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Goods and Service Tax 2017-2018

GST

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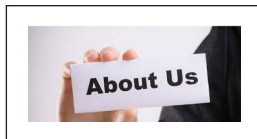
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S B Gabhawalla & Co. is a professional services firm practicing in the entire field of taxation with a specialization in Indirect Taxes. The firm has a distinct research orientation towards Service Tax & VAT related matters and is a front-runner in the field of GST advisory and implementation aspects.



The basic philosophy of the firm revolves around the principles of integrity, knowledge & speed. Over the last two decades, the firm has created a niche for itself in the field of consultancy and evolved new paradigms in quality service to clients.

The firm serves a wide arena of clientele ranging across the spectrum of various industries like logistics, entertainment & media, hospitality, construction and infrastructure, financial services, software, manufacturing, retail, etc.



The firm is headed by Sunil Gabhawalla who is a chartered accountant in practice with 3rd rank at the All-India Level. He also obtained the 9th position at All India Level in CA Intermediate and the 7th position at All India Level at ICWA Intermediate Examinations. Even during

graduation, he had an excellent academic record with ranks throughout the career. He is also a cost accountant.

Sunil regularly speaks at various forums including trade and industry associations and B-Schools and professional forums. He talks on diverse areas of interest including indirect taxes, international tax structuring, etc. His treatise on service tax is a popular book containing detailed commentary on the provisions of service tax law and runs in its' 21st edition.

Sunil is currently Hon. Secretary of the Bombay Chartered Accountants Society. He is also a member of the Study Group constituted by the Maharashtra State Government for implementing GST.



Ever since GST was conceptualised, the firm has understood the importance of the landmark reform and has been active in the said domain. Sunil is regularly invited by the policy makers to present his thoughts on the policy formation parameters of the GST Law. Immediately after the draft GST law was in public domain, the firm was one of

the first to start detailed GST Awareness Sessions and such sessions are recorded in a series of more than 75 videos and are available on Youtube.

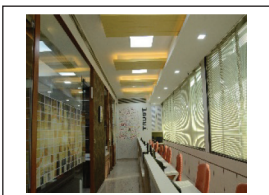
Further, the firm is active in customised GST Awareness and acclimatisation sessions with corporates. It also has started various GST Implementation assignments and believes that technology holds the key to successful GST Implementation.

The firm is assisted by a team of 28 young and energetic human resources.

Prakash Dave, being the senior-most in the team, brings to the organization more than 30 years of experience in sales tax at the field level. He ably guides the entire organization towards increasing service levels.



Being qualified chartered accountants, Yash Parmar, Khyati Kalavadia, Parth Shah, Darshan Ranavat, Aman Haria, Himanshu Kakkad, Shalin Shah and Ronak Gandhi are all equipped with appropriate knowledge to handle client queries on a day to day basis. Other resources assist these senior managers & managers in administrative and procedural compliance.



The firm is headquartered at a prime business area in Andheri, Mumbai and has adequate infrastructure in terms of library resources, office ambience, research software, internet connectivity, web and e-mail support, collaborative task management and monitoring tools, etc. The office is less than 10 minutes drive from the domestic/ international airports. Further, recognizing the need

to provide PAN-India solutions to client requirements, the firm is supported by a community of indirect tax professionals across the country by the name "GST-World". Collectively, the community consists of more than 200 tax professionals in more than 20 locations in 12 States.

The firm is geared to render diverse nature of services which include consultancy, retainership, compliance, litigation, training, audit, etc. It also undertakes detailed audit/ investigation services to identify transaction inefficiencies and suggest due diligence.



The firm believes in an optimum mix of theory and practice and finds both of them complimentary to each other. Indeed, each practical advice further strengthens the theory related thereto. The firm encapsulates these practical advises into case studies and builds up a progressive knowledge base which helps in providing speedy solutions to future clients.

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Introduction

Goods and Service Tax (“GST”) is a landmark indirect tax reform knocking at our doors. The Government has released a set of model GST laws for public comments, thereby reinforcing its commitment to introduce GST at the earliest opportune time. The Finance Minister has indicated his willingness to implement this landmark reform with effect from 01.07.2017.

We welcome comments and feedback. The information provided in this booklet is current as on 1 February 2017. We have been conducting various seminars to educate clients on this landmark reform, the video recordings are available on our Youtube Channel. The proposed GST-Fest 2017 on 4 February 2017 is one more initiative in this direction. We would endeavour to keep you updated as and when further developments take place in this regard.

Sunil Gabhawalla
Leader SBGCO

Goods and Service Tax

1. Dual Model of GST

- 1.1. GST is proposed to be a comprehensive indirect tax levy on manufacture, sale and consumption of goods as well as on the services at a national level. In a utopian situation, the tax has to be a singular tax on all supplies with a uniform rate and seamless credits for taxes paid at the earlier stage. The current distinction between goods and services and between concepts of manufacture, sale, deemed sales, etc. are expected to be subsumed in such a utopian GST.
- 1.2. However, considering the federal structure of India, a dual GST model has been worked out for India. In this model, both the Central and the State Governments would simultaneously levy Central GST (“CGST”) and State GST (“SGST”) respectively on the same comprehensive base of all supplies (a detailed discussion on the concept of supply is provided later in the book), thus eliminating the distinction between goods and services for the purpose of levy of tax

2. Destination Based Consumption Tax

- 2.1. Since the State Governments would also have jurisdiction to levy tax on supplies, the need for addressing issues related to interstate supplies arises. As a design, GST is proposed to be a destination based consumption tax and therefore in case of interstate supplies, the tax on the interstate supply must accrue to the Destination State. This would also enable seamless flow of credit in case of interstate supplies for business purposes.
- 2.2. Extending the principle of destination based consumption tax, supplies imported into the country would attract GST whereas supplies exported from the country need to be zero rated (i.e. not liable for payment of GST with unfettered input credit and a consequential refund as well).
- 2.3. To enable a smooth implementation of the above propositions, it is suggested that interstate supplies, imports and exports be governed by an Integrated GST (“IGST”). The IGST rate is proposed to be determined by considering the CGST and SGST Rates. Effectively, in IGST, there would be two components i.e. CGST and SGST, out of which, the portion of CGST will be held

by the Central Government and the portion of SGST will be transferred to the destination State Government. Thus for IGST, the Central Government will work as a clearing house for the states where consumption takes place. IGST will also enable smooth flow of credits between the origin and the destination States.

