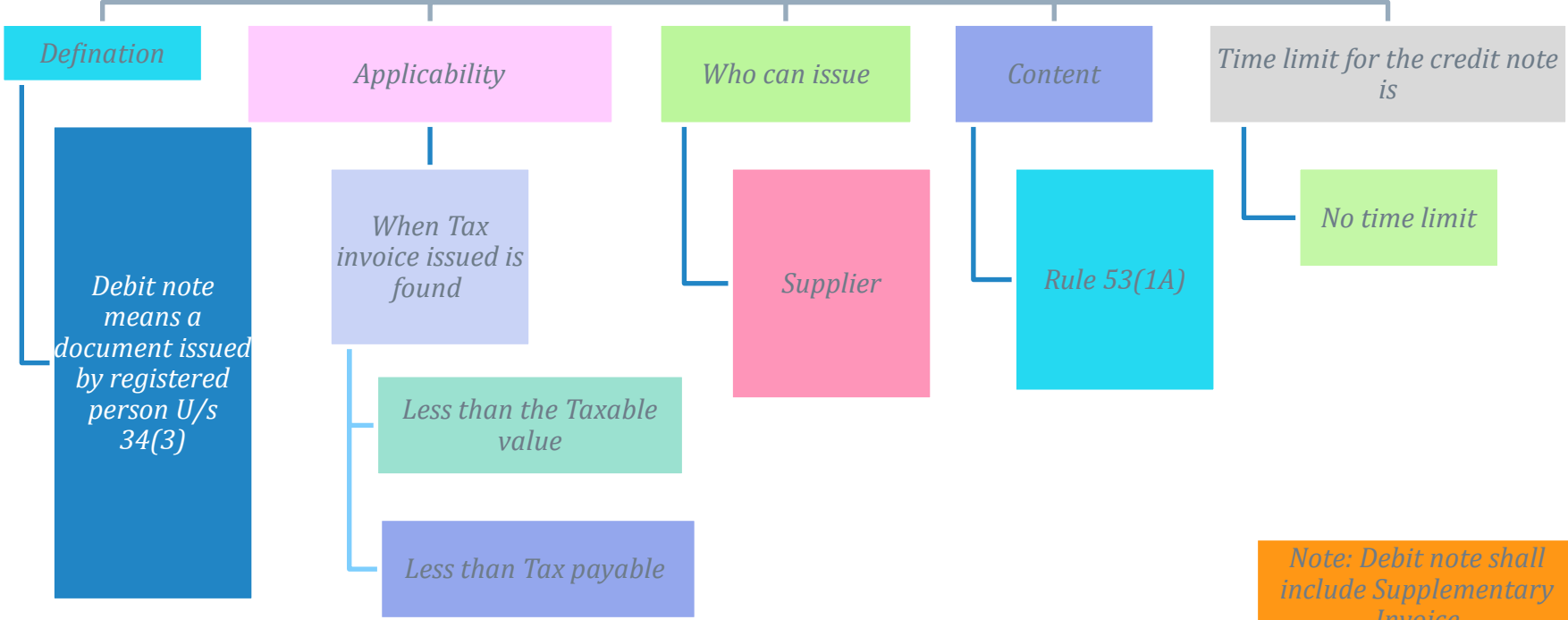
For \_\_\_\_\_

Total Invoice Value (In Words) Rupee \_\_\_\_\_

Only

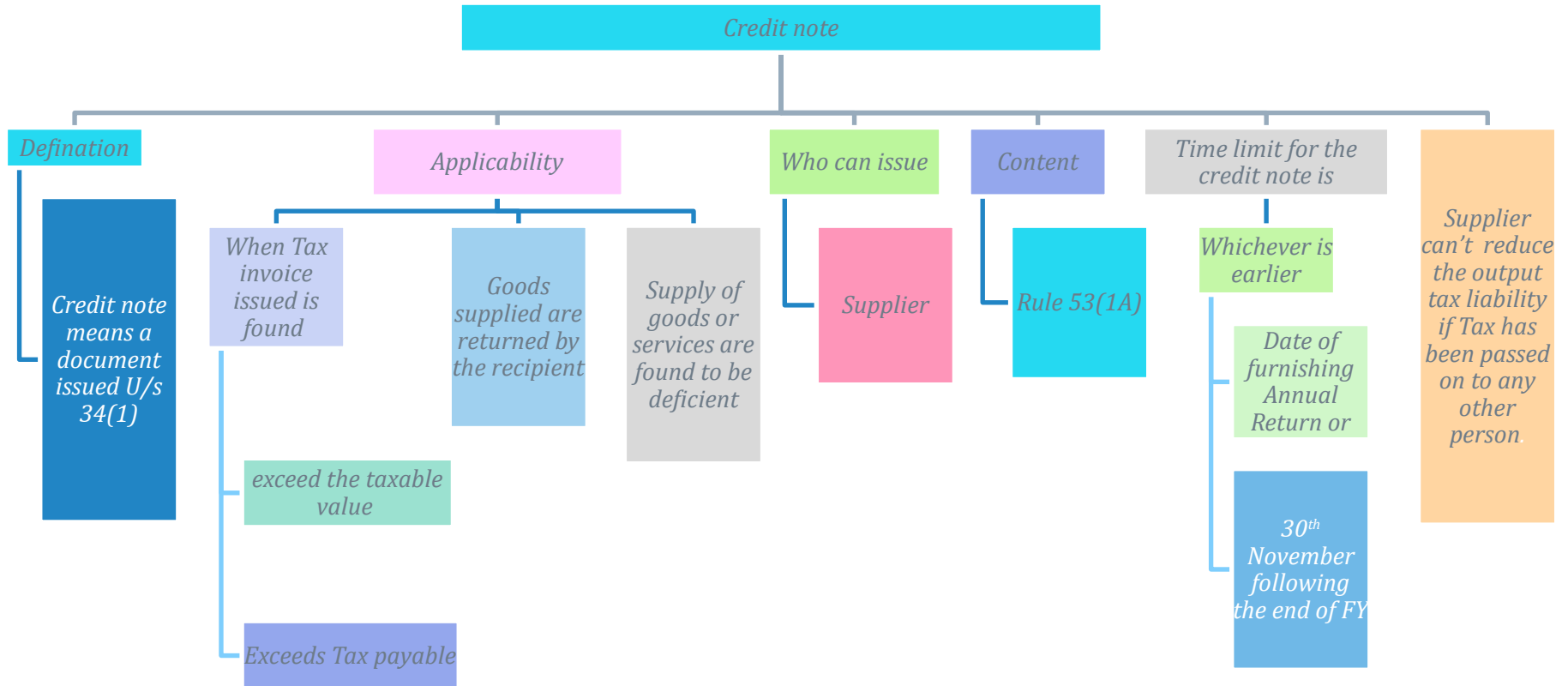
Authozed Signatory

# Debit note



Note: Debit note shall include Supplementary Invoice





## Credit Note

**Details of Supplier**

Serial No: \_\_\_\_\_

Date: \_\_\_\_\_

GSTIN \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_

State \_\_\_\_\_

**Against Invoice /Bill of Supply**

Against Invoice /Bill Of Supply No.: \_\_\_\_\_

Date of Invoice /Bill Of Supply : \_\_\_\_\_

**Details Of Recipient (Billed To)**

Name \_\_\_\_\_

Address \_\_\_\_\_

State \_\_\_\_\_

State Code \_\_\_\_\_

GSTIN/UIN \_\_\_\_\_

**Details Of Consignee (Shipped To)**

Name \_\_\_\_\_

Address \_\_\_\_\_

State \_\_\_\_\_

State Code \_\_\_\_\_

GSTIN/UIN \_\_\_\_\_

S.No	Description	HSN/A CS	QTY/ Units	Rate	Amount	Less: Discount	Taxable Value	CGST		SGST		IGST		Total
								Rate	Amount	Rate	Amount	Rate	Amount	
Total														

Total Invoice Value (In Figure) \_\_\_\_\_

Rs. \_\_\_\_\_

Total Invoice Value (In Words) Rupees \_\_\_\_\_

Only.

For \_\_\_\_\_

Authorised Signatory \_\_\_\_\_



# ACCOUNTS & RECORDS

[www.arpanbohra.co.in](http://www.arpanbohra.co.in)

# Every registered person shall maintain

Every registered person –

Will be required to maintain the **true and correct** account of:

- ✓ Production/Manufacture of goods
- ✓ Inward and outward supply of goods of services or both
- ✓ Stock of goods
- ✓ Input Tax Credit availed and
- ✓ Output tax payable and paid.
- ✓ Separate account of advances received, paid and adjustments made thereto.
- ✓ Names and addresses of the suppliers from whom supplies have been received and recipients to whom supplies have been made.
- ✓ The complete address of all the premises where goods are stored by a registered person
- Supplier fails to account for Goods lost/Stolen, Destroyed / Disposed by way of Gifts / Samples Officer shall determine the amount
- Exceptions / Additions can be prescribed by commissioner
- ~~Annual audit by a Chartered Accountant or a Cost Accountant if turnover exceeds 5 crore during the financial year.~~

# Retention of Accounts & Records

## **Every registered person**

- 72 months (6 years) from the due date of furnishing of annual return for the year pertaining to such accounts and records.

## **In case of proceedings (Appeals, etc.) or investigation,**

- One year after final disposal of such proceedings or investigation or
- 72 months (6 years) from the due date for filing annual return pertaining to such records  
whichever is later.
- In case such records are maintained **manually**, to be kept at every related place of business of the registered person for the above period.
- In case such records are maintained **digitally**, they are to be accessible at every related place of business for the above period.

# Retention of Accounts & Records

..

<b>FY</b>	<b>Original / Extended Due Date</b>	<b>Has to be retained till</b>
2017-18	05.02.2020	04.02.2026
2018-19	31.12.2020	30.12.2026
2019-20	31.03.2021	30.03.2027
2020-21	28.02.2022	27.02.2028
2021-22	31.12.2022	30.12.2028
2022-23	31.12.2023	30.12.2029

# A&R of All Places ?

- Rule 56 (6) - The complete addresses of **all the premises** where goods are stored by a registered person **are to be disclosed**. If any taxable goods are found to be stored at any place(s) other than the premises disclosed in the records by the registered person, without the cover of any valid documents, **tax shall be payable (along with interest)** on such goods as if such goods have been supplied by the registered person

# Payment of Taxes

# Types of Ledgers

- Electronic Liability Ledger (FORM GST PMT-01)
- Electronic Credit Ledger (FORM GST PMT-02)
- Electronic Cash Ledger (FORM GST PMT-05)



## **Section 50. Interest on delayed payment of tax.-**

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

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



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

[(3) Where the **input tax credit** has been **wrongly availed and utilised**, the registered person **shall pay interest on such input tax credit wrongly availed and utilised**, at such rate not exceeding twenty-four per cent. as may be notified by the Government, on the recommendations of the Council, and the interest shall be calculated, in such manner as may be prescribed]

Govt. may mandate:

- a department or establishment of the Central Government or State Government; or
  - local authority; or
  - Governmental agencies; or
  - such persons or category of persons as may be notified
- (a) an authority or a board or any other body, -
- (i) set up by an Act of Parliament or a State Legislature; or
  - (ii) established by any Government, with 51% or more participation by way of equity or control, to carry out any function;
- (b) Society established by the Central Government or the State Government or a Local Authority under the Societies Registration Act, 1860 (21 of 1860);
- (c) public sector undertakings.
- To deduct tax @ 1% from the payment made or credited** to the supplier of taxable goods or services or both, where the **total value of such supply, under a contract,** exceeds 2,50,000/-

Every Electronic commerce operator

- not being an agent,
- shall collect an amount calculated at such rate not exceeding 2%., (Now – 1%)
- of the net value of taxable supplies made through it
- by other suppliers
- where the consideration with respect to such supplies is to be collected by the operator

Net value of Taxable supplies shall not include value of services notified u/s 9(5)  
Shall be deposited within 10 days from the end of the month

Delay – Interest @ 18% p.a.

Operator liable to provide info. as required by the officer

Effective date: 1<sup>st</sup> October, 2018

# Thank You

**CA ARPAN BOHRA**  
**Arpan Bohra & Co.,**  
**Chartered Accountants**

**[gst@arpanbohra.co.in](mailto:gst@arpanbohra.co.in)**  
**9030499151**  
**[www.arpanbohra.co.in](http://www.arpanbohra.co.in)**

# Exports & Refunds under GST

CA SANDEEP KUMAR BAHETI

# Refund under GST

Section 54 and 55 of CGST deals with legal and procedural aspects for claiming refund of

- ▶ any tax (which was excess paid);
- ▶ interest paid on such tax or any other amount paid (which was not required to be paid);
- ▶ tax paid on export of goods or services or both
- ▶ tax paid on inputs or input services “used” in the zero rated supply of goods and/or services including exports and supplies to SEZ;
- ▶ tax on the supply of goods regarded as deemed exports;
- ▶ unutilized input tax credit at the end of tax period in cases of –exports- other than when goods are subjected to export duty & the supplier avails drawback of central tax or claims refund of integrated tax paid on such supplies.

# Refund under GST

- ▶ unutilized input tax credit at the end of tax period in cases of input tax rate being higher than output tax rate, other than NIL rated or fully exempted.
- ▶ Supply which is not provided, either wholly or partially and for which invoice has not been issued or refund voucher has been issued.
- ▶ CGST and SGST paid for transaction HELD to be Inter-state transaction or IGST paid for transaction HELD to be Intra state transaction
- ▶ Refund to Casual Taxable Person/ Non Resident Taxable Person (subject to furnishing all returns for the period of currency of registration)
- ▶ Refund to Inward Supplies to UN and agencies

# Refund under GST

Some Other circumstances where refund may be granted but are **not covered** by section 54 may be as

- ▶ Refund of duty/tax under old law
- ▶ Refund in case of International Tourist
- ▶ Refund of Provisionally paid tax
- ▶ Refund of Compensation Cess or Excess or Erroneous Deduction
- ▶ Refund on Inward Supplies to Canteen Stores Department
- ▶ Refund due to order of Appellate Authority/Court
- ▶ Refund of Central share in CGST & IGST in hilly areas
- ▶ Refund of tax under Seva Bhoj Yojna
- ▶ Refund of taxes paid on inward supply of indigenous goods by retail outlets established at departure area of the international airport beyond immigration counters when supplied to outgoing international tourist against foreign exchange-**omitted from 01.07.2019-Not 14/22-CT dated 05.07.22**



# Relevant Section/ Rules (CGST)

## ▪ Sections

- 54. Refund of tax
- 55. Refund in certain cases
- 56. Interest on delayed refunds
- 57. Consumer Welfare Fund
- 58. Utilisation of Fund

## ▪ Other Relevant Sections

- 33. Tax to be indicated in tax invoice
- 57. Consumer Welfare Fund
- 49. Payment of tax, interest, penalty etc.
- 39 Furnishing of returns
- 77. Tax wrongfully collected and paid

## ▶ Rules

- ▶ 89. Application for refund of tax, interest, penalty, fees or any other amount
- ▶ 90. Acknowledgement
- ▶ 91. Grant of provisional refund
- ▶ 92. Order sanctioning refund
- ▶ 93. Credit of the amount of rejected refund claim
- ▶ 94. Order sanctioning interest on delayed refunds
- ▶ 95. Refund of tax to certain persons
- ▶ 96. Refund of integrated tax paid on goods or services exported out of India
- ▶ 96A. export of goods or services under bond or Letter of Undertaking
- ▶ 97. Consumer Welfare Fund
- ▶ 97A. Manual filing and processing

# Relevant section and Definition

- ▶ Section 2(5)- Export of goods
- ▶ Section 2(6)-Export of services
- ▶ Section 16 of IGST Act- Zero rated supply
- ▶ Zero rated supply 16(1)- export of goods and services & supply to SEZ developer and SEZ unit
- ▶ Section 16(2)-ITC-zero rated supplies including exempt supply
- ▶ Sec 16(3)-refund can be claimed
  - ▶ Supply- without payment of taxes-LUT/bond – proviso for goods- recovery on non-realisation -30 days-time limit prescribed in FEMA
  - ▶ Supply with payment of tax-**omitted from 01.10.23 vide NN 27/23-CT dated 31.7.23**

## Sec-54: Refund of tax

*(1) Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed:*

*Provided that a registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49, may claim such refund in 1[such form and] manner as may be prescribed.*

*(2) A specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947 (46 of 1947), Consulate or Embassy of foreign countries or any other person or class of persons, as notified under section 55, entitled to a refund of tax paid by it on inward supplies of goods or services or both, may make an application for such refund, in such form and manner as may be prescribed, before the expiry of two years] from the last day of the quarter in which such supply was received*

## Sec-54: Refund of tax

- ▶ (3) Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilised input tax credit at the end of any tax period:

**Provided** that no refund of unutilised input tax credit shall be allowed in cases other than-

- ▶ (i) zero rated supplies made without payment of tax;
- ▶ (ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council:

**Provided** further that no refund of unutilised input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty:

**Provided** also that no refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies.

## Sec-54: Refund of tax

▶ (4) The application shall be accompanied by-

(a) such documentary evidence as may be prescribed to establish that a refund is due to the applicant; and

(b) such documentary or other evidence (including the documents referred to in section 33) as the applicant may furnish to establish that the amount of tax and interest, if any, paid on such tax or any other amount paid in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such tax and interest had not been passed on to any other person:

**Provided** that where the amount claimed as refund is less than two lakh rupees, it shall not be necessary for the applicant to furnish any documentary and other evidences but he may file a declaration, based on the documentary or other evidences available with him, certifying that the incidence of such tax and interest had not been passed on to any other person.

## Sec-54: Refund of tax

- ▶ (5) If, on receipt of any such application, the proper officer is satisfied that the whole or part of the amount claimed as refund is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund referred to in section 57.
- ▶ (6) Notwithstanding anything contained in sub-section (5), the proper officer may, in the case of any claim for refund on account of zero-rated supply of goods or services or both made by registered persons, other than such category of registered persons as may be notified by the Government on the recommendations of the Council, refund on a provisional basis, ninety per cent. of the total amount so claimed, , in such manner and subject to such conditions, limitations and safeguards as may be prescribed and thereafter make an order under sub-section (5) for final settlement of the refund claim after due verification of documents furnished by the applicant.