- 2.4. The 'wash' nature of the tax across businesses has been an important driving principle in the formulation of the concept of IGST, its' settlement matrix to the consuming State and the formulation of the Place of Supply Rules.
- 2.5. Therefore, to the extent that the inter-state supply is for a creditable purpose at the recipient's end, the IGST payment stays in the common pool with the Central Government. It is only when the inter-state supply is not for a creditable purpose at the recipient's end, the settlement provisions and allocation of the tax to the Central Government and the consuming State Government takes place. Similarly, the general rule for the place of supply of services and many of the specific address rules determine the place of supply to be the location of the address of the registered person.

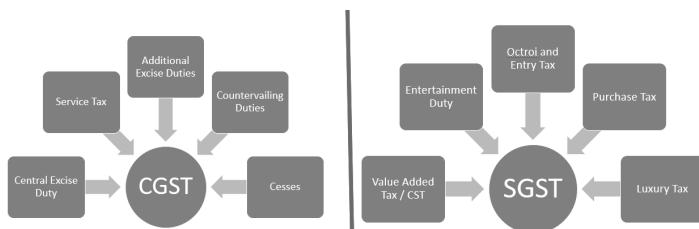
3. Legislation

- 3.1. The dual GST model would be implemented through multiple statutes:
 - An enactment by the Centre to govern the collection and administration of CGST
 - An enactment by each of the States to govern the collection and administration of SGST
 - An enactment by the Centre to govern the collection and administration of IGST
- 3.2. The draft legislations for the above have been provided for public comments and the same are analysed in this booklet.
- 3.3. While there would be multiple statutes for collection and administration of different variations/components of the GST, the basic features of law such as chargeability, definition of taxable event and taxable person, measure of levy including valuation provisions, basis of classification etc. would be uniform across these statutes. For the said purpose, the GST Council would finally recommend a draft legislation for adoption by the State Governments. However full autonomy would be available to the

respective State Governments to deviate from the suggested draft legislations, if there is a need for the same.

4. Coverage - which taxes will be subsumed and which will not be?

- 4.1. The Central GST and the State GST will apply to all 'Taxable Supplies' except exempted and excluded supplies which will be outside the purview of GST. Similarly, basic threshold limits for registration have been prescribed.
- 4.2. The following duties and taxes are proposed to be subsumed into the GST Regime



- 4.3. However, it is proposed that the following supplies will not get subsumed under the GST regime:

- Alcohol for human consumption (State Excise plus VAT will continue to be levied)
- Electricity (Electricity Duty will be levied rather than GST)
- Real Estate Transactions (Stamp Duty plus Property Taxes as in present regime will continue)
- Petroleum Products (covered under GST but effective from the date as notified by GST Council)
- Tobacco products (GST plus Central Excise will be applicable)

5. Levy and Charging Provisions of Dual GST Law

- 5.1. The levy of tax on intrastate supply of goods and/or services is governed by the CGST/ SGST Act whereas the levy on inter-state supply of goods and/or services is governed by the IGST Act.
- 5.2. Therefore, the classification of a supply as intrastate supply or interstate supply becomes paramount to determine the applicable taxes. This classification is based on the combination of "location

of supplier” and the “place of supply” and is provided under the IGST Act. The provisions are tabulated below for ready reference:

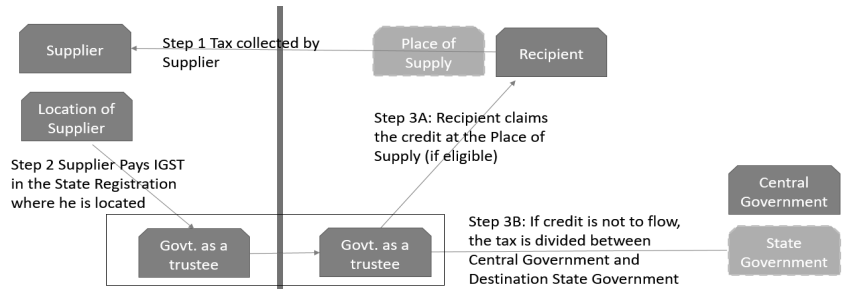
Nature of supply	Interstate	Intra state
Goods	Location of the supplier and the place of supply are in different state	Location of the supplier and the place of supply are in the same state
Services	Location of supplier and place of supply in different state	Location of supplier and place of supply in same state

- 5.3. As can be seen from the above table, the classification for supply of goods and services is similar. The essential benchmark is the combination of the location of supplier and the place of supply. Section 2(18) of the IGST Act defines the term “location of supplier of service”. In case the supply of service is from a single establishment, the said establishment will determine the location of supplier of service. However, if the service is provided from multiple establishments, the tie breaker test provided in Section 2(18)(c) will become relevant and the establishment most directly concerned with the supply will determine the location of supplier of service.
- 5.4. There is no definition for “location of supplier of goods”. In general parlance, the location of supplier is understood to be the place from where the supply is made. Therefore, in case of goods which require delivery, the location of supplier of goods will be the warehouse or the place from where the delivery is granted. However, in certain cases, there is a deemed receipt of goods at an intermediary location. In such cases, the location of the supplier of goods will also have to be read in synchronisation with the provisions of Section 7(3) of the IGST Act.
- 5.5. This definition of location of supplier coupled with the obligation to register in each of the States from where the supply is made, results in a situation of multiple registration obligations and consequentially decentralised billing processes. Essentially, the BILL FROM Address will need to be aligned with the interpretation of the location of supplier.
- 5.6. Further, the place of supply is to be determined under sections 7 to 10 of the IGST Act. These rules differ based on whether the supply is in the nature of supply of goods or services and whether the transaction is between two residents or otherwise. The detailed analysis of the place of supply is provided later in the booklet.

- 5.7. The distinction between the location of supplier and the place of supply is very vital to the understanding of the GST Law. Since GST is a destination based consumption tax, the tax will ultimately flow to the State where the place of supply is defined. However, for administrative and jurisdictional reasons, the tax needs to be discharged in the State where the location of supplier is defined.
- 5.8. The following table summarises the distinction between the location of supplier and the place of supply

Location of Supplier	Place of Supply
Generally closer to the Supplier Location	Generally closer to the Client Location (subject to exceptions)
Registration is required in this State	No registration is required in this State. It only identifies the nature of tax as CGST+SGST or IGST
Tax has to be paid in this State	Tax is not required to be paid in this State by the assessee
	Credit is claimed by the recipient in this State and therefore this is important in determining eligibility of credit.

- 5.9. In fact, the IGST Mechanism acts as a clearing house and the originating State which received the tax is expected to transfer the tax to the destination state to enable a free flow of credit. The following diagram explains the flow of tax and the wash nature of GST even in the context of interstate supplies



5.10. The general rules for determination of interstate and intrastate supplies (based on the combination of location of supplier and place of supply) have already been explained earlier. However, the IGST Act provides for certain exceptions and treats the following transactions as specifically covered under interstate supplies and not as intrastate supplies

- Supply of goods in the course of import into the territory of India till the time the goods are cleared from the customs frontiers of India
- Supply of goods and/or services by a developer of SEZ or unit located in SEZ Area
- Any supply of goods and/or services which is not intrastate of any of the States (For example, supplies at extended continental shelf or union territories without Legislature)

5.11. The following table presents a refined version of the relevant provisions in this regard:

Scenario based on Location of Supplier and Place of Supply	Classification of Supply	Nature of Taxes
Same State	Intra State	CGST + SGST
Different States	Inter State	IGST
Different Countries (Import)	Inter State	IGST (CVD/RCM)
Different Countries (Exports)	Inter State	Zero Rated
Special Economic Zones	Inter State	Zero Rated?
Other than Intra-State (UT, extended continental Shelf)	Inter State	IGST

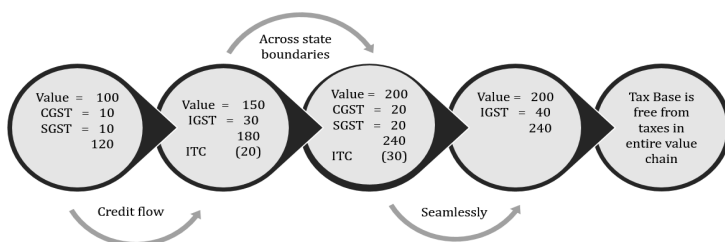
6. Fungibility of Credits

6.1. Since CGST and SGST are to be paid to separate Governments, taxes paid against the CGST shall be allowed as Input Tax Credit (ITC) for CGST and could be utilized only against the payment of CGST. Similarly, the ITC of each SGST can be utilised only for the payment of output SGST of that particular State and cross utilization of ITC between the Central GST and State GST would not be allowed.

6.2. Since each assessee is required to obtain separate registration in each of the States, the CGST credit under a registration obtained in a particular State cannot be automatically adjusted against the

CGST payable under another registration obtained in another State

- 6.3. This is where the role of IGST comes into play. IGST acts as a bridge and permits a free flow of credit amongst various registrations across different States. While cross utilization of ITC between the Central GST and State GST is generally not allowed, in the case of Inter-state supply of goods and services under the IGST model, cross utilisation of credit is allowed as per the rules explained later.
- 6.4. Credit of IGST would be first adjusted against the output IGST. After the said adjustment, the balance unutilised credit of IGST can be used for payment of output CGST and thereafter output SGST. As such, IGST would act as a bridge for smooth flow of credits.
- 6.5. The following chart explains the free flow of credits on account of inter-fungibility of credits



7. Supply

- 7.1. The term “supply” is defined u/s 3 of the CGST/SGST Act. The said definition also applies to the IGST Law. The said supply can be either taxable supply or an exempted supply.
- 7.2. U/s 3(1) of the Act, all forms of supply like sale, transfer, barter, exchange, license, rental, lease or disposal and importation of services are made liable for GST. However, it is important that such supplies should be for a consideration and that the supplies should be in the course of or furtherance of business or commerce.
- 7.3. Despite providing a very wide definition to the term supply, it may be important to note that the term “supply” would still require certain basic fundamental aspects to be examined. It is felt that a supply would arise out of a contract and therefore, the existence

of a contract would be a sine qua non before considering something as a supply. Further, duality of persons would also be required before considering something as a supply. This should also be coupled with a consideration flowing from the recipient of the supply to the provider of the supply.

7.4. Some interesting principles were laid down by the Australian Commissioner in a ruling where the term supply has been exhaustively interpreted. The important principles are listed below for ready reference:

- For every supply there is a supplier
- Generally, for every supply there is a recipient and an acquisition
- A supply may be mixed, composite or neither
- A transaction may involve two or more supplies
- To 'make a supply' an entity must do something
- 'Supply' usually, but not necessarily, requires something to be passed from one entity to another
- An entity cannot make a supply to itself
- A supply cannot be made by more than one entity
- Creation of expectations alone does not establish a supply
- It is necessary to analyse the transaction that occurs, not a transaction that might have occurred
- The agreement is the logical starting point when working out the entity making the supply and the recipient of that supply
- Transactions that are neither based in an agreement that binds the parties in some way nor involve a supply of goods, services, or some other thing, do not establish a supply
- When A has an agreement with B for B to provide a supply to C, there is a supply made by B to A (contractual flow) that B provides to C (actual flow)
- A third party may pay for a supply but not be the recipient of the supply
- One set of activities may constitute the making of two (or more) supplies

- The total fact situation will determine the nature of a transaction, the entity that makes a supply and the recipient of the supply

7.5. In addition to supplies for consideration, Section 3(1) also includes supplies mentioned in Schedule-I without a consideration. Notable inclusions in Schedule-I are as under:

- Permanent transfer/disposal of business assets, in cases where input tax credit has been availed
- Supply of goods and/or services between branches or between related persons
- Supply of goods by principal to agent and vice-versa
- Importation of services from overseas branches

7.6. Of the above inclusions in deemed supplies, the supply of goods and/or services between branches in different States is likely to result in a tax outflow in the Sending State and corresponding credit in the receiving State. There would be challenges relating to valuation since the value will need to be determined on arms' length pricing.

7.7. As far as job workers are concerned, the supply by principal to job worker will not trigger a tax liability. However, if the job worker does not return the goods after processing within a period of 365 days (extended upto 3 years for capital goods), in view of Section 55, the principal shall be deemed to have supplied the goods to the job worker.

7.8. Further, under Section 3(1)(b), importation of services are also defined to be supplies, irrespective of business use and therefore are liable for payment of GST.

7.9. Supplies can be classified based on various parameters. The classifications provided under the law are as under:

Nature of Classification of Supply	Implications
Intra-State Supply vs. Inter-State Supply	Helps in determining whether CGST + SGST is payable or IGST is payable.
Supply of Goods vs. Supply of Services	Is secondary in nature. However, important since rules relating to place of supply and time of supply are distinct for supply of goods and for services.

Nature of Classification of Supply	Implications
Taxable Supplies vs. Ex-empted Supplies	Important in determining the eligibility of credit.
Inward Supplies vs. Outward Supplies	Terms defined but not used very frequently. More relevant from return filing process.
Normal Supplies vs. Deemed Supplies	Deemed Supplies without consideration also become taxable.
Composite Supplies vs. Mixed Supplies	Important to determine the classification and applicable tax rates.
	In case of composite supplies, the tax implications of the principal supply will be taken into account.
	However, in case of mixed supplies, the highest rate of tax of any of the constituent supplies will be relevant.