## Sec-54: Refund of tax

- ▶ (7) The proper officer shall issue the order under sub-section (5) within sixty days from the date of receipt of application complete in all respects.
- ▶ (8) Notwithstanding anything contained in sub-section (5), the refundable amount shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to-
  - (a) refund of tax paid on [export] of goods or services or both or on inputs or input services used in making such [exports]
  - (b) refund of unutilised input tax credit under sub-section (3)
  - (c) refund of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued, or where a refund voucher has been issued;
  - (d) refund of tax in pursuance of section 77
  - (e) the tax and interest, if any, or any other amount paid by the applicant, if he had not passed on the incidence of such tax and interest to any other person; or
  - (f) the tax or interest borne by such other class of applicants as the Government may, on the recommendations of the Council, by notification, specify.

## Sec-54: Refund of tax

(8A) The Government may disburse the refund of the State tax in such manner as may be prescribed.

(9) Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the Appellate Tribunal or any Court or in any other provisions of this Act or the rules made thereunder or in any other law for the time being in force, no refund shall be made except in accordance with the provisions of sub-section (8).

(10) Where any refund is due **under the said sub-section(3)** to a registered person who has defaulted in furnishing any return or who is required to pay any tax, interest or penalty, which has not been stayed by any Court, Tribunal or Appellate Authority by the specified date, the proper officer may—

(a) withhold payment of refund due until the said person has furnished the return or paid the tax, interest or penalty, as the case may be;

(b) deduct from the refund due, any tax, interest, penalty, fee or any other amount which the taxable person is liable to pay but which remains unpaid under this Act or under the existing law .

**Explanation.**-For the purposes of this sub-section, the expression "specified date" shall mean the last date for filing an appeal under this Act.



## Sec-54: Refund of tax

(11) where an order giving rise to a refund is the subject matter of an appeal or further proceedings or where any other proceedings under this Act is pending and the Commissioner is of the opinion that grant of such refund is likely to adversely affect the revenue in the said appeal or other proceeding on the account of malfeasance or fraud committed, he may, after giving the taxable person an opportunity of being heard, withhold the refund till such time as he may determine.

(12) where a refund is withhold under Sub-Sec(11), the taxable person shall notwithstanding anything contained in Sec 56, be entitled to interest at such rate not exceeding Six per cent, as may be notified on the recommendations of the council, if as a results of the appeal or further proceedings he becomes entitled to refund.

## Sec-54: Refund of tax

(13) Notwithstanding anything contained to the contrary contained in the Sec, the amount of advance tax deposited by the casual taxable person or a non-resident taxable person under Sub-Section(2) of Sec27 shall not be refunded unless such person has, in respect of the entire period for which the certificate of the registration granted to him had remained in force, furnished all the returns required under Sec39.

(14) Notwithstanding anything contained in this Sec, no refund under Sub-Section (5) or Sub-Section (6) shall be paid to an applicant if the amount is less than one thousand rupees.

# Relevant Date

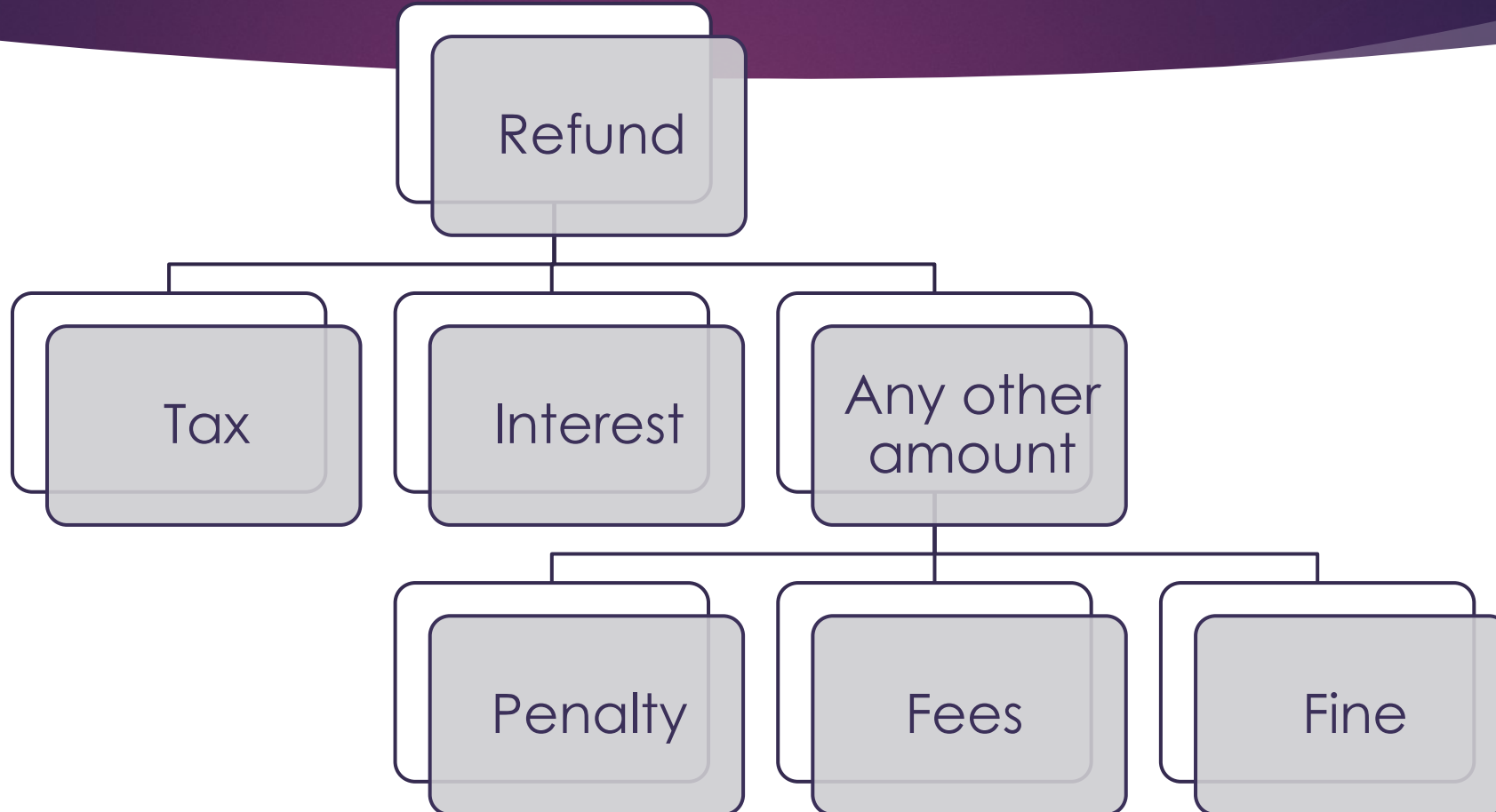
In Case of	Relevant Date
Export by Sea/Air	The date on which the ship or the aircraft in which such goods are loaded, leaves India
Export by Land	The date on which such goods pass the frontier
Export by Post	The date of dispatch of goods by the Post Office concerned to a place outside India
Deemed Export	The date on which the return relating to such deemed exports is furnished
Export of Service	The date of— (i) Receipt of payment in convertible foreign exchange, where the supply of services had been completed prior to the receipt of such payment; or (ii) Issue of invoice, where payment for the services had been received in advance prior to the date of issue of the invoice

# Relevant Date

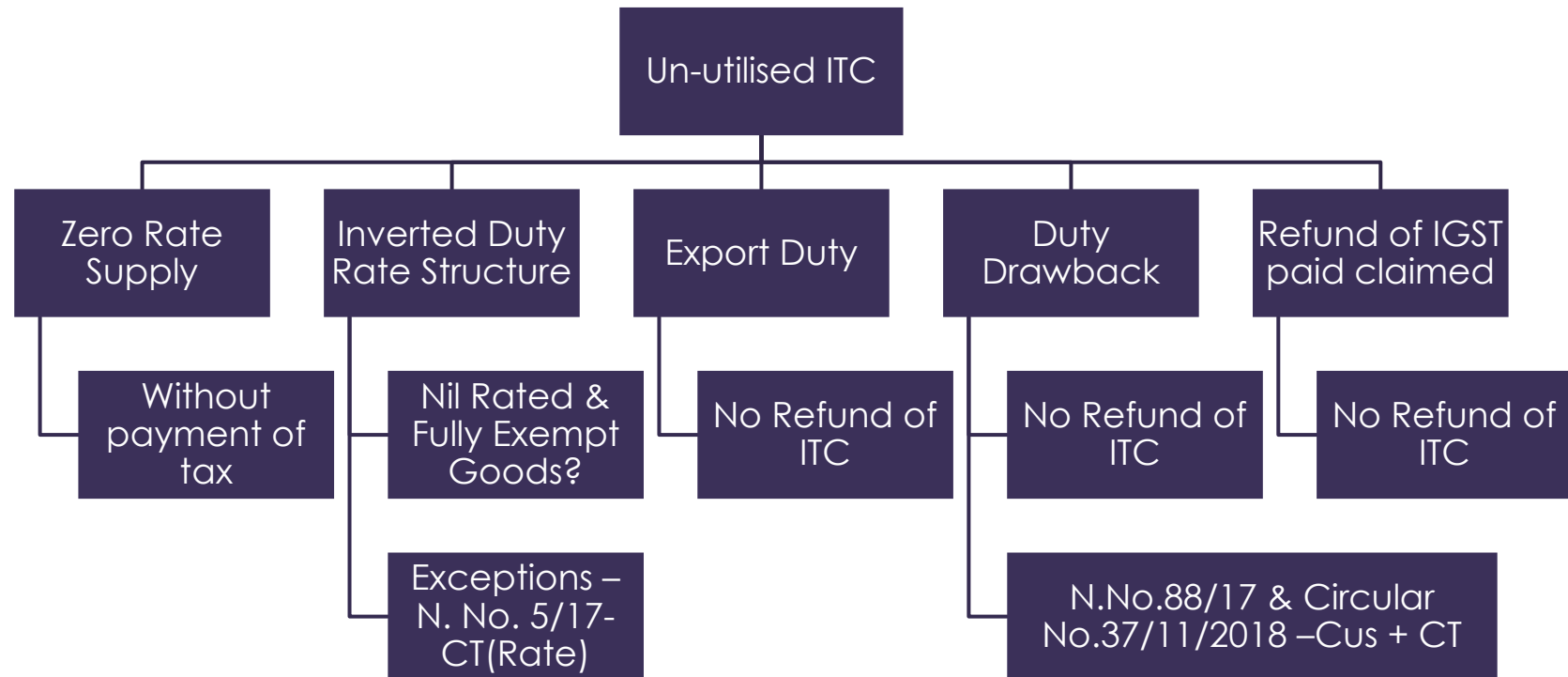
Order/judgement	The date of communication of such order or judgment or decree or direction
Refund of unutilised ITC	Due date furnishing the return u/s 39 for the period in which such claim for refund arises
Provision payment of tax	The date adjustment of tax after final assessment
TO SEZ on payment basis or otherwise	Due date of furnishing return u/s 39 for period
Other case	The date of payment of tax

Note: This limit will not apply where tax / interest / or any other amount has been paid under protest or otherwise.

# WHAT CAN BE APPLIED FOR REFUND



# WHEN IS REFUND OF UN-UTILISED INPUT TAX GIVEN



# Forms for Refund

FORM GST RFD-01	Refund Application.
FORM GST RFD-02	Acknowledgement.
FORM GST RFD-03	Notice of Deficiency on application for refund.
FORM GST RFD-04	Provisional Refund Sanctioned Order.
FORM GST RFD-05	Payment Advice.
FORM GST RFD-06	Refund sanctioned/Rejection order.
FORM GST RFD-07	Order to complete adjustment of sanction order (part A)- withheld (Part B)
FORM GST RFD-08	Show cause notice for rejection of refund application.
FORM GST RFD-09	Reply to SCN
FORM GST RFD-10	Refund u/s 55-UN etc
FORM GST RFD-10B	Duty Free shop

# Refund on exports

Select the Refund type:



• Indicates Mandatory Fields

<input type="radio"/>	Refund of Excess Balance in Electronic Cash Ledger
<input type="radio"/>	Refund of ITC on Export of Goods & Services without Payment of Tax
<input type="radio"/>	On account of supplies made to SEZ unit/ SEZ developer (without payment of tax)
<input type="radio"/>	Refund on account of ITC accumulated due to Inverted Tax Structure
<input type="radio"/>	On account of Refund by Recipient of deemed export
<input type="radio"/>	Refund on account of Supplies to SEZ unit/ SEZ Developer (with payment of tax)
<input type="radio"/>	Export of services with payment of tax
<input type="radio"/>	Tax paid on an intra-State supply which is subsequently held to be inter-State supply and vice versa
<input type="radio"/>	On account of Refund by Supplier of deemed export
<input type="radio"/>	Any other (specify)
<input type="radio"/>	Excess payment of tax
<input type="radio"/>	On Account of Assessment/Provisional Assessment/Appeal/Any other order

CREATE REFUND APPLICATION



# Refund on exports

<b>Export of</b>	<b>Export Under</b>	<b>Refund Form</b>
Export of Goods	On payment of IGST	Shipping Bill
	Under Bond or LUT	GST RFD-01
Export of Services	On the payment of IGST	GST RFD-01
	Under Bond or LUT	GST RFD-01

# Export with payment of IGST

- The exporter has option to pay IGST on exports and then claim refund of the same.
- The exporter charges IGST on the invoice for export at the applicable rate.
- There is no need to file refund application (GST RFD-01) separately for export of goods and services.
- The shipping Bill filed by the exporter is the refund claim in itself.
- ▶ The law specifies that shipping bill is to be considered as refund claim on satisfying following two conditions.
- ▶ The person in charge of conveyance - should file an departure manifest export manifest or export report and
- ▶ The applicant should have filed the return GSTR-3B appropriately. A refund is initiated on filing table 6A in Form GSTR1.

# Export with payment of IGST

- ▶ The details required in this table are as follows:
- ▶ Invoice date
- ▶ Port code
- ▶ Shipping bill no./bill of export no.
- ▶ Shipping bill date/bill of export date
- ▶ Total invoice value and taxable value
- ▶ GST payment ('With Payment of Tax' needs to be selected)

## Export with payment of IGST

- ▶ On the filing the above document- confirmation from system designated by customs
- ▶ Processing of refund by customs authorities
- ▶ Claim can be withheld-on request from JC or proper officer/ customs violation/data analysis or risk parameter verification is required
- ▶ Intimation to applicant and JC and refund is processed as per Rule 89
  
- ▶ Payment of IGST to Bhutan-no refund to exported
- ▶ Restriction u/s 96(10)- should not received from Deemed export, Merchant export, AA, EPCG- EPCG allowed from 2018

# Export of Goods with Payment of IGST

The screenshot displays the GST Refund Portal interface. The browser address bar shows the URL: <https://refund.gst.gov.in/refunds/auth/trackInvStatus>. The page title is "Goods & Services Tax (GST)". The main content area shows the "Export Ledger" for a taxpayer with GSTIN/UI 36AAXFM8351M1ZB. The ledger displays the following information:

Net IGST Balance: ₹ -65,146.59  
Net CESS Balance: ₹ 0.00  
Data displayed as on 18/01/2020

Buttons: DOWNLOAD AS CSV, DOWNLOAD TRANSACTION AS CSV, CLOSE

Return Period	Return Type	Credit/Debit	IGST Amount (₹)	CESS Amount (₹)
11-2018	R3B	Credit	0.00	0.00
11-2018	R1	Debit	0.00	0.00
10-2018	R1	Debit	44,424.72	0.00
10-2018	R3B	Credit	0.00	0.00
09-2018	R1	Debit	0.00	0.00
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# Export of Goods with Payment of IGST

Goods & Services Tax (GST) | U X | Inbox (162) - pisseysrihari@gm X | (1) WhatsApp X | +

https://refund.gst.gov.in/refunds/auth/trackInvStatus

GSTIN/URN/Temporary ID : 36AAACD Legal Name : Trade Name : PVT LTD

Track status

Financial Year 2019-20

SEARCH

Search Results

Data of valid processing.

Export Ledger

Month	Code	Type	Amount	Total
10-2019	R3B	Credit	0.00	0.00
09-2019	R1	Debit	142,111.30	0.00
09-2019	R3B	Credit	142,111.29	0.00
08-2019	R3B	Credit	0.00	0.00
07-2019	R1	Debit	0.00	0.00
07-2019	R3B	Credit	0.00	0.00
06-2019	R1	Debit	0.00	0.00
06-2019	R3B	Credit	0.00	0.00
05-2019	R1	Debit	0.00	0.00
04-2019	R1	Debit	0.00	0.00
05-2019	R3B	Credit	0.00	0.00

Particulars	Count	Total IGST Amount (₹)	Total CESS Amount (₹)
Total invoices processed from table 6A	2	142,111.30	0.00
Invoices transmitted to ICEGATE	2	142,111.30	0.00
Invoices not transmitted to ICEGATE <sup>1</sup> (SB/Port Code details are either missing or			

Top

15:27 18-01-2020

# Refund with payment of Duty-final processed

Goods & Services Tax (GST) | U... X | Inbox (162) - pisseysrihari@gm... X | (1) WhatsApp X | +

https://refund.gst.gov.in/refunds/auth/trackInvStatus

Track status of invoice data shared/to be shared with ICEGATE

[View Export Ledger](#)

Financial Year **\*** 2019-20 Month **\*** September

**SEARCH**

Search Result based on Financial Year : 2019-20 & Month: SEPTEMBER

Details to be transmitted/partially transmitted to ICEGATE as below:

Data of valid export invoices provided in the return period has been transmitted/partially transmitted by the GST System to ICEGATE for further processing.