8. Taxable Person

- 8.1. Section 8, which is the charging provision, applies only to taxable persons. Therefore, it is important to understand the term taxable person which is defined u/s 10 of the CGST/ SGST Act. In view of Section 2(30) of the IGST Act, the same meaning will be attributed for IGST transactions as well.
- 8.2. Generally, the supplier is defined to be the taxable person and he is required to obtain registration in each State from where he makes a supply. However, in certain cases, the Government, may through a notification, prescribe the recipient of supply as the person liable for discharging the tax. In such a scenario, the recipient of supply becomes the taxable person. It may be noted that unlike the current regime, Reverse charge mechanism may apply not only to services but also to notified goods.
- 8.3. Taxable Person means a person who is registered or liable to be registered under Schedule V of this Act. Schedule V of the Act obliges the following persons to be registered under the Act.
 - Every supplier (other than special category states) if his aggregate turnover in a financial year exceeds twenty lakh rupees. It may be noted that aggregate turnover is defined to be the turnover of all supplies calculated on an All India basis.

- Every supplier (special category states) if his aggregate turnover in a financial year exceeds ten lakh rupees
- Existing dealers under the existing service tax/ VAT/ excise laws, subject to the above threshold limits.
- Successors of business
- Persons making interstate supply irrespective of threshold
- Casual taxable persons
- Persons liable under Reverse Charge Mechanism
- Non-resident taxable persons irrespective of threshold
- Persons required to deduct tax
- Persons acting as agent/ otherwise for other registered taxable persons irrespective of threshold
- Input Service Distributor
- Persons operating in E-commerce irrespective of threshold
- E-commerce operators irrespective of threshold
- Person engaged in online information and database access service from a place outside India
- Any other notified person

8.4. Government Departments also would be considered as taxable persons for all activities other than those listed under Schedule IV of the Act.

8.5. Schedule V specifically excludes the following persons from the definition of taxable person:

- An agriculturist, to the extent that he is engaged in agriculture
- A person exclusively engaged in non-taxable supplies of goods or services
- A service recipient receiving services for a personal use upto a particular limit to be specified

8.6. It may be noted that an employee providing services in the course of employment is excluded from the nature of supply under Schedule III and therefore GST is not applicable on employment contracts

9. Value of Supply

9.1. In general, GST would be payable on the value of supply. In stark departure to the expectations of the trade and industry, it is found that the excise concept of valuation is sought to be continued and further strengthened. While the general provision under Section 15 states that the value of supply shall be the transaction value, the same is subject to the following conditions:

- Supplier and recipient of supply not related
- Price is the sole consideration

9.2. Section 15 thereafter also provides for the inclusion of the following amounts in the transaction value if the same are not already included therein:

- The amounts paid by recipient which were actually payable by supplier.
- All taxes other than SGST, CGST and IGST
- Incidental expenses such as commission or packing
- Subsidies directly linked to the price excluding subsidies provided by the Government.
- Discounts after supply
- Interest or late fees and penalties for delayed payment of consideration

9.3. Separate Valuation Rules will also be prescribed to cover specific instances where:

- Consideration is not entirely in money
- Supplier and recipient are related
- Reimbursements are claimed in the nature of pure agent
- Transactions pertaining to money changer, insurer, air travel agent, lottery agent services
- Where accuracy and truthfulness of value is doubtful

10. GST Rate

10.1. The proposed GST Rate would be determined based on the principle of Revenue Neutral Rates (RNR). 'Revenue Neutral Rates' (RNR) in layman terms, is the rate that allows the Central and States to sustain the current revenue from tax collections.

- 10.2. Based on the announcements made by the GST Council, the following broad classifications of rates are proposed in upcoming regime of GST:
- Nil Rate for essential goods and services
 - Merit Rate for essential goods – 5%
 - Lower Standard Rate for goods and services – 12%
 - Standard Rate (RNR) for goods and services in general – 18%
 - Demerit Rate for goods – 28%
 - Special rate for precious metals – yet to be decided
- 10.3. In addition to the above, certain goods classified under the 28% rate may also bear a cess which will enable the compensation to be paid by the Centre to the Revenue losing States

11. Exemptions & Composition Scheme

- 11.1. Most of the exemptions currently available will be phased out. However, Section 11 of the Act permits the Government to grant exemptions through the issuance of notifications. Further, certain goods and supplies may be covered under the NIL rate under the Schedule
- 11.2. For small dealers, an optional composition scheme has been prescribed. The composition option is not available to the following persons:
- Service Providers
 - Persons making inter-state supplies
 - Persons having aggregate turnover above ₹ 50 lakhs
- 11.3. The Composition scheme is subject to various conditions. The supplier is not eligible to claim the credit nor is he entitled to collect the tax from the customer. Further, the customer is not eligible for any credits of the composition amount.
- 11.4. The following table explains the minimum amount of tax payable under composition scheme:

Type of suppliers	Minimum CGST	Minimum SGST	Total
Manufacturers	2.5%	2.5%	5%
Traders	1%	1%	2%
Service Providers	Not eligible		

12. Time of Supply

- 12.1. The liability to pay tax arises at the time of supply. The following provisions are relevant in this regard.

Section	Provisions
12	Time of supply of goods
13	Time of supply of services
14	Change in rate of tax for goods and services

- 12.2. Section 12 states that the liability to pay GST on goods shall arise on raising of invoice or receipt of payment whichever is earlier. However, it is also provided that in case where the invoice is not issued within the due date, the date on which the invoice is required to be issued will trigger the GST Liability
- 12.3. Section 28 provides that in the case of goods, the invoice needs to be raised either before or at the time of delivery or removal of goods.
- 12.4. In cases where the tax has to be discharged on reverse charge basis for goods, it is provided that the earliest of the following will trigger the liability towards payment of tax.
- Receipt of goods
 - Date of payment (Entry in books or debit in bank account, whichever is earlier)
 - The day immediately following 30 days from the date of issue of invoice
- 12.5. It may be noted that these provisions are very onerous as compared to the existing provisions where there is a singular point of taxation. For example, Excise duty is currently payable only at the time of removal of goods whereas VAT is payable only at the time of delivery of goods. Providing for multiple points of taxation for goods and defining the earliest point of taxation as the basis is likely to create substantial difficulty to manufacturers and traders of goods.
- 12.6. Under the GST regime, even the receipt of an advance against sale of goods would trigger a liability for payment of tax.
- 12.7. Section 13 of the Act deals with the time of supply of services. The provisions are similarly worded. However, under Section 28, it is provided that an invoice can be raised within prescribed period (30 days) from the date of completion of service.

- 12.8. In case of reverse charge mechanism for services, the point of taxation is defined to be as under
- Date of payment (Entry in books or debit in bank account, whichever is earlier)
 - The day immediately following 60 days from the date of issue of invoice
- 12.9. Section 14 deals with a scenario where there is an intermediary change in the rate of tax in respect of goods and services and appears to be similarly worded to the existing Rule 4 of the Point of Taxation Rules, 2011.

13. Place of Supply for Goods

- 13.1. Section 7 of the IGST Act defines the place of supply of goods other than imported and exported goods. The said provisions are fundamentally different from the current provisions since they are based on the destination principle rather than the origin principle.
- 13.2. The following table summarizes the place of supply of goods as defined under the GST Act and under the IGST Act:

Situation	Place of Supply as per Section 7 of IGST Act
Supply involving movement of goods	Location of termination of movement for delivery
Supply by way of transfer of documents of title	Principal place of business of the buyer
Supply not involving movement of goods	Location of goods
Goods assembled or installed at site	Place of installation or assembly
Goods supplied on board of conveyance	Location at which goods are taken on board

- 13.3. Section 7(2) of the IGST Act prescribes the general rule for place of supply as under:

Where the supply involves movement of goods, whether by the supplier or the recipient or by any other person, the place of supply of goods shall be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient.

- 13.4. The above prescription is based on 'supply involving movement of goods' and not 'supply causing movement of goods'. Further, the anchor point is the location where the movement of goods terminates for delivery to the recipient and not a generic termination of movement of goods. This can present some challenges in taxation of supplies on Ex-Works principle
- 13.5. Under the current provisions of the Central Sales Tax Act, 1956, if a transaction causes a movement of goods from one State to another, it is considered as an inter-state supply even if the said transaction per se does not involve the movement of goods. Therefore, Ex-Works Sales are treated as inter-state sales if the supplier is able to establish an inextricable nexus of the delivery at the factory gate, with a subsequent movement of the said goods by the buyer to another State. However, since the model GST law determines the place of supply on the basis of location at which the goods are delivered to the receiver, it is possible that the place of supply of such ex-works sales shall be considered as the factory gate itself.
- 13.6. Section 7(3) of the IGST Act deals with the place of supply of goods in cases where three persons are involved in the supply. The rule states as under:
- Where the goods are delivered by the supplier to a recipient or any other person, on the direction of a third person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to the goods or otherwise, it shall be deemed that the said third person has received the goods and the place of supply of such goods shall be the principal place of business of such person.
- 13.7. The above provision will cover various situations. A very commonplace situation is that of direct delivery of goods to a third person under instructions of the buyer. This is commonly referred to as the "Bill To"/ "Ship To" Model. For example, if A in Mumbai places an order to B in Gujarat and tells him to directly deliver the goods to C in Karnataka, there would be two supplies involved, supply by B to A and another supply by A to C. The supply by B to A will be governed under Section 7(3) and the place of supply will be Maharashtra (principal place of business of A). B in Gujarat will charge IGST to A in Maharashtra. Further, the second supply by A to C will be governed by Section 7(2) and the place of supply will be Karnataka (place where the goods are finally delivered). A in Maharashtra will charge IGST to C in Karnataka and claim the corresponding credit of the tax charged to him by B in Gujarat.

- 13.8. However, in situations where the supply does not involve movement of goods, whether by the supplier or the recipient, the place of supply shall be the location of such goods at the time of the delivery to the recipient. This is specifically provided under Section 7(4).
- 13.9. Section 7(5) provides that where the goods are assembled or installed at site, the place of supply shall be the place of such installation or assembly. Under the current tax regime, we have issues in determination of situs of sale in case of composite works contracts. The Originating States demand a tax based on the theory of inextricable link between the movement of goods from their State and the final accretion at the Site. The Destination States also demand a tax if there is some intermediary processing or fabrication prior to the final accretion at the Site. Further, in most of the cases, taxes are deducted in the Destination State. The proposed Section 7(5) brings to rest these controversies and associated cash flow issues and is therefore a welcome change.
- 13.10. Section 7(6) states that where the goods are supplied on board a conveyance, such as a vessel, an aircraft, a train or a motor vehicle, the place of supply shall be the location at which such goods are taken on board
- 13.11. The above provision applies only in cases where the supply is made on board a conveyance and not to cases where the supplier supplies to the owner/representative of the conveyance when the conveyance is not in motion.

14. Place of Supply for Imported / Exported Goods

- 14.1. The place of supply for imported / exported goods is provided under Section 8 of the IGST Act. The provisions are simple and are therefore tabulated below for ready reference

Nature of Goods	Place of Supply
Imported Goods	Location of Importer
Exported Goods	Location outside India

15. Place of Supply for Services

- 15.1. The concept of IGST serves multiple objectives. Since the services are essentially intangible in nature, the place of supply rules for services are drafted considering these objectives in mind. Further to the above objectives, the place of supply rules under IGST

also need to deal with situations of supplies amongst two or more States, where also the guiding principle is ensuring a seamless flow of credits amongst businesses and transfer of tax to the correct State of Consumption.

- 15.2. The following table summarises the provisions in regard to the place of supply of services. It may be noted that if the location of service recipient is not available on records, the location of supplier will be considered in cases where the place of supply is the location of recipient of service.

Nature of Supply of Service	Supplier- recipient in India (R2R)		Either of supplier or recipient is outside India
	Business to Business Cases (B2B)	Business to Customer Cases (B2C)	
General Rule	Location of Service recipient	Location of Service Recipient	Location of Service Recipient
Immovable property	Location of Immoveable Property	Location of Immoveable Property	Location of Immoveable Property
Performance based service	Location of Service Recipient	Location of Service Recipient	Place of Performance of Service
Training and performance	Location of Service Recipient	Place of Performance	Place of Performance
Admission to an event or park	Location of the Event	Location of the Event	Location of the Event
Organization of events etc.	Location of service recipient	Place where event is actually held	Place where the event is held
Transportation of goods	Location of service recipient	Place where goods are handed over their transportation	Destination of Goods
Transportation of passengers	Location of service recipient	Place where passenger embarks on the conveyance for a continuous journey	Place where passenger embarks on the conveyance for a continuous journey