Particulars	Count	Total IGST Amount (₹)	Total CESS Amount (₹)
<b>Total invoices processed from table 6A</b>	2	142,111.30	0.00
<b>Invoices transmitted to ICEGATE</b>	2	142,111.30	0.00
<b>Invoices not transmitted to ICEGATE <sup>1</sup> (SB/Port Code details are either missing or Port Code is incorrect)</b>	0	0.00	0.00
<b>Invoices rejected by ICEGATE <sup>2</sup></b>	0	0.00	0.00

<sup>1</sup> Invoices are not transmitted to ICEGATE due to missing SB/Port Details or incorrect Port code. You can view details by clicking on error count and "Download Failed Invoices" button to download details of failed invoices.

Recommended Action: You can amend these errors in Table 9A of subsequent month GSTR-1 by making appropriate corrections and the record shall be

Windows Taskbar: 15:25 18-01-2020

# Refund with payment of Duty-final processed

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GSTIN/UIN/Temporary ID :

36AAACD

Legal Name :

Trade Name :

PVT LTD

Track status

Financial Year

2019-20

SEARCH

Search Results

Data of valid processing.

## Export Ledger

Net IGST Balance: ₹ 0.00

Net CESS Balance: ₹ 0.00

Data displayed as on 18/01/2020

DOWNLOAD AS CSV

DOWNLOAD TRANSACTION AS CSV

CLOSE

Return Period	Return Type	Credit/Debit	IGST Amount (₹)	CESS Amount (₹)
01-2019	R3B	Credit	0.00	0.00
12-2018	R3B	Credit	0.00	0.00
11-2018	R3B	Credit	0.00	0.00
10-2018	R1	Debit	0.00	0.00
09-2018	R1	Debit	0.00	0.00
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Particulars

Count

Total IGST Amount (₹)

Total CESS Amount (₹)

Total invoices processed from table 6A

2

142,111.30

0.00

Invoices transmitted to ICEGATE

2

142,111.30

0.00

Invoices not transmitted to ICEGATE <sup>1</sup> (SB/Port Code details are either missing or



# Export with payment of IGST: Export of Services

- ▶ A separate refund application in RFD-01 is required.
- ▶ Such taxpayer needs to login to the GST portal and selecting Services > Refunds > Application for Refund > Export of Services with payment of tax > RFD-01.
- ▶ The details relating to the export of services will need to be uploaded using the offline utility.
- ▶ The amount of refund and the bank account number in which the refund is to be credited will also need to be provided.
- ▶ On successful filing, an Application Reference Number (ARN) will be generated, which can be used to track the status of the refund application.

## Export Under Bond or LUT without payment of Tax

- ▶ **Transactions for which LUT/Bond can be Used:**
- ▶ Zero rated supply to SEZ without payment of IGST.
- ▶ Export of goods to the country outside India without payment of IGST.
- ▶ Providing services to a client in country outside India without payment of IGST.
- ▶ **Format of LUT/Bond RFD-11**
- ▶ **Form for LUT:- can be submitted online**
- ▶ Registered name
- ▶ Address
- ▶ GST NO.
- ▶ Date of Furnishing
- ▶ Signature, date and place.
- ▶ Details of Witnesses (Name, address and Occupation)

# Refund Formula

- ▶ **In case of Accumulated ITC -**
  - ▶ Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) x Net ITC ÷ Adjusted Total Turnover
    - ▶ Where, "Net ITC" means input tax credit availed on inputs and input services during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both
  
- ▶ Turnover of zero-rated supply of goods - value of zero-rated supply of goods under LUT/bond or the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed-whichever is less, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both
  
- ▶ Turnover of zero-rated supply of services- aggregate of the payments received during the relevant period + supply of services where supply has been completed for which payment had been received in advance in any period prior – (reduced) by advances received for zero-rated supply of services for which the supply of services has not been completed during the relevant period

# Refund Formula

Adjusted Total Turnover" means the sum total of the value of-

(a) the turnover in a State or a Union territory, as defined under clause (112) of section 2, excluding the turnover of services and

(b) the turnover of zero-rated supply of services and non-zero-rated supply of services

**excluding-**

(i) the value of exempt supplies other than zero-rated supplies and

(ii) the turnover of supplies in respect of which refund is claimed under sub-rule (4A) or sub-rule (4B) or both, if any, during the relevant period.

# Supplies to Special Economic Zone

- ▶ These are the areas having different economic laws that the rest of the country has regarding duties and taxes.
- ▶ Supplies to the SEZ unit or SEZ developers have been accorded the status of inter-state supplies under the IGST Act.
- ▶ Supplies to SEZ- without payment of tax
- ▶ Declaration and endorsement

# Refund procedures for Export of Services and Supplies to SEZ

- ▶ The option to pay IGST and claim a refund is always available. In this case, the refund claim has to be filed in Form *GST RFD-01- only for export of service*
- ▶ For exporters of services, the following are also required to be filed along with the refund claim:
  - ▶ I. A Statement containing Number and Date of Invoices; and
  - ▶ II. Bank Realisation Certificates / Foreign Inward Remittance Certificates
- ▶ The supplier of goods or services to an SEZ are required to file the following along with the refund claim:
  - ▶ I. A Statement containing Number and Date of Invoices; and
  - ▶ II. Proof of Receipt of goods or services which is authorised by the specified officer of SEZ
  - ▶ III. Details of payment made
  - ▶ IV. The declaration that the tax has not been collected from SEZ unit or developer of SEZ
- ▶ FORM GSTR-3B for a given tax period, certain registered persons committed errors in declaring the export of services on payment of integrated tax or zero-rated supplies made to a Special Economic Zone developer or a Special Economic Zone unit on payment of integrated tax.

# Inverted Tax Structure

- ▶ The term 'Inverted Tax Structure' refers to a situation where the rate of tax on inputs purchased (i.e. GST Rate paid on inputs received) is more than the rate of tax (i.e. GST Rate Payable on outward supplies) on outward supplies.
- ▶ NO refund for Inverted Duty on Input service and Capital goods initially but later service included vide NN 14/ /2022 dated 05.07.22
- ▶ Stores and spares, for capital goods, the expenditure on which has been charged as a revenue expense

# Refund in case of Inverted Duty Structure

36

- ▶ A registered person may claim a refund of unutilized ITC on account of Inverted Duty Structure at the end of any tax period where the credit has accumulated on account of rate of tax on **inputs** being higher than the rate of tax on output supplies.
- ▶ Output supplies are nil rated or fully exempt supplies except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council..
- ▶ The supplier who supplies goods at the concessional rate is also eligible for refund on account of inverted tax structure.



# Formula for calculation of refund: Inverted Duty Structure

- ▶ **Maximum Refund Amount** = (Turnover of inverted rated supply of goods and services X Net input tax credit / Adjusted total turnover) – Tax payable on such inverted rated supply of goods and services x (net ITC/ ITC on input and input service)
- ▶ **Net ITC** shall mean input tax credit availed on inputs during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both.
- ▶ From the above, it is important to note that it does not specifically mention inputs having higher GST rate than output supplies.
- ▶ Therefore, for the purpose of calculating refund claim on account of inverted duty structure, entire credit of inputs can be considered.

## Refund of ITC unutilized: Inverted Duty Structure

- ▶ GSTR 1 and GSTR-3B has to be filed for the relevant tax period for which you want to file refund application of the accumulated ITC.
- ▶ RFD-01 has to be filed within 2 years from the due date of filing return under section 39 for the period in which such claim for refund arises.

# Deemed Export

- ▶ **The supply of goods and services to the following would be treated as Deemed Export under GST-**
  1. Supply of goods by a registered person against Advance Authorization/DFIA.
  2. Supplies made to an Exporter Oriented undertaking (EOU) or Hardware Technology Park unit, Software Technology Park unit, Biotechnology Park unit.
  3. Supply of capital goods by a registered person against Export promotion capital goods Authorization.
  4. Supply of gold by a bank or Public sector undertaking against Advance Authorization as per Customs Law.

# Refund of GST paid on deemed exports: Procedure

- ▶ **Documentary Evidence required to claim a refund:**
- ▶ In case the supplier is claiming a refund of tax paid on deemed exports, the following details/ documents must be produced:
- ▶ A statement containing Invoice-wise details of deemed export supplies made by the supplier.
- ▶ Acknowledgement by jurisdiction tax officer of AA or EPCG holder that the said deemed export supplies have been received OR in case of EOU/ EHTP/ STP/ BTP/ Copy of tax invoice signed by the recipient that said deemed export supplies have been received.
- ▶ Undertaking by the recipient that no ITC has been claimed.
- ▶ Undertaking by the recipient that it shall not claim a refund in respect of such supplies.
- ▶ In case of deemed exports, the invoice will be uploaded as a normal B2B invoice in Tables 4A, 4B, 4C, 6B, 6C – B2B invoices

# Procedure for Refund

- ▶ All the following Old Circular based on **manual processing** of refund application have been rescinded. However, applications filed before 26-09-2019 shall be dealt as per old Circulars only. Applications filed on after 26-09-2019 shall be processed electronically only.
- ▶ RFD-01 shall be submitted instead of RFD-01A and supporting documents / Undertakings/ invoices also to be submitted electronically along with each type of refund application is provided In Annexure A and Annexures shall not exceed 5MB.

# Procedure for Refund

- ▶ Time of generating of ARN is deemed time for filling refund application and period of issuing acknowledgement or deficiency memo with 15 days or calculation of interest after 60 days from the date of receipt of refund application is computed accordingly.
- ▶ Application is automatically transmitted to jurisdictional officer. In case of assignment to wrong officer, it shall be re assigned by Commissioner or officer authorized by him to correct officer, within 3 working days. No deficiency memo shall be issued by officer for incorrect assignment.

# Procedure for Refund

- ▶ Refund sanction Final/ Provisional (RFD-06/RFd-04) for both CGST and SGST shall be done by single jurisdictional Central/State officer. Payment order under all tax heads (RFD-05) shall be done by single Central/State officer and **all Pending returns to be filed before application.**
- ▶ GST Council has decided to grant refund of provisionally accepted ITC subject to undertaking that ITC shall be paid back along with interest if it is found subsequently which:
  - a. Supplier fails to pay tax charged as per section 16(2)
  - b. Matching of Invoices resulting final acceptance of ITC is not done as per section 42(2). Such availment of ITC will be subject to restriction imposed under sub-rule (4) in rule 36 of the CGST rules - deleted and clarification provided vide circular Circular No. 197/09/2023- GST 17.07.23
- ▶ Refund applications for different tax periods (monthly /quarterly) may be clubbed to apply for consolidated refund application without spreading over different financial years. For claiming refund of unutilized ITC on exports, supplies to SEZ and inverted duty refund shall be applied chronologically only.

# Procedure for Refund

- ▶ Deficiency Memo/Acknowledgment to be issued in 15 days only. No deficiency memo shall be issued after issue of acknowledgment
- ▶ After issue of deficiency memo there shall be auto re credit to electronic credit ledger. No PMT-03 or undertaking for non -filing of appeal is required at this stage.
- ▶ Fresh Refund application filed pursuant to deficiency memo
- ▶ Fresh application pursuant to deficiency memo to be filed within 2 years from relevant period only and there shall be no extension only because original application was filed within said 2 years.



# Procedure for Refund

- ▶ Where refund is granted provisionally, and final refund is reduced then issue SCN in RFD-08 for
  - a. Rejection of ineligible ITC
  - b. Recovery of Erroneously refunded amount with interest and penalty After hearing according to principles of natural justice, issue
    1. **RDF-06** for Final refund amount
    2. **PMT-03** for [re-credit of debit amount-Final Refund Amount] subject to undertaking that appeal shall not be filed against refund order. If appeal is made there shall be no recredit

# Procedure for Refund

- ▶ **DRC-07** for recovery of provisionally granted wrong amount/Ineligible ITC plus interest plus penalty.
- ▶ Alternately **DRC 03** may be filed.
- ▶ Where appeal is made, and refund is granted then apply for refund under category “On Account of Assessment/Provisional Assessment/ Appeal/ Any other order”

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# Procedure for Refund

- ▶ Disbursal of refund amount shall be done through PFMS after validating bank details provided in refund application.
- ▶ Interest on delayed disbursal @ 6% on the refund amount starting from the date immediately after the expiry of sixty days from the date of receipt of application (ARN) till the date of refund of such tax (i.e. date of credit in bank account) shall have to be paid to the applicant.
- ▶ Tax authorities have been advised to issue the final sanction order in FORM GST RFD-06 and the payment order in FORM GST RFD-05 within 45 days of the date of generation of ARN, so that the disbursement is completed within 60 days.
- ▶ Adjustment of refund amount against any outstanding demand under the existing law can be done.

# Procedure for refund

- a. 2A relating to period for which Invoice carrying ITC pertain to be uploaded – now GSTR 2B -Circular No. 197/09/2023- GST from 01.01.2022
- b. 2B to be treated evidence of accountal of tax on invoices being claimed by recipient. Submission of invoices accounted in 2B not to be insisted
- c. List of Invoices not appearing in 2A for which refund is being claimed to be provided in Annexure B along with declaration of eligibility and subject to restrictions of ITC not exceeding 20% of invoices appearing in 2A as per Notification No. 49/2019-Central tax.- Now 10% -deleted vide circular **Circular No.135/05/2020 - GST**
- d. Formula under Rule 89(4) and 89(5) to be applied on consolidated amount of tax heads and not to be applied on each tax head separately.

# Procedure for refund

- ▶ Quantum of refund of Unutilized ITC= Minimum of [Refund as per Formula, Credit ledger Balance at the end of period after filing 3B for the period for which refund is claimed, Credit ledger Balance at the time of filing refund]
- ▶ Refund of Unutilized ITC on Compensation Cess to be computed separately and Debit to be made from Cess balance only.
- ▶ Where inward supply e.g. coal is subject to Cess, but final product say aluminum is not subject to Cess, refund for unutilized ITC of Cess for export may be claimed but at the same if IGST is paid on exports, then Cess can be utilized for payment of such IGST.
- ▶ Further Cess reversed in 3B and treated as expense cannot be claimed as refund. However, if subsequently reversal is restored back and accounting entry is also reversed, then refund can be claimed

# Annexure- A: Documents Required

Sl.No.	Type of Refund	Declaration/Statement/Undertaking/Certificates to be filled online	Supporting documents to be additionally Uploaded
1	Refund of unutilized ITC on account of exports without payment of Tax	Declaration under second and third proviso to section 54(3)	Copy of GSTR-2A of the relevant period
		Undertaking in relation to sections 16(2)(c) and section 42(2)	Statement of invoices (Annexure-B)
		Statement 3 under rule 89(2)(b) and rule 89(2)(c)	Self-certified copies of invoices entered in Annexure-B whose details are not found in GSTR-2A of the relevant period
		Statement 3A under rule 89(4)	BRC/FIRC in case of export of services and shipping bill (only in case of exports made through non-EDI ports)
2	Refund of tax paid on export of services made with payment of Tax	Declaration under second and third proviso to section 54(3)	Copy of GSTR-2A of the relevant period
		Undertaking in relation to sections 16(2)(c) and section 42(2)	Statement of invoices (Annexure-B)
		Statement 2 under rule 89(2)(c)	Self-certified copies of invoices entered in Annexure-A whose details are not found in GSTR-2A of the relevant period
			Self-declaration regarding non-prosecution under sub-rule (1) of rule 91 of the CGST Rules for availing provisional refund 3

# Annexure-A: Documents Required

Sl.No	Type of Refund	Declaration/Statement/Undertaking/Certificates to be filled online	Supporting Documents to be additionally uploaded
3	Refund of unutilized ITC on account of Supplies made to SEZ units/developer without payment of tax	Declaration under third proviso to section 54(3)	Copy of GSTR-2A of the relevant period
		Statement 5 under rule 89(2)(d) and rule 89(2)(e)	Statement of invoices (Annexure-B)
		Statement 5A under rule 89(4)	Self-certified copies of invoices entered in Annexure-B whose details are not found in GSTR-2A of the relevant period
		Declaration under rule 89(2)(f)	Endorsement(s) from the specified officer of the SEZ regarding receipt of goods/services for authorized operations under second proviso to rule 89(1)
		Undertaking in relation to sections 16(2)(c) and section 42(2)	
		Self-declaration under rule 89(2)(l) if amount claimed does not exceed two lakh rupees, certification under rule 89(2)(m) Otherwise.	