Nature of Supply of Service	Supplier- recipient in India (R2R)		Either of supplier or recipient is outside India
	Business to Business Cases (B2B)	Business to Customer Cases (B2C)	
Services on board a conveyance	First Scheduled Point of Departure	First Scheduled Point of Departure	First Scheduled Point of Departure
Telecommunication services	Various situations to determine the location of subscriber	Various situations to determine the location of subscriber	Location of Recipient
Banking & Financial Services including stock broking	Location of service recipient on the records of service provider	Location of service recipient on the records of service provider	Location of Supplier for account related services. Location of Recipient in other cases
Insurance	Location of service recipient	Location of service recipient	Location of service recipient
Advertisement services to Government etc.	Not Applicable	<ul style="list-style-type: none"> Meant for identifiable state- POS would be that state 	Not Applicable
		<ul style="list-style-type: none"> Multiple States- POS all such states and value to be attributed to each of them 	
Intermediary	Location of Recipient	Location of Recipient	Location of Supplier
Hiring of means of transport	Location of Recipient	Location of Recipient	Location of Supplier
Online information and database access or retrieval service	Location of Recipient	Location of Recipient	Location of Recipient

16. Input Tax Credit

- 16.1. Input Tax Credit mechanism is the core of the GST Regime. However on a perusal of the draft provisions in this regard, it is found that the hopes of the industry are totally belied. The draft provisions cast onerous and impossible obligations on the taxable person claiming the credit. They also lend a lot of subjectivity as regards eligibility since there are various exclusions from credit.
- 16.2. The provisions of input tax credit are contained in Section 16 of the Act. The salient features thereof are as under:
- Input Tax credit will be allowed only to registered persons
 - On registration, credit would also be available for inputs and finished goods lying in stock on the date of registration.
 - Credit to be calculated based on generally accepted accounting principles as may be prescribed.
 - Proportionate credit in case certain goods are used for business as well as non-business purposes
 - Certain cases of ineligible input tax credit are also prescribed.
- 16.3. Ineligible credits: As stated earlier, various credits are denied. Important ones are listed below for ready reference
- Motor vehicles unless used for transportation of goods
 - Food and Beverages unless the same is used for the purposes of further business in F&B
 - Employee related goods/ services
 - Goods/ services resulting in construction of immovable property for self-consumption
 - GST paid under the composition scheme
 - Goods for personal consumption
 - Goods lost, destroyed, stolen, written off or disposed off by way of gifts or free samples
- 16.4. Fungibility of credit
- The rules relating to fungibility of credits and priority of adjustment are as under

- The input tax credit on account of IGST during a tax period shall first be utilised towards payment of IGST; the amount remaining, if any, shall be utilized towards the payment of CGST and SGST, in that order.
- The input tax credit on account of CGST during a tax period shall first be utilised towards payment of CGST; the amount remaining, if any, shall be utilized towards the payment of IGST.
- The input tax credit on account of SGST during a tax period shall first be utilised towards payment of SGST; the amount remaining, if any, shall be utilized towards the payment of IGST.
- No input tax credit on account of CGST shall be utilized towards payment of SGST.
- No input tax credit on account of SGST shall be utilized towards payment of CGST.
- The above rules are summarised in the table below for easy understanding:

Tax	For SGST	For IGST	For CGST
CGST	No	2nd	1st
SGST	1st	2nd	No
IGST	3rd	1st	2nd

16.5. Documentation

- Section 16(2) of the Act also prescribes for certain documentation before the credit can be claimed, such as possession of tax invoice, goods/ service should have been received, tax has been actually paid by the supplier and return has been furnished under the applicable section.
- Similarly, it is also stated that the payment of tax by cash or credit by the supplier is necessary to claim credit.
- Similarly, it is important that the payment is made to the service provider within a period of 3 months.

17. Transition provisions to the Model GST Law

- 17.1. Chapter XXV of the CGST/ SGST Act deals with the transitional provisions. The law provides for different situations requiring a

transition. Since the treatment under the current Central and State legislations are fundamentally different, the transitional provisions in such situations are also differently worded. They are tabulated as under for ready reference:

Sec.	Provision	Impact
Output Taxes		
178	Issue of supplementary invoices, debit or credit notes where price is revised in pursuance of a contract	Increase in value – GST Law to apply
		Decrease in value –claim reduction in GST subj. to the vendor agreeing to reduce input tax credit
186	Treatment of long term construction / works contracts	Basis the date of invoice
187	Progressive or periodic supply of goods or services	Advances to be taxed under the old law
188 & 189	Point of Taxation before the appointed day	To be taxed under the old law
173	Exempted goods returned to the place of business on or after the appointed day	Not independent supply if returned within 6 months
174	Duty paid goods returned to the place of business on or after the appointed day	Not independent supply if returned within 6 months by person other than registered person. In case returned by registered person, deemed to be supply.
194	Treatment of branch transfers	Retention is lost
Credits		
167	Amount of CENVAT Credit carried forward in a return	to be allowed as input tax credit
168	Un-availed CENVAT Credit on capital goods, not c/fd in a return	to be allowed in certain situations

Sec.	Provision	Impact
169 & 170	Credit of eligible duties and taxes in respect of inputs held in stock	to be allowed in certain situations
171	Credit of eligible duties and taxes in respect of inputs or input services during transit	to be allowed in certain situations
172	Credit of eligible duties and taxes on inputs held in stock to a taxable person switching over from composition scheme	to be allowed
190	Credit distribution of service tax by ISD	To be allowed under the new law even for old services
191	Transfer of unutilized CENVAT credit by person having Centralized registration	to be allowed as credit to the agent
192	Tax paid on goods lying with agents	to be allowed as credit to the agent
193	Tax paid on capital goods lying with agents	to be allowed as credit to the agent
Other Obligations		
175	Inputs removed for job work and returned on or after the appointed day	No impact if returned within 6 months
176	Semi-finished goods removed for job work and returned on or after the appointed day	No impact if returned within 6 months
177	Finished goods removed for carrying out certain processes and returned on or after the appointed day	No impact if returned within 6 months
195	Goods sent on approval basis returned on or after the appointed day	No impact if returned within 6 months
Litigation		
179	Pending refund claims	to be disposed of under earlier law

Sec.	Provision	Impact
182	Claim of CENVAT credit	to be disposed of under the earlier law
183	Proceedings relating to output duty liability	Under the earlier law
184	Treatment of the amount recovered or refunded in pursuance of assessment or adjudication proceedings	Under the earlier law
185	Treatment of the amount recovered or refunded pursuant to revision of returns	Under the earlier law
180	Refund filed for duty or tax paid under earlier law, for goods or service exported before or after the appointment day	Disposed in the earlier law certain conditions on CENVAT
181	Refund of tax deposited before the appointed day, however services not yet provided	Disposed in the earlier law certain conditions on CENVAT