# Annexure-A: Documents Required

4	Refund of tax paid on supplies made to SEZ units/developer with payment of tax	Declaration under second and third proviso to section 54(3)	Endorsement(s) from the specified officer of the SEZ regarding receipt of goods/services for authorized operations under second proviso to rule 89(1)
		Declaration under rule 89(2)(f)	Self-certified copies of invoices entered in Annexure-A whose details are not found in GSTR-2A of the relevant period
		Statement 4 under rule 89(2)(d) and rule 89(2)(e)	Self-declaration regarding non-prosecution under sub-rule (1) of rule 91 of the CGST Rules for availing provisional refund
		Undertaking in relation to sections 16(2)(c) and section 42(2)	
		Self-declaration under rule 89(2)(l) if amount claimed does not exceed two lakh rupees, certification under rule 89(2)(m) Otherwise	
5	Refund of ITC unutilized on account of accumulation due to	Declaration under second and third proviso to section 54(3)	Copy of GSTR-2A of the relevant period
		Declaration under section 54(3)(ii)	Statement of invoices (Annexure-B)
		Undertaking in relation to sections 16(2)(c) and section 42(2)	Self-certified copies of invoices entered in Annexure-B whose details are not found in GSTR-2A of the relevant period



# Annexure-A: Documents Required

6	Refund to supplier of tax paid on deemed export Supplies.	Statement 5(B) under rule 89(2)(g)	Documents required under Notification No. 49/2017-Central Tax dated 18.10.2017 and Circular No.14/14/2017-GST dated 06.11.2017
		Declaration under rule 89(2)(g)	
		Undertaking in relation to sections 16(2)(c) and section 42(2)	
		Self-declaration under rule 89(2)(l) if amount claimed does not exceed two lakh rupees, certification under rule 89(2)(m) Otherwise	
7	Refund to recipient of tax paid on deemed export Supplies	Statement 5(B) under rule 89(2)(g)	Documents required under Circular No. 14/14/2017-GST dated 06.11.2017
		Declaration under rule 89(2)(g)	
		Undertaking in relation to sections 16(2)(c) and section 42(2)	
		Self-declaration under rule 89(2)(l) if amount claimed does not exceed two lakh rupees, certification under rule 89(2)(m) Otherwise	

# Annexure-A: Documents Required

8	Refund of excess payment of Tax	Statement 7 under rule 89(2)(k)	
		Undertaking in relation to sections 16(2)(c) and section 42(2)	
		Self-declaration under rule 89(2)(l) if amount claimed does not exceed two lakh rupees, certification under rule 89(2)(m) Otherwise	
9	Refund of tax paid on intra-state supply which is subsequently held to be an inter-state supply and vice versa	Statement 6 under rule 89(2)(j)	
		Undertaking in relation to sections 16(2)(c) and section 42(2)	

# Annexure-A: Documents Required

10	Refund on account of assessment / provisional assessment / appeal / any other order	Undertaking in relation to sections 16(2)(c) and section 42(2)	Reference number of the order and a copy of the Assessment / Provisional Assessment / Appeal / Any Other Order
		Self-declaration under rule 89(2)(l) if amount claimed does not exceed two lakh rupees, certification under rule 89(2)(m) Otherwise	Reference number/proof of payment of predeposit made earlier for which refund is being claimed
11	Refund on account of any other ground or reason	Undertaking in relation to sections 16(2)(c) and section 42(2)	Documents in support of the claim
		Self-declaration under rule 89(2)(l) if amount claimed does not exceed two lakh rupees, certification under rule 89(2)(m)	

# Annexure-B

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Circular No.135/05/2020 - GST

**Annexure-B**  
**Statement of invoices to be submitted with application for refund of unutilized ITC**

Sr. No.	GSTIN of the Supplier	Name of the Supplier	Invoice Details			Category of input supplies		Central Tax	State Tax/ Union Territory Tax	Integrated Tax	Cess	Eligible for ITC	Amount of eligible ITC
			Invoice No.	Date	Value	Inputs/Input Services/capital goods	HSN/SAC						
1	2	3	4	5	6	7	8	9	10	11	12	13	14

# Refund Amount to be debited to Electronic Credit Ledger

- ▶ As per Rule 89(3), where the application relates to refund of input tax credit, the electronic credit ledger shall be debited by the applicant by an amount equal to the refund so claimed. As per **Circular 59/33/2018 dated 4-09-2018**, the amount to be debited to electronic credit ledger is least of the following:
  - a) Amount calculated as per Rule 89(4) or 89(5)
  - b) The balance in the electronic credit ledger of the claimant at the end of the tax period for which the refund claim is being filed after the return for the said period has been filed; and
  - c) The balance in the electronic credit ledger of the claimant at the time of filing the refund application.

# Rule 96-Refund of integrated tax paid on goods or services exported out of India

- ▶ refund of integrated tax paid on the services exported out of India shall be dealt with in accordance with the provisions of rule 89 and the application for refund shall be filed in FORM GST RFD-01. [Rule 96(9)]

- ▶ **Shipping Bill Deemed to be application**

The shipping bill filed by an exporter of goods shall be deemed to be an application for refund of integrated tax paid on the goods exported out of India.

## Rule 96A -Refund of integrated tax paid on export of goods or services under bond or Letter of Undertaking

- ▶ Any registered person availing the option to supply goods or services for export without payment of integrated tax shall furnish, prior to export, a bond or a Letter of Undertaking in **FORM GST RFD-11** to the jurisdictional Commissioner (vide circular no 2/2/2017-GST the power has been delegated to Deputy/Assistant Commissioner).

# Rule 92-Order sanctioning refund

- ▶ As per notification 39/2017-Central Tax and further modified by notification 10/2018-Central Tax dated 23-01-2018, state tax officers have been authorized to act as proper officer for the purpose of section 54 and 55 for the sanction of refund. Regarding refund of IGST paid on exports, State officer have been authorized to deal refund of IGST on export of service but can't deal IGST refund on export of goods. All other types of refunds can be dealt by state tax officer for the purpose of S. 54 & 55 of CGST



# Rule 93-Credit of the amount of rejected refund claim

- ▶ Where any amount claimed as refund is rejected under rule 92, the amount debited to the extent of rejection, shall be re-credited to the electronic credit ledger by an order made in FORM GST PMT-03. A refund shall be deemed to be rejected, if the appeal is finally rejected or if the claimant gives an undertaking in writing to the proper officer that he shall not file an appeal. Also, where any deficiencies have been communicated in FORM GST RFD-03, the amount debited under sub-rule (3) of rule 89 shall be re-credited to the electronic credit ledger.

# Refund U/s-55

## Refund can be filed by following:

1. A specialized agency of the United Nations Organization or
  2. Any Multilateral Financial Institution and Organization notified under the United Nations (Privileges and Immunities) Act, 1947,
  3. Consulate or Embassy of foreign countries or
  4. Any other person or class of persons as notified under section 55.
- ▶ Refund should be claimed within 6 months from the end of quarter in which such supply received. Vide **Notification No. 20/2018 – Central Tax dated 28th March, 2018**, time limit got extended to 18 months

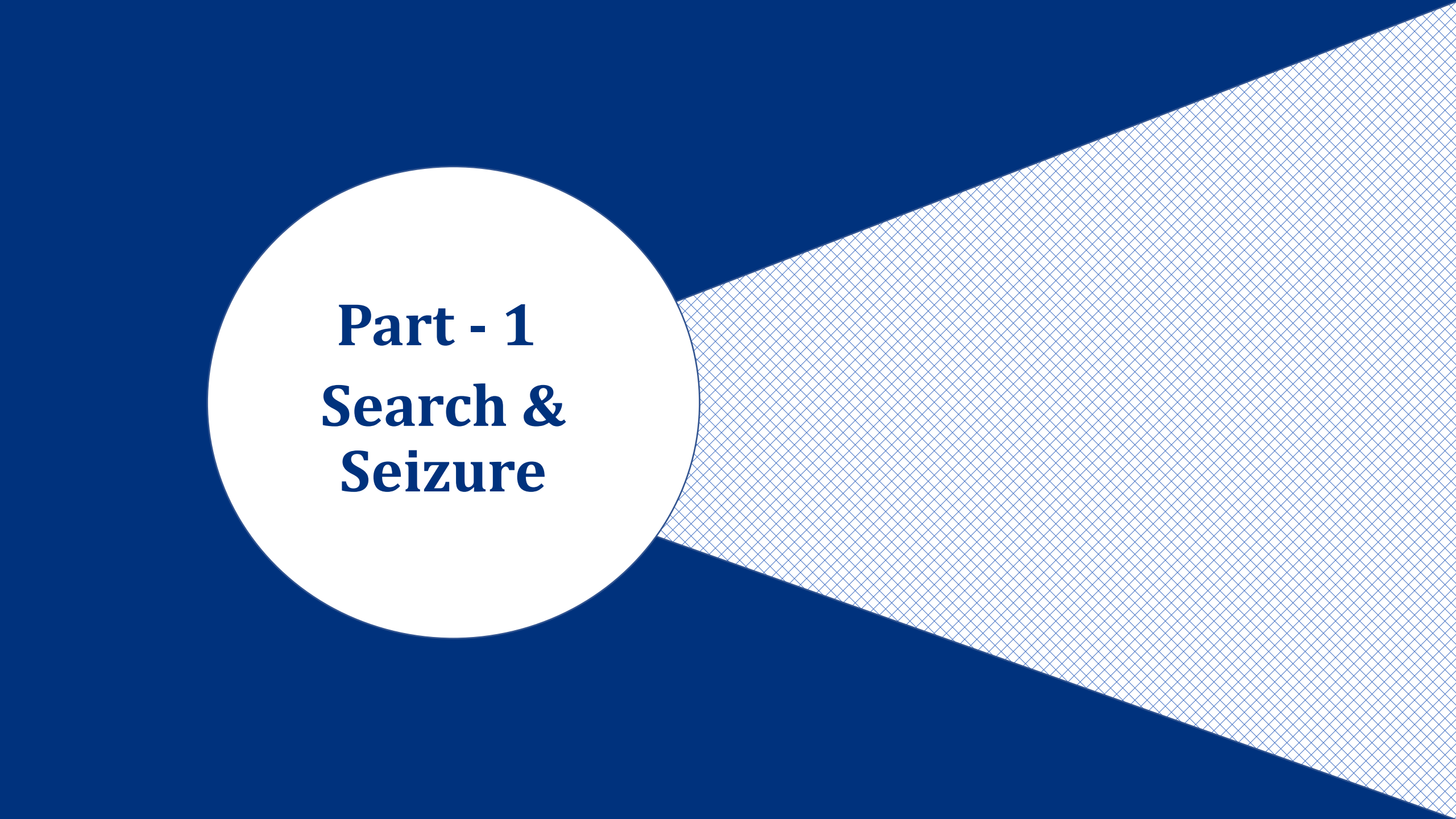
# Thank You

- **CA Sandeep Kumar Baheti**
- **Sandeep\_baheti1982@yahoo.co.in**
- **9032422477**

# Search, Seizure, Penalties and Prosecution under GST

- CA. Venkat Prasad. P, L.L.B





**Part - 1**  
**Search &**  
**Seizure**

# Coverage

- *Statutory provisions*
- *Reasons for dispute*
- *Need for investigation*
- *Points to consider during summons/interrogation*
- *General practice/Do's and Don't during investigation*
- *Availability of Documents during investigation*
- *Points to consider during submitting documents/responding to letters*
- *Manner of submissions*
- *Decisions around investigation/summons*

# Audit, Assessment & Investigation – Different powers

## Assessment – Chapter XII

- *Self Assessment (S. 59)*
- *Provisional Assessment (S. 60)*
- *Scrutiny of Returns (S. 61)*
- *Assessment of Non-filers of returns (S. 62)*
- *Assessment of unregistered persons (S. 63)*
- *Summary assessment in certain special cases (S. 64)*

## Audit – Chapter XIII

- *Audit by Tax Authorities (S. 65)*
- *Special Audit (S. 66)*

## Investigation – Chapter XIV

- *Power of inspection, search & seizure (S. 67)*
- *Inspection of goods in movement (S. 68)*
- *Power of Arrest (S. 69)*
- *Power to summon persons to give evidence and produce documents (S. 70)*

## Section 71

*Access to business premises*

## Demands & Recovery – Chapter XV

- *Adjudication of taxes – Matters not involving fraud etc. (S. 73)*
- *Adjudication of taxes – Matters involving fraud etc. (S. 74)*

# *Parallel proceedings*

- *State tax v. Central tax – Cross empowerment?*
- *Central tax v. Central tax (Range/Division officer v. AE v. DGGI)*
- *Specific state v. All India*
- *State tax v. IGST demands?*
- *Audit v. Investigation*
- *Section 6 of CGST/SGST*
- *Same subject matter for past period*



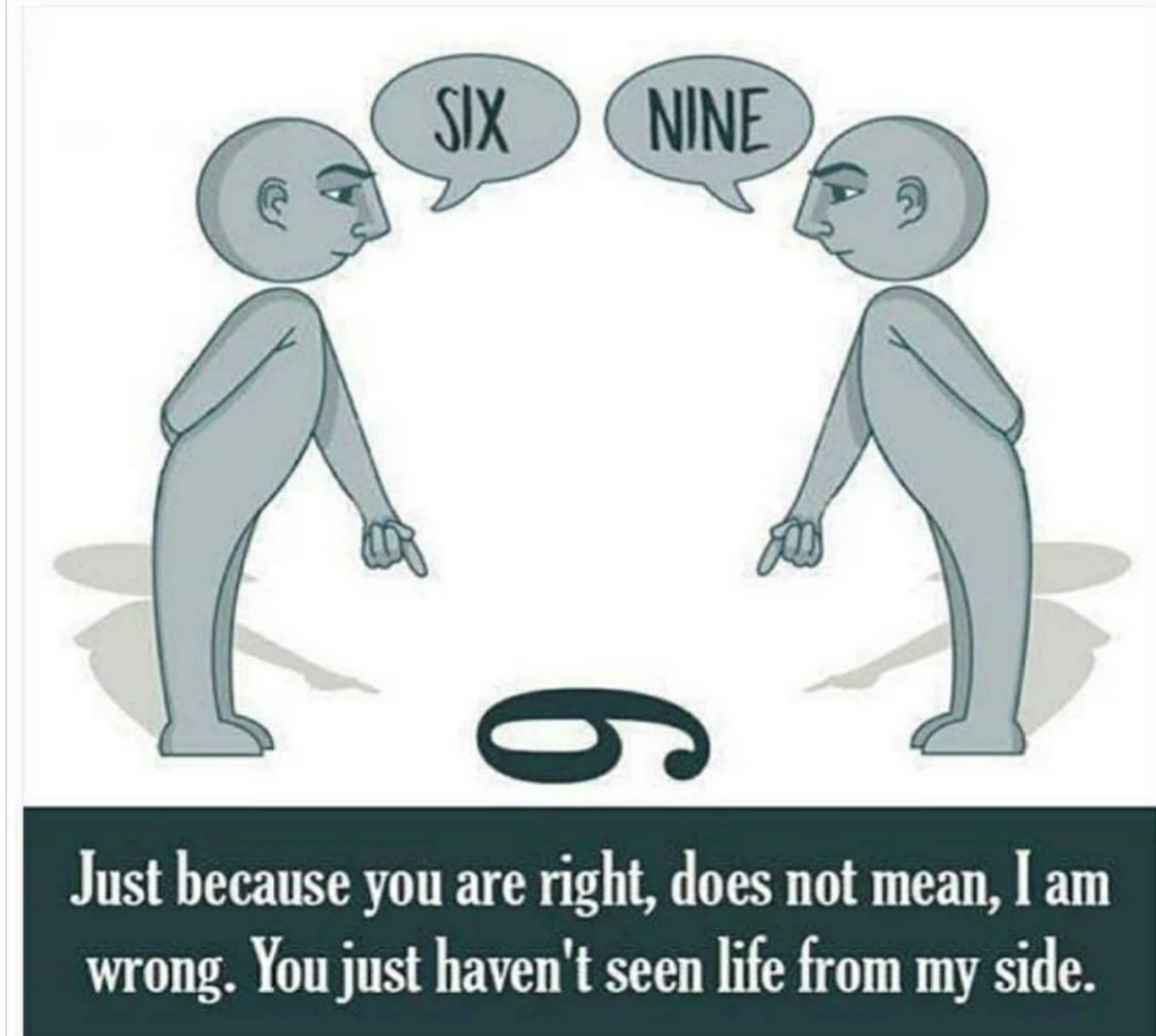
# Reasons for Disputes

## Department Perspective

- *Aggressive tax collection behaviour*
- *Lack of Training and skills of tax officers*
- *Lack of accountability and judicial indiscipline*
- *Lack of supervision and guidance*
- *Fear of Audit, Vigilance machinery and CBI*

## Taxpayers perspective

- *Complicated law*
- *Cumbersome procedures*
- *Compliance requirements*
- *Ignorance*
- *Deliberate evasion*
- *Competition by tax evaders*



# Prevention

- *Thorough knowledge of law*
- *Sincere efforts to be legally compliant*
- *Strong internal control*
- *Strong and effective internal audit*
- *Strong and effective professional audit on GST/Customs issues*
- *Utilisation of legal provisions to reduce/prevention disputes*
- *Regular consultation with professional advice*
- *Utilisation of various fora to air the grievances and get them rectified*

# Mitigation

- *Use of section 73(5) and 73 (8)*
- *Cost benefit analysis before taking action*
- *Effective correspondence*
- *Effective use of RTI Act*
- *Interaction with senior officers*
- *Representation to the Officers/government*
- *Effective use of writ remedies*

# *Start of dispute*

- *Written Enquiry – roving/ fishing – survey or with some prior suspicion/ compliant etc. IT VS GST returns, 2A vs 3B.....*
- *Visit – General survey or verification of premises or specific reason.*
- *Inspection – Sec.67 Books, documents, stocks*
- *Search – Sec. 67 – with warrant*
- *Summons – 70 to interrogate*
- *Show Cause Notice – with reason for demand*
- *Payment if agreed at any stage above- not due to threats/ coercion*

# Document Identification Number (DIN)

- **Circular No. 122/41/2019-GST dated 5th Nov 2019**
  - *Search warrants, summons, arrest memos, inspection notices and enquiry letters shall contain electronic DIN*
  - *Exceptions are there when there is no sufficient time to issue the letters.*
  - *Any document without DIN, such communication shall be treated as invalid document*
  - *To promote the transparency and accountability in tax administration.*
  - *Recipient can verify its genuineness @ <https://www.cbicddm.gov.in/MIS/Home/DINSearch>*
- *Extended to all communications including E-Mail with effect from 24.12.2019 vide Circular 128/47/2019-GST*
- *SC directed UOI/GST Council to issue advisory/instructions/recommendations to the States regarding implementation of the system of electronic (digital) generation of a DIN in the indirect tax administration **Pradeep Goyal Vs UOI 2022-TIOL-66-SC-GST***

# *Dealing with enquiries/ Visits*

- *Is it official? – Personal gmail or Gov.in? – DIN for central tax officials*
- *Understand that purpose of enquiry*
- *If clear provide the information by Email + SP +RPAD. No oral clarifications*
- *Any oral enquiries ask for written communication*
- *If persistent – write a polite letter referring the phone calls and ask for specifics*
- *Visits – Ask for ID- note down the details of designation, check jurisdiction, call dept number to verify if suspicious*
- *Information/ copies provided- ask for acknowledgement- follow up with explanation provided to officer + AC/DC.*

# Dealing with Investigation

- *If matter relates to valuation, classification, - burden of proving is on revenue*
- *If exemption or ITC – then onus on tax payer.*
- *Interpretation/ use of Circulars- only circulars in line with law valid in law*
- *Don't be panic – seek legal remedies – time taking process & Patience pays back*
- **Law serve the vigilant – Right to agitate available**
- *'Ubi jus Ibi Remedium - there is a legal right, there is a legal remedy.*