18. Registration Procedures

- 18.1. Section 23 deals with the basic provisions relating to register and provides the dealer to either obtain registration voluntarily or compulsorily on turnover crossing the threshold limit specified. Multiple business verticals in a State to obtain a separate registration for each business
- 18.2. Any specialized agency of the United Nations Organization or any Multilateral Financial Institution and Organization notified under the United Nations (Privileges and Immunities) Act, 1947 (46 of 1947), Consulate or Embassy of foreign countries and any other person or class of persons as may be notified by the Board / Commissioner will be required to obtain a Unique Identity Number
- 18.3. Section 24 deals with the provision relating to a Casual Dealer/ Non-resident taxable registration which provides for a registration for a limited period of 90 days. Such dealers shall be required to make payment in advance by demand drafts separately for SGST and CGST

- 18.4. Section 25 deals with the procedure to be followed for amendment in registration. The provisions require that a proper officer shall not reject the request for amendment in the registration particulars without giving a notice to show cause and without giving the person a reasonable opportunity of being heard.
- 18.5. Section 26 deals with the provisions relating to cancellation of registration, either
- Voluntary in case of specific events, such as
 - closure of business,
 - transfer of business including death of proprietor,
 - amalgamation/ demerger,
 - change in constitution of the business,
 - the person is no longer required to register under Schedule V of the Act or
 - By Department, after giving a proper opportunity of being heard in case of
 - contravention of specific provision of GST Law,
 - non-furnishing of returns for three consecutive tax periods by assessee opting for composition scheme,
 - non-furnishing of return by other assessees for a continuous period of six months,
 - non-commencement of business within 6 months from the date of registration (in case of voluntary registration), or
 - registration obtained by means of fraud, wilful misstatement or suppression of facts.
- 18.6. Section 27 deals with the provisions relating to revocation of cancellation of registration. Any registered taxable person whose registration is cancelled by the officer or by his own motion, can apply for revocation of cancellation of the registration in the manner to be prescribed. The officer may either revoke or cancel the registration within the period to be prescribed after giving a show cause and reasonable opportunity of being heard.

19. Payment Procedures

- 19.1. Section 44 deals with the provisions relating to payment of tax, interest, penalty and other amounts. The said provisions provide as under:

- The amount can be paid by internet banking, debit cards, credit cards, National Electronic Fund Transfer, Real Time Gross Settlement, etc. Explanation to Section 44(1) states that the date of credit to the account of the appropriate Government in the authorized bank shall be deemed to be the date of deposit.
 - Input tax credit as self-assessed has to be credited to electronic credit ledger to be maintained in the manner to be prescribed
 - Electronic cash ledger may be used for making any payment towards tax, interest, penalty, fees or any other amount payable under the provisions of the Act
 - All liabilities of a taxable person shall be recorded and maintained in an electronic register as may be prescribed
- 19.2. Section 45 deals with the provisions relating to interest on delayed payment of tax. The rate of interest is yet to be notified. The said provision further provides that interest shall be payable in case of an undue or excess claim of credit, the assessee shall be liable to pay credit on such amount for a period to be computed in the prescribed manner.
- 19.3. Section 46 deals with the provisions relating to deduction of tax at source. The provisions as prescribed under the said section are as under:
- TDS rate is 1% where the total value of supply, under a contract, exceeds ₹ 5 lakhs
 - The amount of TDS has to be paid within a period of 10 days from the end of month in which tax is deducted
 - The deductor shall issue certificate to deductee within a period of 5 days from payment of tax to appropriate Government, failing which, late fees of ₹ 100 per day after the expiry of five days period will be payable, subject to maximum of ₹ 5,000/-
 - The deductee has to be claim credit in electronic cash ledger
 - Interest is payable on delay in payment of amount deducted but not deposited with appropriate Government
 - Excess deduction shall result in refund of amount to deductee, provided he has not taken credit in the electronic cash ledger

20. Filing of Returns

20.1. Due date of furnishing returns/ details in certain cases:

Step	GSTR	Action to be taken by	Particulars	Due Date of Filing the Return
1	1	Supplier	Details of outward supplies of taxable goods and/or services effected	10 days after the end of each month
2	2A	Recipient	Details of inward supplies made available to the recipient on the basis of Form GSTR-1 furnished by the supplier	Download from Portal, no due date
3	2	Recipient	Details of inward supplies of taxable goods and/or services claiming input tax credit	15 days after the end of each month
4	1A	Supplier	Details of outward supplies as added, corrected or deleted by the recipient	17 days after the end of each month
5.	3	Supplier	Monthly return on the basis of finalization of details of outward supplies and inward supplies along with the payment of amount of tax	20 days after the end of each month
	3A	Dept.	Notice to a registered taxable person who fails to furnish return under section 27 and section 31	Need Based
	4	Supplier	Quarterly Return for compounding Taxable persons	18 days after the end of such quarter

Step	GSTR	Action to be taken by	Particulars	Due Date of Filing the Return
	4A	Recipient	Details of inward supplies made available to the recipient registered under composition scheme on the basis of FORM GSTR-1 furnished by the supplier	Download from Portal
	5	Supplier	Return for Non-Resident foreign taxable person	Within 20 days after the end of such month
	6	ISD	ISD Return	Within 13 days after the end of such month
	6A	ISD	Details of inward supplies made available to the ISD recipient on the basis of FORM GSTR-1 furnished by the supplier	Download from Portal
	7	Deductor	Return for authorities deducting tax at source	10 days after the end of each month
	7A	Deductor	TDS Certificate	15 days after the end of each month
	ITC-1	Dept.	Communication of acceptance, discrepancy or duplication of input tax credit claim	Download from Portal

Step	GSTR	Action to be taken by	Particulars	Due Date of Filing the Return
	8	TCS	Details of supplies effected through e commerce operator and the amount of tax collected as required under sub-section (1) of section 43C	10 days after the end of such month
	9	Supplier	Annual return	31 December
	9A	Composition Dealer	Simplified Annual return by Compounding taxable persons registered under section 8	31 December
	9B	Supplier	Reconciliation Statement	31 December
	10	Supplier cancelling registration	Final return	3 months from date of cancellation
	11	UIN Holder	Details of inward supplies to be furnished by a person having UIN	

20.2. Further, section 34 (9) provides that in case any taxable person after furnishing return discovers any omission or incorrect particulars, other than as a result of scrutiny, audit, inspection or enforcement activity by tax authorities, he shall rectify the same in the return during which such omission or incorrect particulars noticed, subject to interest where applicable.

20.3. However, proviso to Section 34 (9) provides that no such rectification of any omission or incorrect particulars shall be allowed after the due date for filing of return for the month of September or second quarter, as the case may be, following the end of the financial year, or the actual date of filing of relevant annual return, whichever is earlier.