**Inspection,  
Search &  
Seizure**



# *Inspection [Section 67(1)]*

- **Who may conduct:** *Proper officer [“PO”] not below the rank of joint commissioner.*
- **When it may be conducted:** *Where there is a reason to believe that:*
- **Taxable person** *has, with intent to evade tax, suppressed information:*
  - *Of transaction relating to supply of goods or services’*
  - *Of stock of goods in hand;*
  - *Of claiming ITC in excess of entitlement;*
  - *Of contravention of any provisions of the Act.*

# Inspection [Section 67(1)]

- **Transporter/warehouse operator:**
  - *Is keeping goods on which tax has been evaded;*
  - *Has kept accounts in such manner as is likely to cause evasion*
- **What can be inspected:** *PO may authorize any other officer of central tax in writing in Form GST INS-01 to inspect:*
  - *Any place of business of taxable person/transporter/warehouse*
  - *Any other place.*

# *Inspection [Section 67(1)] - Meaning*

- **Per Black's Law Dictionary, 7th Edn:** *'Inspection' means a careful examination of something, such as goods (to determine their fitness for purchase) or items produced in response to a discovery request (to determine their relevance to a law suit).*
- **Per CBIC FAQs:** *'Inspection' is a new provision under the CGST/SGST Act. It is a softer provision than search to enable officers to access any place of business of a taxable person and also any place of business of a person engaged in transporting goods or who is an owner or an operator of a warehouse or godown.*

# *Inspection [Section 67(1)] - Meaning*

- **Per Section 2(91) of the Act:** *“proper officer” in relation to any function to be performed under this Act, means the Commissioner or the officer of the central tax who is assigned that function by the Commissioner in the Board.*
- **Per Circular 03/3/2017-GST dated 05.07.2017:** *Proper officer to carry out inspection u/s 67(1) is the Additional or Joint Commissioner of Central Tax.*

# Reason to Believe – Meaning of

- **Section 26 IPC:** *A person is said to have “reason to believe” a thing, if he has sufficient cause to believe that thing but not otherwise.*
- **Reason’ – Meaning of: HL Sibal Vs CIT [1976] 103 ITR 606 (P&H)**
  - *Reason is a statement of fact employed as an argument to justify or condemn some act.*
  - *When information is received or facts are harnessed in support of an argument, the resultant effect assumes the shape of a reason.*
  - *Facts constituting the information must be relevant to the enquiry. They must be such from which a reasonable and prudent man can come to the requisite belief or conclusion.*
  - *Material must have rational nexus of bearing to the reasons for formation of belief.*
  - *Reason must be the basis to arrive at conclusion, i.e, by inference, deduction, etc.*
  - *When a number of reasons are considered in relation to each other, the final result of this consideration assumes the shape of a conclusion.*

# *Reason to Believe – Meaning of*

- **‘Belief’ – Meaning of: Rich Udyog Network Ltd Vs CCIT [2016] 386 ITR 136 (All)**

- *Belief must be held in good faith.*

- *It cannot be a mere pretense or a doubt.*

- *Belief should not be based on mere suspicion but must be based on information which is in the possession of the authorizing authority.*

- *The said “information” must be something more than a mere rumor, gossip or hunch. It must form the basis on which the authorizing officer can have “reason to believe” that an action can be taken.*

# Judicial Review of “Reason to Believe”

- **Balwant Singh Vs R.D. Sharma [1969] 71 ITR 550 (Delhi)**

- *The existence of 'reason to believe' is subject only to a limited scrutiny and the Court cannot substitute its own opinion for that of the officer carrying out Inspection.*
- *Inspection must not lightly or arbitrarily invade the privacy of a subject. Before he acts, he must be reasonably satisfied that it is necessary to do so but the decision must still remain his and not that of the Court.*
- *If the grounds on which reason to believe is founded are non-existent or are irrelevant or are such on which no reasonable persons can come to that belief, the exercise of power would be bad and court can interfere.*
- *It is also open to the Court to examine whether the reasons for the belief have a rational connection or a relevant bearing to the formation of the belief.*

- **DDIT Vs Mahesh Kumar Agarwal [2003] 262 ITR 338 (Cal)** – *Court cannot look into aptness or sufficiency of grounds upon which satisfaction is based. Satisfaction is subjective. If belief is bona fide and cogently supported, court will not interfere.*

# *Place of Business or Any Other Place – Meaning of*

- **Section 2(85) CGST Act:** *“Place of business” includes:*
  - *A place from where the business is ordinarily carried on, and includes a warehouse, a godown or any other place where a taxable person stores his goods, supplies or receives goods or services or both; or*
  - *A place where a taxable person maintains his books of account; or*
  - *A place where a taxable person is engaged in business through an agent, by whatever name called.*



# *Search and Seizure [Section 67(2)]*

- **Search – Meaning of:**

- **Black's Law Dictionary 6th Edition:** *An examination of a man's house or other buildings or premises, or of his person, with a view to the discovery of contraband or illicit or stolen property, or some evidence of guilt to be used in the prosecution of a criminal action for some crime or offense with which he is charged.*

- **Seizure – Meaning of:**

- **Law Lexicon Dictionary:** *The act of taking possession of property by an officer under legal process.*

- *It generally implies taking possession forcibly contrary to the wishes of the owner of the property or who has the possession and who was unwilling to part with the possession.*

# *Search and Seizure [Section 67(2) r/w 67(11)]*

- **Who may conduct:** *Proper officer not below the rank of joint commissioner.*
- **When it may be conducted:** *Where there is reason to believe that the following is secreted in any place:*
  - *Goods liable for confiscation;*
  - *Documents/things/books relevant for proceedings.*
- **What can be searched/seized:** *The following may be searched and seized by making an order in Form GST INS-02:*
  - *Aforesaid Goods/books/documents/things;*
  - *Accounts/registers/documents of any person produced before the PO, if PO has reason to believe that such person has evaded or is attempting to evade tax.*

# 'Secreted' – Meaning of:

- **Durga Prasad Vs H.R. Gomes AIR 1966 SC 1209 (1216)** – *In the context of Section 105(1) Customs Act:*
  - *'Secreted' means documents which are kept not in the normal or usual place, with a view to conceal them.*
  - *It may even mean documents or things which are likely to be secreted.*
  - *It includes, documents or things which a person is likely to keep out of the way or to put in a place where the officer of law cannot find it.*
  - *What can be called from an assessee in the normal course should not be recovered from him under search proceedings.*
- **Rajeev Traders vs. State of U.P. 2019 (29) G.S.T.L. 9 (All.)**
  - *Goods lying at a disclosed place of business of the assessee when not recorded in regular books of account, a presumption of the goods having been "secreted" arises*
  - *"in any place" includes both the disclosed and undisclosed place(s) of business*

# *'Retention and Return of Seized Articles [Section 67(3), (7) and (8)]*

- **Retention – For How Long:** *As long as it is necessary for examination / inquiry.*
- **When to return:** *Those goods/documents/things which are not relied upon in the notice must be returned within 30 days of issue of notice.*
  - **Note:** *Notice must be issued Within 6 months of seizure unless extended further. Otherwise all goods/documents/things seized are to be returned.*
- **Provisional return:** *This can be done upon:*
  - *Execution of bond and furnish security; or*
  - *Payment of tax, interest and penalty.*

# *Detention of Goods [1st Proviso to Section 67(2)]*

- *If not practicable to seize, PO may serve owner or custodian of goods, an order in **Form GST INS-03** not to remove, part with or otherwise deal with goods except with prior permission.*
- **‘Practicable’ – Meaning of: Om Parkash Jindal Vs UOI [1976] 104 ITR 389 (P&H)** – *Seizure is ‘impracticable’ when the nature or location of the property found on search which is reasonably believed to be undisclosed property and does not allow or the circumstances do not permit the immediate seizure of the same.*
- *Order of detention cannot be issued for the purpose of finding out whether the goods are seizable or for further enquiry.*
  - *Maa Vaishnavi Sponge Ltd Vs DGIT [2012] 21 ITR 413 (Orissa)*
  - *Sriram Jaiswal Vs UOI [1989] 176 ITR 261 (All)*
  - *B.K. Nowlakha Vs UOI [1991] 192 ITR 436 (Delhi)*

# *Disposal of Seized Articles [Section 67(8) & (9)]*

- *Government may, by notification, specify goods or class of goods which shall be disposed of after seizure by proper officer.*
- *In disposing of, regard should be had to the following factors:*
  - *Perishable nature*
  - *Hazardous nature*
  - *Depreciation in value of goods with passage of time*
  - *Constraints of storage space for goods*
  - *Any other relevant considerations.*
- *An inventory of such goods shall be prepared by the PO after its seizure in Form GST INS-05.*

# Applicable Provisions of CrPC Regarding Search

Section 93 of CrPC	Section 165 of CrPC	Section 100 of CrPC
When <b>search warrant</b> can be issued by a court in the following three cases:	Search must be <b>necessary for investigation</b>	To ensure fair search, presence of <b>two respectable witnesses</b> are obligatory.
If there is <b>reason to believe</b> that a person to whom summons to produce documents or other things <b>may not produce the said documents.</b>	Offence must be such that <b>PO is authorized to investigate</b> [i.e, it must be a cognizable offence]	They must be independent, <b>unprejudiced and uninterested</b> in the search. [AIR 1974 SC 1224]
If the court thinks that it <b>serves the purpose</b> of inquiry, trial or any other proceedings.	<b>Reasonable ground</b> must exist for believing that the thing will be found in the place to be searched	<b>Occupant of the place</b> , i.e, person residing in or being in charge of that place searched is permitted to <b>attend search.</b>

# Applicable Provisions of CrPC Regarding Search

Section 93 of CrPC	Section 165 of CrPC	Section 100 of CrPC
If a document or thing is <b>not known to be in possession</b> of any person/place .	There would be <b>undue delay</b> in getting the thing in any other way	Officer must prepare <b>list of all things seized (recovery memo)</b> and where it was found and <b>deliver to the occupant</b> after signature of that officer and the witnesses. Otherwise, the accused may be entitled to benefit of doubt. [AIR 1969 Cal 340]
An <b>illegal warrant</b> of search and seizure <b>vitiates seizure</b> of the article [ <u>Shyam Sachedev Vs State</u> 1991 CrLJ 300 (Del)].	Grounds of belief regarding necessity of search must be <b>previously recorded</b> . If not, the search will be illegal.	
<b>Section 47(2):</b> If ingress into premises cannot be obtained, officer carrying out search may <b>break open</b> any outer or inner door or window of any house or place, whether that of person sought to be searched or any other person.		



# *Whether assessee is entitled to a copy of reasons recorded for issuing a search warrant?*

- **DGIT(I) Vs Spacewood Furnitures (P) Ltd [2015] 57 taxmann.com 292 (SC):**
  - *Recording of reasons is necessary so as to ensure accountability and responsibility in the decision making process.*
  - *However, that by itself would not confer in the assessee a right to communication of the reasons for the belief at the stage of issuing of the authorization.*
  - *Any such view would be counter productive of the entire exercise contemplated in the search provisions.*
  - *It is only at the stage of commencement of the assessment proceedings after completion of the search and seizure, if any, that the requisite material may have to be disclosed to the assessee.*

**Golden Cotton Industries Vs UOI - 2019 (29) GSTL 587 (Gujarat)**

# *Whether illegal search vitiates seizure and subsequent proceedings?*

- **Radhakrishnan Vs State of UP AIR 1963 SC 122:** *Even if search is illegal, the seizure of articles and further trial is not vitiated. If search provisions are violated, only the following two consequences could ensue:*
  - *The person whose premises is sought to be searched can, at best, **resist search.***
  - *Because of the illegality of the search the Court may be **inclined to examine carefully the evidence** regarding the seizure.*
- **State of MP Vs Patlan Mallah 2005 CrLJ 918 SC:** *Illegality in search does not vitiate search unless it had caused prejudice to the accused. Merely because the accompanying witness is not from the same locality, search evidence cannot be disregarded.*
- **ACCE Vs Wilfred Sebastian 1983 (12) ELT 122 (Ker):** *On examination, if the evidence regarding the seizure of the articles is found to be satisfactory and acceptable, it will not be in the interests of justice to ignore altogether that evidence*

# *Power to Seal or Break Open [Section 67(4)]*

- **Where access is denied to:**

- *Door of any premises, almirah, boxes, electronic devises, box, receptacle.*
- *In which any goods, registers, accounts, documents of the person are suspected to be concealed.*

*officer authorized for search and seizure has power to seal or break it open.*

# *Allowing to Take Photocopies [Section 67(5)]*

- **What is allowed:** *To make copies of any documents which are seized or take extracts therefrom.*
- **Who is allowed:** *Person from whose custody any documents are seized.*
- **When photocopy may be taken:** *In presence of an authorized officer at such place and time as such officer may indicate.*
- **When photocopy cannot be taken:** *In the opinion of the proper officer, it prejudicially affects the investigation.*

*High Ground Enterprises Ltd vs. Union of India 2020 (33) GSTL 169 (Bombay)*

*Jayachandran Alloys (P) Ltd. v. Superintendent — 2019 (25) G.S.T.L. 321 (Mad.)*

*Harp Resorts Pvt. Ltd. vs. Union of India 2024 (81) G.S.T.L. 233 (Bom.)*

## Inspection, Search & Seizure - Section 67

- *An authorization from Joint Commissioner and not below rank. – Prakashsinh Hathisinh Udavat Vs State of Gujarat 2019 (31) G.S.T.L. 583 (Guj.)*
- *Should be in business hours only*
- *Should not use coercive measures.*
- *The action should be in good faith- No pretence- fanciful, arbitrary. Immunity u/s 157 - Officer to be protected provided he is **authorised** to do something under GST Act, and done in **good faith**. Paresh Nathalal Chauhan vs State of Gujarat 2020 (32) G.S.T.L. 342 (Guj.)*
  - *Mahazar to be drawn- duly agreed*
  - *Receive back goods after 6 months- release in between- bond etc*
  - *Books after 30 days of SCN*
  - *Cross Examination*

# *Seizure understanding + dealing*

- *Search Authorisation in form INS- 01 U/r 139*
- *Order of the seizure in Form INS-02 – custody may be with TP*
- *INS-03 – prohibits dealing without officer permission*
- *Release goods with a bond for market value of goods with BG security for tax + Int + penalty in Form INS-04*
- *Perishable goods – bond for market value of goods or tax + int + penalty w.e.l in Form GST INS – 05 otherwise officer can sell & realise the amount*
- *Seizure of Money/title deeds etc., - Shabu George vs. State Tax Officer (IB), State GST Department, Aluva 2023 (76) G.S.T.L. 348 (Ker.) - SC dismissed SLP in 2023 (76) G.S.T.L. 145 (S.C.)*

# Inspection, Search & Seizure - Section 67

- **Bhumi Associates Vs. Union of India 2021 (46) G.S.T.L. 36 (Guj.) directed CBIC & State tax authorities to issue guidelines that**
  - *No recovery in any mode by cheque, cash, epayment or adjustment of ITC at the time of search/inspection under any circumstances.*
  - *Even if the assessee comes forward to make voluntary payment by DRC-03, the assessee should be asked/ advised to file such on the next day after the end of search proceedings and after the officers of the visiting team have left the premises of the assessee.*
  - *Facility of filing complaint/grievance after the end of search be available.*
  - *If complaint/ grievance is filed by assessee and officer is found to have acted in defiance of the aforestated directions, then strict disciplinary action should be initiated.*

**CBIC issued instruction no. 1/2022-23[GST-Investigation] dated 25-05-2022.**

**Many instances of forceful recoveries are directed to be refunded as payments are involuntary - Paid during night time, Threatening calls/messages etc.,**

# Inspection, Search & Seizure - Section 67

## **Deepak Khandelwal vs. Commissioner of CGST, Delhi West 2023 (77) G.S.T.L. 5 (Del.)**

- *Not all types of movable assets found during search can be seized. Only those goods subject matter of or are suspected to be subject matter of tax evasion would be liable for confiscation*
- *Seizure of documents or books is permissible so as to aid in proceedings; otherwise documents or books or things cannot be confiscated and have to be returned*
- *Purpose of Section 67 is not recovery of tax but is to empower authorities to unearth tax evasion and ensure that taxable supplies are brought to tax*
- *Power to seize goods to ensure that taxes are paid and once department is secured in this regard, either by discharge of such liability or by such security or bond as concerned authority deems fit, goods are required to be released*
- *Section 67 ibid is not a machinery provision for recovery of tax; it is for ensuring compliance and to aid proceedings against evasion of tax*
- *Search and seizure operations under section 67 are not for purpose of seizing unaccounted income or assets or ensuring that same are taxed; said field is covered by Income-tax Act, 1961 –*
- *Where currency or silver bars that were seized, could not be traced in species to any transaction which revenue required to establish in any proceedings those silver bars and cash could not be seized only on ground that it was 'unaccounted wealth' and not as any material which was to be relied upon in any proceedings under Act*





**Summons**

# *Summons = interrogation - Section 70*

- *The Superintendent has power to summon **any person** –*
  - *to to give evidence or*
  - *to produce a document or*
  - *Others*

*As per Code of Civil Procedure, 1908.*

- *This is a judicial proceeding u/s 193 & 228 of the Indian Penal Code.*
  - *Sec 193 - Intentionally giving the false evidence or fabricating the evidences - imprisonment may extend up to 7 years.*
  - *Sec. 228 - Intentionally insulting or interruption to public servant is an offense liable for imprisonment up to 6 months.*
- *Only if the taxpayer does not respond to letters issued by officers. CBIC Instruction F. No. 207/07/2014-CX-6, dated 20-1-2015 & 2 more old circulars*

# Summons - Section 70

- *CA or Advocate can accompany tax payer & permitted to be present during investigations at **visible but not audible distance** Vijay Sajnani v. Union of India 2017 (345) E.L.T. 323 (S.C)*
- *Summons to owner/MD/Director/CFO/Chairman of the company - In extreme & rare cases-yes*
- *Statement, recorded before a Gazetted Officer during inquiry or investigation will be admissible as evidence to prove charges-Section 136 of CGST Act, 2017*
- *Statement shall be recorded in language known to person whose statement is recorded.*
- *It must be left to investigating agency to decide venue, timings and questions and manner of putting questions to persons involved in offences. **UOI Vs Rajneesh Kumar Tuli – 2017 (355) ELT 492 (S.C.)***

# Summons - Section 70

- *Statement to be retracted within reasonable time when it is recorded in duress/threat/atrocity or coercion, violence, intimidations & torture. If dictated or written by officer*
- *Such retraction could be communicated to higher official also.*
- *Taxpayer is entitled for copy of statement recorded? Can record in plain paper if permitted. Otherwise come out and write down.*
- *It is settled law tax demands cannot be confirmed based sole concessions/admissions.*
- *Non-attendance leads to imprisonment under section 174 of the Indian Penal Code (IPC) for 6 Months.*

# Summons - Section 70

- *Statement cannot be recorded at odd hours*
- *No manhandling permitted - Sudhir Kumar Agarwal vs. DGGI – 2020 (34) G.S.T.L. 155 (Del.) Officers cannot physically assault or manhandle the tax payer- Methods which do not have approval of law cannot be used.*
- *Physical assault by the investigating officers is not permitted under GST law. The report given by private hospitals also admissible evidence Agarwal Foundries Pvt Ltd Vs UOI 2020-TIOL-1898-HC-AP-GST*
- *The person who knows the facts & accounts should attend the summons*
- *Shall answer question only.*
- *Answer not aware or will come back. Ignorance of fact can be excused.*
- *Should not confess any tax liability due to force.*
- *Ensure that his answers only the officer is recording.*

# CBIC 2024 instructions on Investigations

- *Prior written approval of the zonal Principal CC shall be required for initiation of investigation in the following matters:*
  - *Matters of interpretation seeking to levy tax for the first time*
  - *Big industrial house and major multinational corporations*
  - *Sensitive matters or matters with national implications*
  - *Matters already before the GST Council.*
- *Principal Commissioner must coordinate with other investigating offices when a taxpayer is simultaneously being investigated by the other investigating offices on a different subject matter. If feasible, only one investigating office should undertake investigation on all the subject matters. Where the issue is based on a matter of interpretation and the taxpayer is following prevalent trade practice as per their sector, it is recommended to make a reference to the relevant policy wing of the CBIC.*
- *When commencing an investigation of a listed company, PSU, Corporation, Government department or authority established by law, the CGST field formation should first issue an official letter, instead of summons to the designated officer of such entity.*
- *The letter or summons issued should disclose the specific nature of the inquiry being initiated or undertaken. The letter should not be vague, and should not call for information available digitally or on the online GST portal.*

## *Other important points*

- *Give complete facts in case of investigation letter received from the officer since officer is new to your business*
- *How we record the transactions (title) in the books of accounts will also make lot of sense.*
- *Pay the tax under protest in case you are not agreeing the liability. Mere mention of 'voluntary' in DRC-03 do not conclude that it is voluntary, the facts & circumstances required to be seen - Bundl Technologies Pvt Ltd v. UOI 2021-TIOL-2073-HC-KAR-GST & 2022-TIOL-333-HC-KAR-GST -*
- *Ensure all your premises are added in registration certificate*
- *Facility of payment of tax/interest in instalments – After determination - Section 80 not exceeding 24 instalments.*
- *Send background with interpretation placed in detail prior to summons*

# Coercive actions during investigation

- Common approach of Investigation agencies viz.,
  - Threat of arrest or likely word of arrest,
  - Provisional attachment
  - Forceful confessions/admissions about liability etc.,
  - ITC block
  - Registration suspension

What immediately to be done?

- Stall/stop investigation?? – **No** unless prima facie there is no case for dept which adjudication takes long time
  - Shield against abuse process of law i.e. threat arrest, provisional attachment, Forceful confessions/admissions about liability
- SC in **Dabur India Ltd. vs. State of Uttar Pradesh 1990 (49) E.L.T. 3 (S.C.)** held that *Court would not like to hear from a litigant in this country that the Government is coercing citizens of this country to make payment which the litigant is contending not to be leviable. Government, of course, is entitled to enforce payment and for that purpose to take all legal steps but the Government, Central or State, cannot be permitted to play dirty games with the citizens of this country to coerce them in making payments which the citizens were not legally obliged to make. If any money is due to the Government, the Government should take steps but not take extra-legal steps or manoeuvre.*



# Coercive actions during investigation

- Circumstances to be considered (illustrative not exhaustive)
  - Recovery on same day of search or summons (Guj HC in Bhumi associates, CBIC instruction no. 1/2022-23[GST-Investigation] dated 25-05-2022)
  - Odd hours – Night time or early morning hours etc., (Bundl Technologies Private Limited TS-546-HC(KAR)-2021-GST; Vallabh Textiles v. SIO (2022) 1 Centax 241 (Del.); Shree Ganesh Molasses Trading Co. v. Superintendent (2023) 4 Centax 37 (Guj.)
  - % of amount paid [>10% paid - SC in C. Pradeep v. CCE, Salem 2019 (11) TMI 659; Tel HC in MS Agarwal Foundries 2022 (7) TMI 135]]
  - Revenue authorities can neither issue any advices regarding payment of tax nor coerce the taxpayer to pay tax without determining the liability u/s. 73/74. Recovery in the stage of investigation/summons proceedings is wholly arbitrary and without jurisdiction.- **Deem Distributors Private Limited v. UOI 2022 (56) GSTL 286 (Telangana)**
  - Interpretive issues – GST on JDA, Genuine trans but vendors absconding/bankrupt etc.,
  - No movement after recovery – gap of months/years

# Coercive actions during investigation

- Relief can be asked from Court?
  - No coercive action of recovery while Investigation to continue
  - Completion of the investigation in specified time & issuance of SCN u/s. 73/74
  - Transfer of investigation to different authorities
  - Refund if No movement in investigation after recovery
- The assessee can be summoned only as a last resort and as far as practicable, details can be obtained from an assessee by way of an ordinary letter. The summons cannot be issued to coerce and pressurize the assessee. – [FSM Education Pvt. Ltd v. UOI 2022-TIOL-61-HC-MUM-GST]
- Authorities should ensure that the taxpayer is left in a position where he can continue with his business because it is only if the dealer continues with the business that he would be in a position to generate revenue and pay the taxes. Bringing the business of a dealer to a halt does not in any manner serve the interest of the revenue. – **[Steel Rolling Mill v. Assistant Commissioner of State Tax, 2019 (20) G.S.T.L. 732 (Guj), Siddarth Mandavia vs Union of India 2021 (044) GSTL 0347 (Bom)]**



**Provisional  
Attachment**

# Provisional attachment

- Sec 83 provides for Provisional attachment
- Rule 159 of CGST Rules, 2017 provides for the procedure to be followed
- CBIC issued instructions dated 23<sup>rd</sup> Feb 2021 detailing the procedure *inter alia provides that immovable property to be attached first, Movable property (+Bank account) attachment is only last*
- Principles laid down by Hon'ble SC decision in case of Radha Krishan Industries v. State Of Himachal Pradesh & Ors 2021 (48) G. S. T. L. 113 (SC) & Gujarat HC in case of Valerius Industries v. Union of India — 2019 (30) G.S.T.L. 15 (Guj.)
- When one can approach Court?
  - Complete stall of business & stakeholders – effecting the constitutional fundamental right to do business
  - Arbitrary exercise of Prov attachment power – ignorance of rationale of SC & CBIC instructions like first resort instead of last, bank account instead of immovable property etc.,
  - Filing objections needs the reasons to be communicated which dept is not furnishing thereby filing objections become more of guesswork
  - No specific time limits for reply/revocation thereby intentional delays in deciding the attachment (rule of 7 days time limit for filing objections prior to 1<sup>st</sup> Jan 2022 which was removed )

# *Provisional Attachment of property*

- *Type of cases where provisional attachment can be resorted:*
  - ✓ *Supply of goods/ services without issue of invoice;*
  - ✓ *Issue of invoice without supply of goods/ services;*
  - ✓ *Fraudulently availing ITC without supply of goods/ services;*
  - ✓ *Tax collected and not paid for more than 3 months;*
  - ✓ *Fraudulently obtained refund;*
  - ✓ *Passed on ITC fraudulently to the recipient but has not paid the tax to the government  
[GSTR 1 filed but GSTR 3B not filed]*

**[Guidelines for Provisional Attachment – CBEC-20/16/05/2021-GST/359 Dated 23.02.2021]**

- *Order of attachment to be communicated by Commissioner to the concerned revenue authority via GST DRC-22, along with a copy with the person concerned;*
- *Objection to such an attachment can be filed by the person concerned via GST DRC-22A and the time limit of seven days from the attachment has been done away with;*

# Provisional Attachment of property – Scope widened

- *The rationale of Hon'ble SC decision in case of **Radha Krishan Industries v. State Of Himachal Pradesh & Ors 2021 (48) G. S. T. L. 113 (SC)** & Gujarat HC in case of *Valerius Industries v. Union of India* — [2019 \(30\) G.S.T.L. 15 \(Guj.\)](#) worth noting which would be relevant even after the amendment also. The summary is that:*
  - ✓ *It is very drastic and far reaching power*
  - ✓ *It must be exercised with extreme care and caution. Not to harass the tax payers or cause detrimental effect on business*
  - ✓ *It shall be exercised as last resort/Measure and not as means of regular recovery.*
  - ✓ *It shall be done based on some credible materials & supervening factor and not casual evidence.*
  - ✓ *The Joint Commissioner while ordering a provisional attachment under section 83 was acting as a delegate of the Commissioner in pursuance of the delegation effected under Section 5(3) and an appeal against the order of provisional attachment was not available under Section 107 (1);*
  - ✓ *The writ petition before the High Court under Article 226 of the Constitution challenging the order of provisional attachment was maintainable;*

# Provisional Attachment of property

- ✓ *The expression “necessary so to do for protecting the government revenue” implicates that the interests of the government revenue cannot be protected without ordering a provisional attachment;*
- ✓ *The person whose property is attached is entitled to dual procedural safeguards :*
  - *An entitlement to submit objections on the ground that the property was or is not liable to attachment; and*
  - *An opportunity of being heard;*
- ✓ *The Commissioner is duty bound to deal with the objections to the attachment by passing a reasoned order which must be communicated to the taxable person whose property is attached;*
- ✓ *If appeal is filed against the order u/s. 73/74(9), the provisional attachment shall cease*
- ✓ *No second time attachment without change in facts & circumstances*
- *Cash credit (CC) account shall not be provisionally attached - Formative Fashions Pvt. Ltd v. State of Gujarat 2021 (54) G.S.T.L. 7 (Guj.)*

# Provisional attachment

*Parameters to be considered (illustrative not exhaustive):*

- *History of taxpayer and years & Size of establishment*
- *Amount of dispute involved*
- *Investment in capital assets v. likelihood of disposal*
- *Nature of offense – is It blatant law violation or interpretive issues or factual disputes?*
- *Amount already paid (>10%)*

## **What Courts can do?**

- *Revocation of attachment immediately either interim order or final disposal*
- *Conditions may be imposed like minimum balance to be maintained or affidavit for not to dispose of properties without court permission, FD original to be placed with dept etc.,*
- *Some HC's has first asked to get speaking order on objections filed (availing alternative remedy)*





**Part - II  
Prosecution &  
Penalties**

# Arrest & Prosecution in GST

- **Arrest:** *When used in its ordinary and natural sense, means the apprehension or restraint or the deprivation of ones personal liberty...When used in the legal sense in the procedure connected with criminal offences, an arrest consists in the taking into custody of another person under authority empowered by law, for the purpose of holding or detaining him to answer a criminal charge or of preventing the commission of a criminal offence. (State Of Haryana & Ors vs Dinesh Kumar AIR 2008 SC 1083)*
- **Prosecution:** *Hon'ble Supreme Court while explaining scope of Article 20, "prosecution in this context would mean an initiation or starting of proceedings of a criminal nature before a court of law or a judicial tribunal in accordance with the procedure prescribed in the statute which creates the offence and regulates the procedure." (Maqbool Hussain vs The State Of Bombay AIR 1953 SC 325)*

# *Arrest - Section 69 & 132*

- *What is Arrest: Taking into custody under some lawful command/ authority.*
- *Why arrest:*
  - *Preventing from influencing the witness/other suspects*
  - *Risk of flight*
  - *Committing additional crimes*
- *Arrest – restrains the personal liberty guaranteed under art. 21 of COI*
- *Bail = Conditional release with promise to appear in court whenever required*
- *Bail is rule and jail is an exception [Maneka Gandhi vs UOI AIR 1978 SC 597]  
– rigor of jail should be avoided*

## *Power to Arrest – Certain Safeguards*

- As per Section 41 read with Section 41A of Code of Criminal Procedure a person should not be arrested if he appears before Competent Authority and co-operates in the investigation.*
- Where a person is arrested for a non-cognizable and bailable offence, the officer carrying out the arrest can grant him bail in accordance with Section 436 of the Code of Criminal Procedure, 1973.*
- Where a person is arrested for a cognizable offence, he has to be produced within 24 hours of his arrest before a judicial Magistrate who will take a decision regarding releasing him on bail.*

# *Power to Arrest – Guidelines*

- *In 'D.K. Basu v. State of Bengal' - 1997 (1) SCC 416, the Supreme Court has laid down the guidelines required to be followed in case of arrest is detailed below - and these all are also applicable to the arrest under GST also.*
  - *The arresting officers should bear accurate, clear and visible identification with them having their name and designation.*
  - *The arrest memo must be signed by one of the relative of the arrestee or in absence one of the respectable person of the locality and countersigned by the arrestee.*
  - *The arrestee person shall have the right to inform one of the relative or friend from the place where he is kept after arrest may be a police station, a lock-up or an interrogation place.*
  - *The arrestee should be subjected to medical examination every 48 hours during his detention.*
  - *The arrestee should be allowed to meet his lawyer during the interrogation though not throughout the interrogation.*
  - *Copies of all documents including the memo of arrest should be sent to the Magistrate for his record.*

# *Arrest - Section 69 & 132*

- *Serious offenses like*
  - *Supplies without invoice,*
  - *Invoice without actual supply*
  - *Availing ITC on above*
  - *Collected GST but not paid > 3 months etc.,*
- *If the amount > 5 crores, it is cognizable & non-bailable*
- *All other offenses are bailable & non-cognizable*

## *Power to Arrest – Strict action by Judiciary*

- *In 'P.V. Ramana Reddy v. Union of India' - 2019 (25) G.S.T.L. 185 (Telangana) Hon'ble Telangana HC held*
  - *Arrest can be made before completion of the assessment*
  - *Pre-trial arrest can be challenged before HC*
  - *Compounding is not possible if not applied;*
- *Further, the petitioners filed a special leave petition before the Supreme Court against the judgment of Telangana High Court. The Supreme Court dismissing the plea, said that it is not inclined to interfere [2019 (26) G.S.T.L. J175 (S.C.)].*
- *HC of Karnataka & Bombay has taken different view and the matter is pending before 3 judge bench of Hon'ble SC on the above issues – which is being heard now*
- *Various HC's have granted/denied bail or coercive measures based on specifics of its case*

# Prosecution process under GST





## *Prosecution – CBIC guidelines*

*Instruction No. 04/2022-23 [GST – Investigation] dated 01.09.2022*

- Para 3.2: Prosecution should not be filed merely because a demand has been confirmed in the adjudication proceedings. Prosecution should not be launched in cases of technical nature, or where additional claim of tax is based on a difference of opinion regarding interpretation of law.*
- Para 6.1 The prosecution complaint for prosecuting a person should be filed only after obtaining the sanction of the Pr. Commissioner/Commissioner of CGST in terms of subsection (6) of section 132 of CGST Act, 2017.*
- Para 7.2.7: Investigation report should be signed by an Deputy/Assistant Commissioner, endorsed by the jurisdictional Additional/ Joint Commissioner, and sent to the Pr. Commissioner/ Commissioner for taking a decision on sanction for launching prosecution*

# *Compounding of Offences Sec 138*

**Any Offence under the Act**

**Either before or after the institution of prosecution**

**Can be compounded by Commissioner**

**On payment by person accused of the Offence**

**Compounding Amount**

# Compounding of Offences

- **Compounding Benefit not available to:**

- *A person who has already been allowed to compound offence u/s 132(1)(a) to (f) and (h), (i) and (l) of Sec 132*
- *Accused of offense u/s. 132(1)(b)*
- *Convicted for offense by court*
- *Any other class of persons as may be prescribed*

- **Compounding of offence under this Act will not affect proceedings under other Acts**

- **Compounding allowed only after paying tax, interest and penalty.**

# Meaning of Cognizable and bailable offences

*Money to be paid for  
Compounding the Offence:*

*Minimum = 25%  
of tax involved*

*Maximum =  
100% of tax  
involved*

*On payment of  
Compounding Amount*

*No further  
proceedings  
shall be  
initiated*

*Against the  
accused wrt to  
offence  
compounded*

*Criminal  
proceedings if  
already  
initiated, shall  
abate.*



# Penalties

# Penalty for certain offences – Sec 122

Nature of Offence	Prescribed Penalty
<ul style="list-style-type: none"><li>• Supplies any goods without invoice</li><li>• Issues invoice without supply of goods</li><li>• Collects tax amount but does not pay the same into the appropriate government treasury</li><li>• Collects tax in contravention of the Act</li><li>• Fails to deduct or collect tax and also fails to pay it to the appropriate governments</li><li>• Takes input tax credit without receipt of goods</li><li>• Obtains refund by fraud</li><li>• Manipulates financial records</li><li>• Fails to get registered</li><li>• Gives false information</li><li>• Transports taxable goods without documents</li><li>• Fails to maintain books of accounts.</li><li>• Fails to provide information and required documents.</li><li>• Takes or distributes credit in violation</li><li>• Obstructs or prevents a officer in discharge of duty</li><li>• Suppresses turnover</li><li>• Tampers or destroys evidence</li><li>• Disposes or tampers goods detailed or seized etc</li></ul>	<p><b><u>Higher of following:</u></b></p> <ol style="list-style-type: none"><li><b>1. Rs. 10,000/- <u>or</u></b></li><li><b>2. An amount equivalent to the amount of tax evaded/not deducted/collected or input tax credit availed or distributed or refund claimed in the matter</b></li></ol>

# Penalty for certain offences – Sec 122

Nature of Offence	Prescribed Penalty
<ul style="list-style-type: none"><li>• Non payment or short payment of tax or erroneous refund or wrong availment or utilisation of input tax credit by a registered person</li><li>• (a) for reason other than fraud or any wilful misstatement or suppression of facts</li><li>• (b) for reason of fraud or any wilful misstatement or suppression of facts</li></ul>	<p><b>(a) Higher of following:</b></p> <ol style="list-style-type: none"><li>1. Rs. 10,000/- <u>or</u></li><li>2. 10% of tax due</li></ol> <p><b>(b) Higher of the following:</b></p> <ol style="list-style-type: none"><li>1. Rs 10,000/- <u>or</u></li><li>2. Tax due</li></ol>
<ul style="list-style-type: none"><li>• Applicable <b><u>to any person</u></b> who aids or abets any of the offences specified in clauses (i) to (xxi) of sub-section 85(1); or</li><li>• Who acquires possession of, or deals with any goods which he knows or has reason to believe are liable to confiscation;</li><li>• Receives any supply of services in contravention</li><li>• Fails to appear before GST officer to honour the summons;</li><li>• Fails to issue invoice or record it</li></ul>	<p><b><u>Rs. 25,000/-</u></b></p>

# Offences and Penalties – Sec 123, 124 & 125

Nature of Offence	Prescribed Penalty
<ul style="list-style-type: none"><li>Failure to Furnish information return u/c 150</li></ul>	<p><b><u>Rs. 100/ day for the period during which such failure continues</u></b> <i>Subject to maximum penalty of Rs. 5,000</i></p>
<ul style="list-style-type: none"><li>Failure to furnish any information or return under section 151,—<ul style="list-style-type: none"><li>(a) without reasonable cause fails to furnish such information or return as may be required under that section, or</li><li>(b) wilfully furnishes or causes to furnish any information or return which he knows to be false.</li></ul></li></ul>	<ul style="list-style-type: none"><li><b>Upto Rs. 10000 fine</b></li><li><b>in case of a continuing offence to a further fine which may extend to Rs. 100/ day after the first day during which the offence continues</b></li><li><i>subject to a maximum limit of Rs. 25,000/-</i></li></ul>
<ul style="list-style-type: none"><li>General Penalty – contravention of any provisions of this Act or any rules for which no penalty is separately provided</li></ul>	<ul style="list-style-type: none"><li><b><i>Upto Rs. 250000</i></b></li></ul>



# General Discipline related to Penalty – Sec 126

**No Penalty for minor breach/mistake where the tax involved is less than Rs. 5,000/- and are easily rectifiable**

**No penalty will be imposed without issuing SCN or giving personal hearing**

**Penalty cannot be levied Suo-moto on contravention.  
Reasonable explanation needs to be provided by the Officer**

**Voluntary disclosure of non payment of tax to the prescribed officer before examination conducted by him shall be considered as mitigating factor.**

**Not applicable where the penalty is prescribed under the Act as either a fixed sum or expressed as a fixed percentage**

Applicable to person who transports or stores any goods which are in transit in contravention to provision of this act

Detained/ seized goods can be released when

Where the owner comes forward

- Penalty equals to 200% of the tax payable
- In case of exempted goods:
  - a) 2% of the value of goods or
  - b) Rs 25000, whichever is less ;

Where the owner doesn't come forward

- Penalty equals to 50% of the value of goods or 200% of tax payable w.e.h.
- In case of exempted goods:
  - a) 5% of the value of goods or
  - b) Rs 25000, whichever is less ;

Furnishing of security equivalent to the amount payable as determined under clause (a) and (b)

# *Detention, seizure and release of goods and conveyances in transit – Sec 129*

- *Time-line provided for issuance of notice and order by the proper officer:*
  - *Notice to be served – 7 days from detention/seizure;*
  - *Order to be passed – 7 days from service of notice.*
- *Whether this gives a reasonable opportunity of being heard to the person concerned??*
- *If payment of penalty not made by the person within 15 days from the receipt of such order then the goods/ conveyance can be sold/ disposed off.*
  - *Independent powers given u/s 129 and delinked with proceedings of confiscation u/s 130;*
  - *Further, a transporter is allowed to release the conveyance upon paying the penalty levied u/s 129(3) or Rs. 1,00,000/- whichever is lower;*
  - *Equal amount must also be paid towards SGST.*

# *Interest and Penalties*

- *Check whether interest is confirmed at 18% or 24%*
- *No interest to be paid in case ITC is not utilized*
- *10% penalty under Section 73(9) is mandatory?*
- *Section 126 – General discipline related to penalty*
- *General penalty under Sec 125 – Rs.25,000/- for each contravention??*
- *GST Being new law – penalties shall not be imposed*
- *GST is in trail and error phase*

# *Interest and Penalties*

- *Penalty under Sec 74 is applicable only when short/non-payment or irregular ITC or erroneous refund is due to*
  - a. Fraud*
  - b. Wilful-misstatement*
  - c. Suppression of facts to evade payment of tax*
- *Suppression defined in Explanation 2 to Sec 74 to mean*
  - a. Non-declaration of facts or information which a taxable person is required to declare in return, statement or report or any other document or*
  - b. Failure to furnish any information on being asked for in writing by proper officer*

# Interest and Penalties

- *There should be something positive other than mere inaction or failure on the part of manufacturer/service provider - CCE, Chemphar Drugs & Liniments 1989 (40) E.L.T 276 (S.C)*
- *Mere failure to pay tax is not enough and must act deliberately to avoid such payment of tax - Tamil Nadu Housing Board v. CCE, 1994 (74) ELT 9 (SC)*
- *In case of bonafide belief penalties should not be imposed - Padmini Products v. Collector —1989 (43) 195 (S.C.)*
- *Bonafide belief as to -non-taxability of service cannot be the reason for the imposition of the severe penalty - Rajasthan Spinning & Weaving Mills [2009 (238) [E.L.T](#) 3 (S.C.) -*

# *Interest and Penalties*

- *It is settled position that penalty should not be imposed for the sake of levy. The penalty is not a source of Revenue - **Collector of Customs v. Unitech Exports Ltd. 1999 (108) E.L.T. 462 (Tribunal)***
- *Issue involves interpretations and complexities in the determination of taxability - **CCE v. Poonam Plastics Industries 2011 (271) E.L.T 12 (Guj) -***
- *Detention of vehicle – Minor penalties in case of clerical mistakes - **Circular No.64/38/2018-GST dated 14.09.2018***
- *Mismatch in GSTR-01 and 3B is not conclusive for suppression – **AP Appellate Authority***

Who questions much,  
shall learn much,  
and retain much.  
Francis Bacon

**THANK YOU!**

[venkataprasad@hiregange.com](mailto:venkataprasad@hiregange.com)





A person wearing a yellow shirt is sitting at a desk, using a white calculator. In the background, there is a laptop and some papers. A white circular graphic is overlaid on the image, containing the text "GST Returns".

# GST Returns

# Agenda

- Concept of Self-Assessment

- Importance of Returns

- Types of Returns

GSTR-01

GSTR-2B

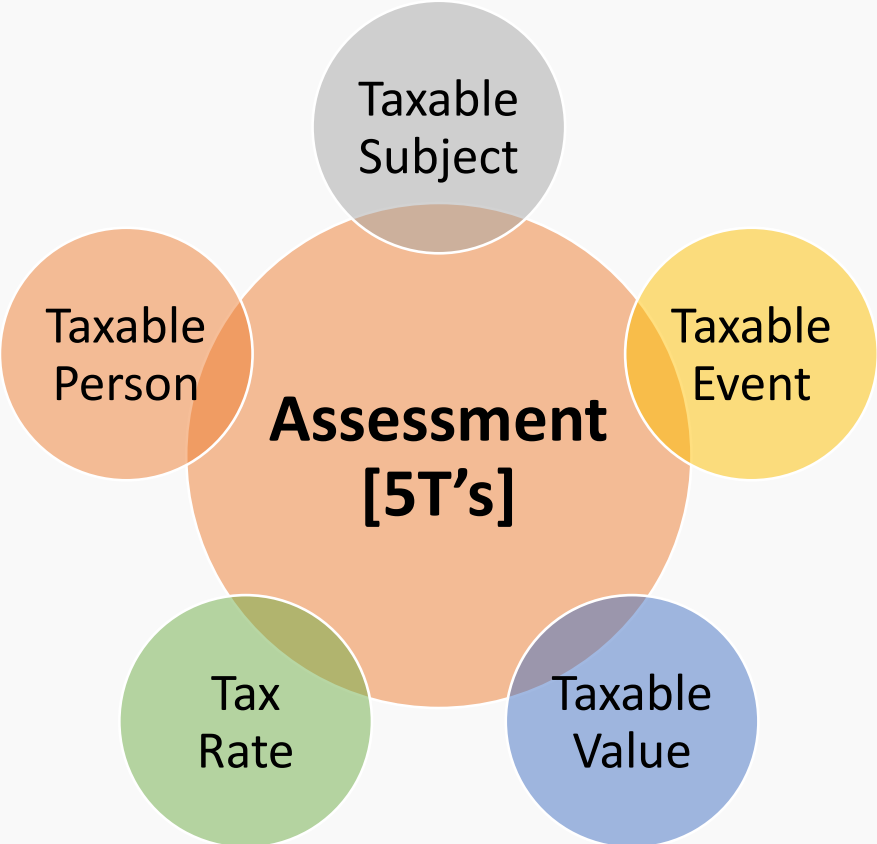
GSTR-3B

- Consequences of Late filing & Non-filing

- G-TDS & GSTR-07

- Q & A

# Concept of Self-Assessment



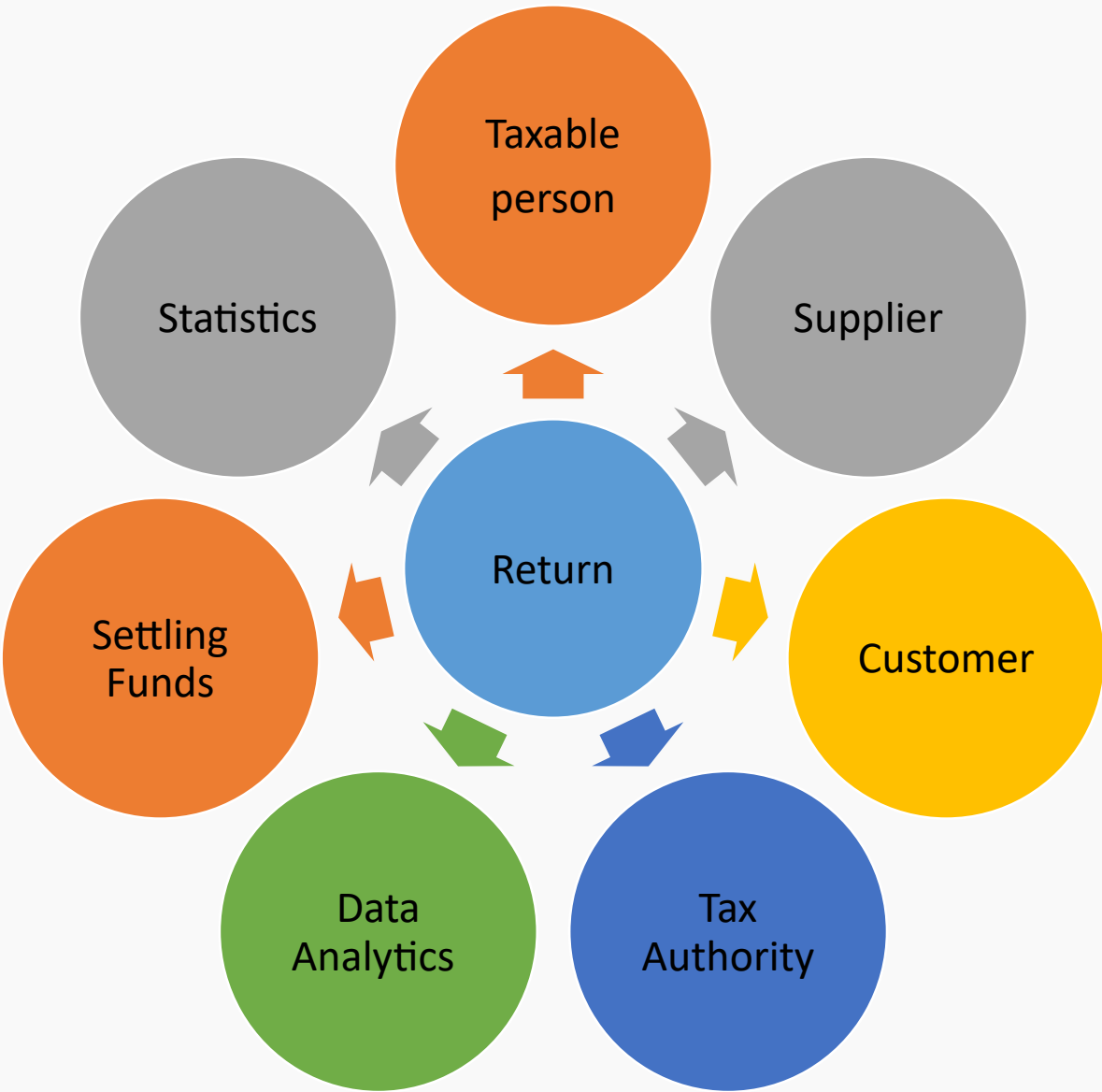
**Assessment:**  
Determination of Tax liability under the Act

**Self-Assessment [Sec 59]:**  
Assessment by the taxable person himself

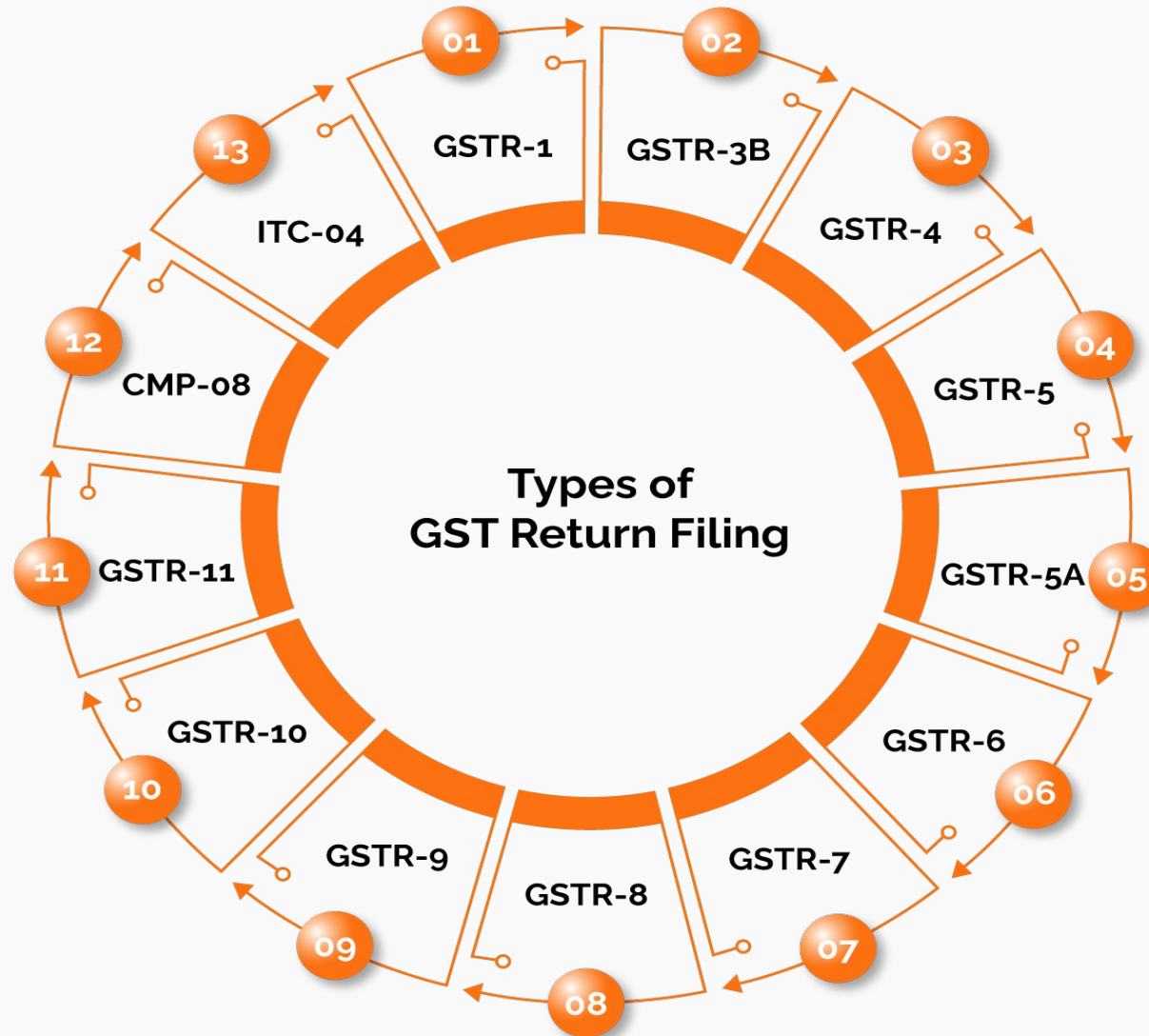
Furnish Return  
[Sec 39]

Statement + **Concretization** + Tax Liability

# Importance of Returns



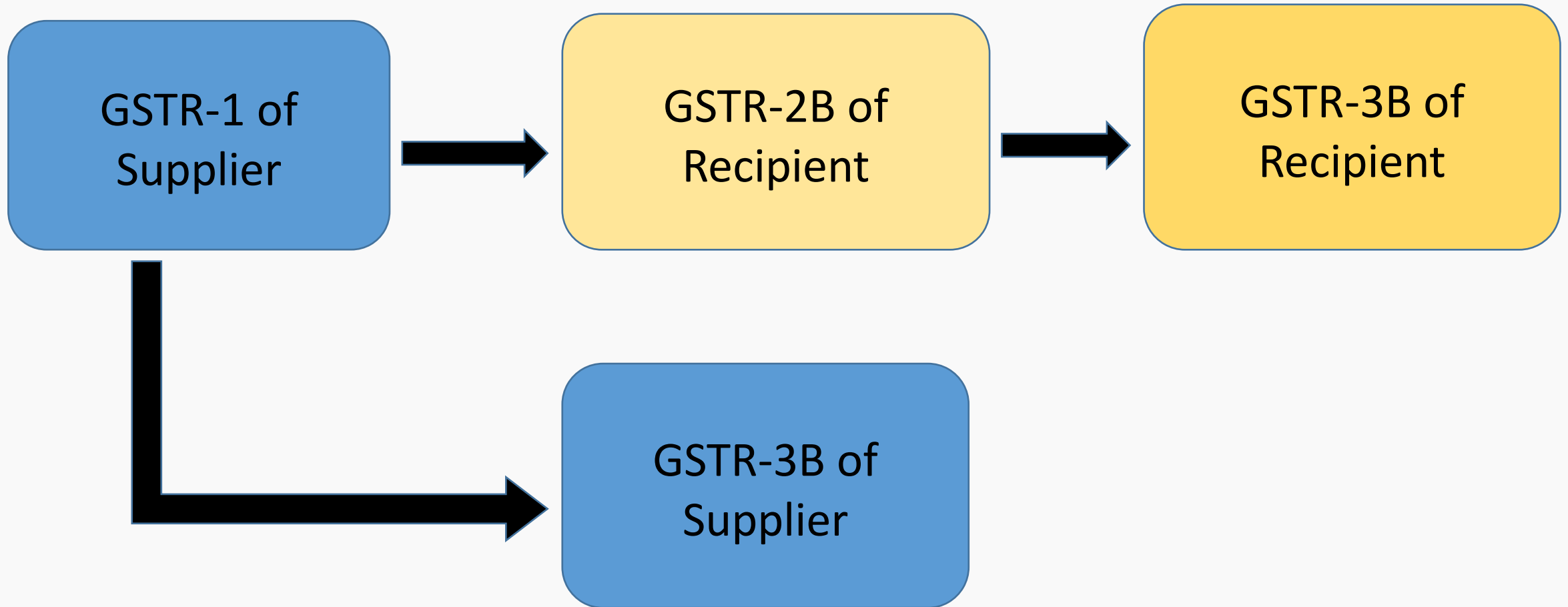
# Types of Returns



# Introduction to GSTR1, GSTR3B & GSTR07

GSTR-01	GSTR-2B	GSTR-3B	GSTR-07
<ul style="list-style-type: none"> <li>Statement of Outward Supplies</li> <li>[Sec 37 + Rule 59(1)]</li> </ul>	<ul style="list-style-type: none"> <li>Statement of Auto-Drafted ITC</li> <li>[Sec 38 + Rule 60(7)]</li> </ul>	<ul style="list-style-type: none"> <li>Return</li> <li>Outward + RCM - Inward = Tax payable</li> <li>[Sec 39 + Rule 61]</li> </ul>	<ul style="list-style-type: none"> <li>TDS Return</li> <li>[Sec 51 + Sec 39(3) + Rule 66]</li> </ul>
<ul style="list-style-type: none"> <li>RP other than ISD, NRTP, Composition Dealer, TDS &amp; TCS</li> </ul>			<ul style="list-style-type: none"> <li>RP (TDS)</li> </ul>
<ul style="list-style-type: none"> <li>Monthly/Quarterly</li> </ul>	<ul style="list-style-type: none"> <li>Monthly/Quarterly</li> </ul>	<ul style="list-style-type: none"> <li>Monthly/Quarterly</li> </ul>	<ul style="list-style-type: none"> <li>Monthly</li> </ul>
<ul style="list-style-type: none"> <li>11<sup>th</sup> / 13<sup>th</sup> of Subsequent month</li> </ul>	<ul style="list-style-type: none"> <li>14<sup>th</sup> of Subsequent month</li> </ul>	<ul style="list-style-type: none"> <li>20<sup>th</sup> of Subsequent month</li> <li>25<sup>th</sup> of Subsequent month (M1 &amp; M2 of Qtr)</li> <li>22<sup>nd</sup> of Subsequent month (M3 of Qtr)</li> </ul>	<ul style="list-style-type: none"> <li>10<sup>th</sup> of Subsequent month</li> </ul>

# GSTR-01, GSTR-2B & GSTR-3B



			Taxable Supply			Exempt, Nil rated, Non-GST Supply
			FCM	RCM	E-Comm 9(5)	
<b>Recipient</b>	<b>RP</b>	<b>Regular</b>	Table 4A	Table 4B	Table 15	Table 8A & 8B
		<b>SEZ</b>	Table 6B	-		
		<b>DE</b>	Table 6C	-		
	<b>URP</b>	<b>Inter (B2CL)</b>	Table 5	-	Table 15	Table 8C & 8D
		<b>Intra &amp; Inter</b>	Table 7	-		
		<b>Outside India</b>	Table 6A			Table 6A

Table 9 & 10- Amendments related to FCM and RCM supplies including Credit/Debit Notes

Table 11 - Advances, Advance adjustments and related amendments





# Evolution of GSTR-3B

2017-18

2018-19

2019-20  
(April - Sept)

2019-20  
(Oct-March)

2020-21  
(April - Dec)

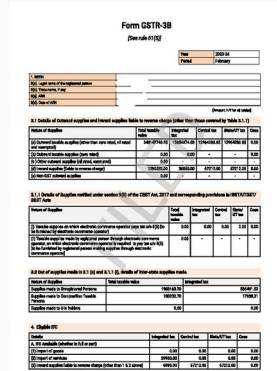
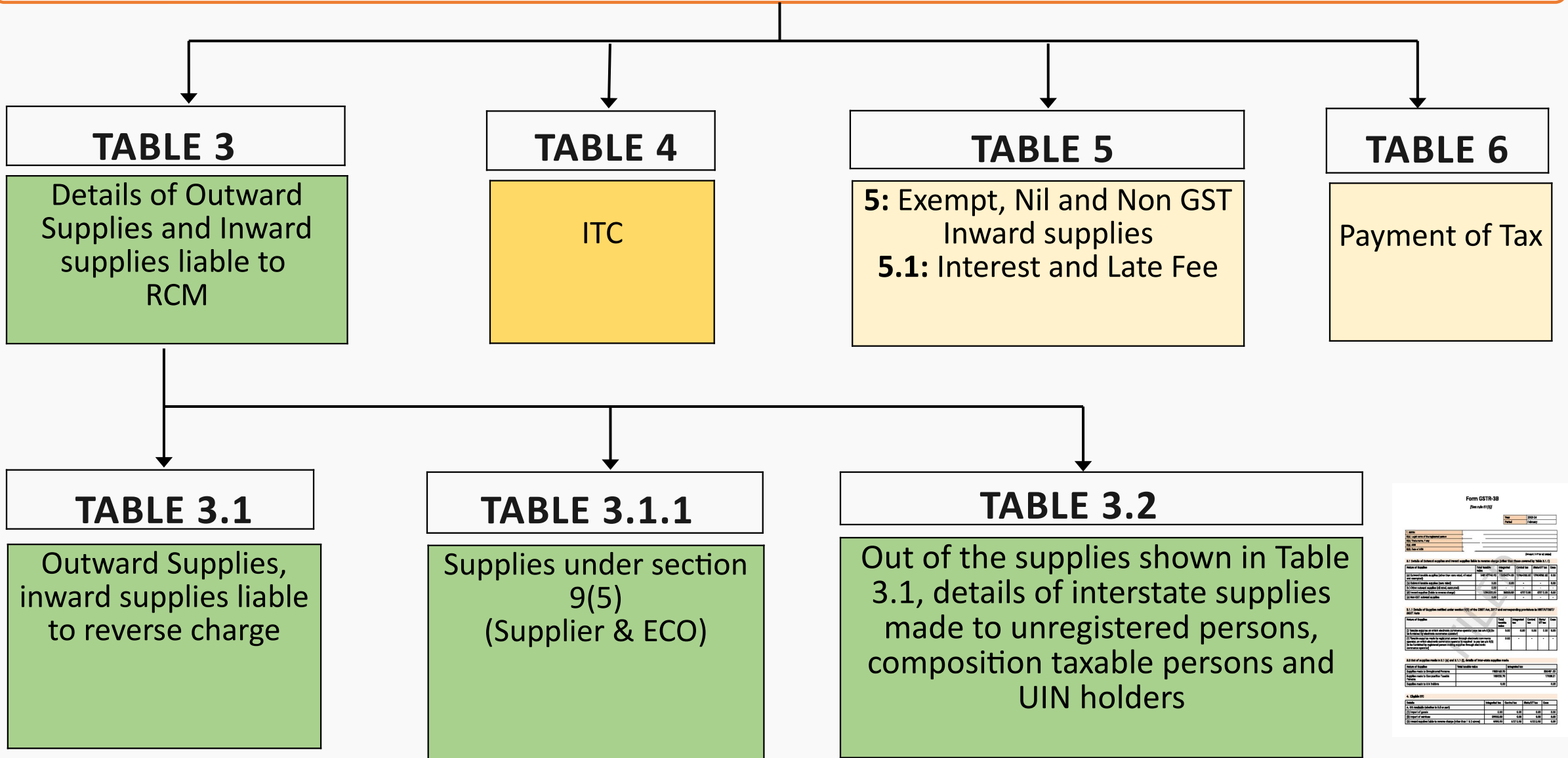
2020-21  
(Jan - March)

2021-22

- A Stopgap arrangement
- Summary & Payment Return
- Existence of GSTR-3
- Rule 61 (5) & (6)
- Notification no. 10/2017 (CT) & 17/2017 (CT)

- Not a Stopgap arrangement any more
- Summary & Payment Return
- Existence of GSTR-3
- Retrospective amendments of Rule 61

- A Complete revamp of Rule 61
- GSTR-3 replaced with GSTR-3B
- Permanent return
- Notification no. 82/2020 (CT)



# Consequences of Late filing & Non-filing

## Postponement of ITC

- Non-availability or postponement of ITC for the recipient.

## Restriction on E-Way Bill Generation

- Not furnished the returns for a consecutive period of **two tax periods**, generation of E-Way Bill is restricted [Rule 138(E)]

## GSTIN Cancellation

- RP does not file a return for a continuous period of **six months**, GST Officer may cancel the GST registration

## Late Fees & Interest

- In case of Nil Returns, Late Fees Rs. 20 per day upto maximum Rs. 500
- In case of other than Nil Returns, Late Fees Rs. 50 per day upto maximum Rs.10,000 (based on Annual Turnover slab)
- Interest @ 18% is applicable if there is any tax liability to be paid through cash

## Sec 51: Tax Deducted at Source

### Applicability

- Department or establishment of Govt.(except Ministry of Defence)
- Local Authority
- Governmental Agencies
- Such persons as may be notified by the Government on recommendations of the Council

### Threshold

Total Value of Taxable Supplies > Rs. 2,50,000 under a contract

### TDS Rate

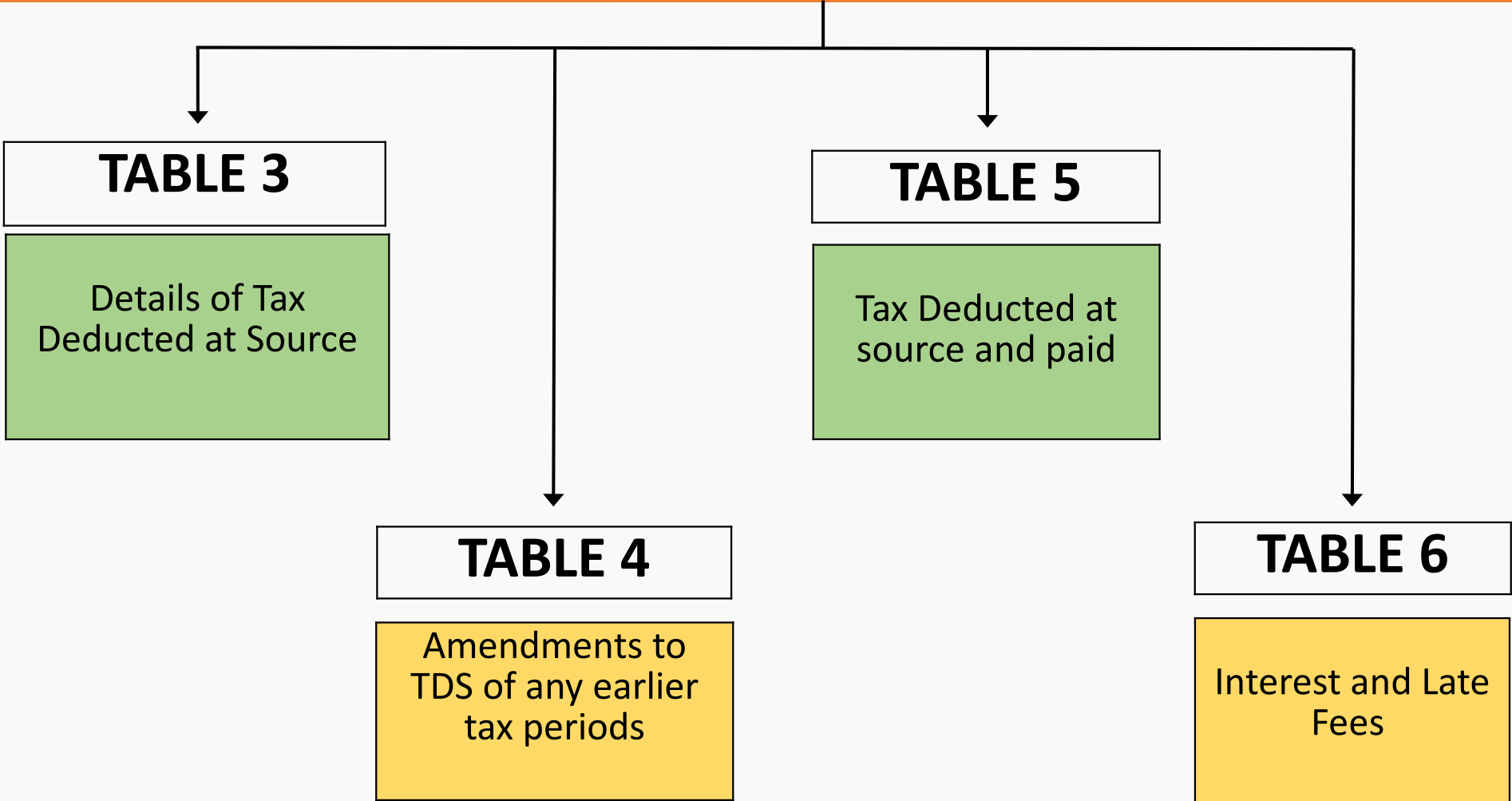
CGST 1% + SGST 1% or IGST 2%

### Time Limit to deposit

Deductor shall deposit **within 10 days** of end of the month in which TDS is deducted

### Return

GSTR-07





Thank you

CA Raghavender Kuncharapu | Partner | **GPHK & ASSOCIATES** | Chartered Accountants | [raghu@gphkca.com](mailto:raghu@gphkca.com)

Table no.	Past	Present
ITC to be reversed	<p><b>Table no. 4(B)(1):</b></p> <ul style="list-style-type: none"> <li>- Rule 42</li> <li>- Rule 43</li> </ul> <p>[Manual]</p>	<p><b>Table no. 4(B)(1):</b></p> <ul style="list-style-type: none"> <li>- Rule 42</li> <li>- Rule 43</li> <li>- <b>Rule 38</b></li> <li>- <b>Sec. 17(5)</b></li> </ul> <p>[Manual]</p>
<p><b>Ineligible ITC</b> to <b>Other Details</b></p>	<p><b>Table no. 4(D)(1):</b></p> <ul style="list-style-type: none"> <li>- Sec. 17(5)</li> </ul> <p>[Manual]</p>	<p><b>Table no. 4(D)(1):</b></p> <ul style="list-style-type: none"> <li>- <b>ITC reclaimed which was reversed in table 4(B)(2) earlier</b></li> </ul> <p>[Manual]</p>
	<p><b>Table no. 4(D)(2):</b></p> <ul style="list-style-type: none"> <li>- Others (RREP ITC)</li> </ul> <p>[Manual]</p>	<p><b>Table no. 4(D)(2):</b></p> <ul style="list-style-type: none"> <li>- <b>Ineligible under sec 16(4)</b></li> <li>- <b>ITC restricted due to POS Provisions</b></li> </ul> <p>[Auto Populated]</p>



## TABLE 4: ELIGIBLE AND INELIGIBLE ITC

Present	Proposed
<p>TABLE 4(A): ITC Available</p>	<p>TABLE 4(A): ITC Available</p> <p>+</p> <ul style="list-style-type: none"> <li>• ITC reclaimed which was reversed in earlier tax period</li> </ul>
<p>TABLE 4(B): ITC Reversed</p>	<p>TABLE 4(B): ITC Reversed</p> <p>+</p> <ul style="list-style-type: none"> <li>• Sec 17(5)</li> <li>• On account of credit notes in respect of inward supplies</li> <li>• Others               <ul style="list-style-type: none"> <li>- On account of section 16(2)(b)</li> <li>- On account of second proviso to section 16(2)</li> <li>- Others</li> </ul> </li> </ul>
<p>TABLE 4(D): Ineligible ITC</p>	<p><del>TABLE 4(D): Ineligible ITC</del></p>