20.4. Section 35: First Return

Every registered taxable person who has made outward supplies in the period between the date on which he became liable to

registration till the date on which registration has been granted shall declare the same in the first return filed by him after grant of registration.

20.5. Section 36: Claim of input tax credit and provisional acceptance thereof

Every taxable person may be entitled to take credit of input tax, as self-assessed, on a provisional basis.

20.6. Section 37: Matching, reversal and reclaim of input tax credit

- Details of every inward supply furnished by a taxable person shall be matched with followings:
 - (a) with the corresponding details of outward supply furnished by the corresponding taxable person (hereinafter referred to in this section as the 'supplier') in his valid return for the same tax period or any preceding tax period,
 - (b) with the additional duty of customs paid under section 3 of the Customs Tariff Act, 1975 (51 of 1975) in respect of goods imported by him, and
 - (c) for duplication of claims of input tax credit.
- In case of any discrepancy, the same shall be communicated to both the person.
- In case any amount which is not rectify than the same will added to output liability of the recipient in succeeding month in which the discrepancy is communicated. The said amount shall be reduced from output tax liability if valid return is filed by supplier within time specified under section 34 (9) of the Act.
- However, if any amount is reduced from output liability in contravention of the above, than the same shall be added to the output liability in the month in which such contravention takes place and interest shall be liable to pay on such amount.
- A recipient in whose output liability any amount has been added shall also be liable to pay interest as prescribed under section 45 of the Act.
- Where any reduction in output liability is accepted, interest so paid shall be refunded by crediting amount in

corresponding head of his electronic cash ledger in the manner prescribed. However, the said refund shall not exceed the amount so paid by the supplier.

20.7. Section 38: Matching, reversal and reclaim of reduction in output tax liability

- Details of every credit note relating to outward supply furnished by a taxable person shall be matched with followings:
 - (a) with the corresponding reduction in the claim for input tax credit by the corresponding taxable person (hereinafter referred to in this section as the 'recipient') in his valid return for the same tax period or any subsequent tax period, and
 - (b) for duplication of claims for reduction in output tax liability.
- In case of any discrepancy, the same shall be communicated to both the person.
- In case any amount which is not rectify than the same will added to output liability of the supplier in succeeding return. The said amount shall be reduce from output tax liability if valid return is filed by recipient within time specified under section 34 (9) of the Act.
- However, if any amount is reduced from output liability in contravention, than the same shall be added to the output liability in which such contravention takes place and interest shall be liable to pay on such amount.
- A supplier in whose output liability any amount has been added shall also be liable to pay interest as prescribed under section 45 of the Act.
- Where any reduction in output liability is accepted, interest so paid shall be refunded by crediting amount in corresponding head of his electronic cash ledger in the manner prescribed. However, the said refund shall not exceed the amount so paid by the recipient.

20.8. Section 39: Annual Return

Annual return has to be furnished before 31st December following the end of such financial year.

Assessee who is required to get his accounts audited under section 53(4) shall furnish the annual return along with the audited copy of the annual accounts and a reconciliation statement (reconciling the value of supplies declared in the return vis-à-vis amounts as per audited annual financial statements).

20.9. Section 40: Final Return

Assessee applying for cancellation of his registration shall furnish a final return within 3 months of the date of cancellation or date of cancellation order whichever is earlier

20.10. Section 42: Levy of late fee

Any registered taxable person who fails to furnish the details of outward or inward supplies or returns required by the due date shall be liable to pay late fee of ₹ 100/- per day for the period for which such failure continues subject to maximum of ₹ 5,000/-

Any registered taxable person who fails to furnish annual return shall be liable to pay late fee of ₹ 100/- per day for the period for which such failure continues subject to maximum of an amount calculated at a quarter percent of his turnover in the State.

21. Refund Procedures

21.1. Section 48 deals with the provisions relating to claim of refund. The said section provides for claim of refund of unutilized input tax credit at the end of any tax period. The refund will be granted only in cases of exports or where input is more than output on account of inverted rate structure.

21.2. Provisional refund to the extent of 90% of refund claimed may be granted by the proper officer and balance 10% of refund should be granted after due verification of documents furnished by the applicant.

21.3. An application for refund should be made in the prescribed form, either through GSTN portal or respective State/ Central portal within a period of two years from the relevant date. The period of limitation will not be applicable in case of tax/ interest paid under protest. The proper officer shall process the refund application within 60 days of receipt of application.

21.4. It is further provided that in case where refund amount is less than five lacs rupees, it shall not be necessary to furnish any documentary or other evidence as prescribed under section 48(4) of the Act.

21.5. Relevant date shall be different on case to case basis, as under:

Sr. No.	Cases	Relevant date
1	Goods exported out of India by sea or air	Date on which ship or aircraft in which goods are loaded, leaves India
2	Goods exported out of India by land	Date on which such goods pass frontier
3	Goods exported out of India by post	Date of despatch of goods by Post Office concerned to a place outside India
4	Deemed export of goods	Date on which the return relating to such deemed exports is filed
6	Service exported out of India	Date of
		i. Receipt of payment in convertible foreign exchange, where supply of service had been completed prior to receipt of such payment.
		ii. Issue of invoice, where payment for service has been received in advance.
7	Tax become refundable as a consequence of judgement, decree, order or direction of Appellate Authority, Authority, Tribunal or any Court	Date of communication of such judgement, decree, order or direction.
8	Refund of unutilised input tax credit	End of financial year in which such claim arises
9	Where tax is paid provisionally under this Act	Date of adjustment of tax after the final assessment
10	Refund claim by person other than the supplier	Date of receipt of goods or services by such person
11	Any other case	Date of payment of tax

22. Appeal Procedures

- 22.1. Section 98 deals with the provisions relating to filing of an appeal before the first appellate authority. The brief outline of the provisions relating to filing of an appeal before the first appellate authority is as under:
- Appeals has to be filed within a period of 3 months from the date of which order is communicated
 - For any sufficient cause in delay of filing the appeal, the same shall be allowed to be presented within a period of one month
 - 10% pre-deposit to be paid of the tax amount in dispute
 - Department authorities in 'serious cases' can apply to First Appellate Authority for ordering a higher pre-deposit not exceeding 25% of the amount in dispute
 - Not more than 3 adjournments will be granted for personal hearing
 - Order enhancing any fee or penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund or input tax credit shall not be passed unless a SCN is issued
 - In possible cases, the appellate authority should hear and decide every appeal within a period of 1 year from the date on which appeal is filed
- 22.2. Powers to revise orders have been granted to Commissioner u/s 99 which provides for revision of order, unless an appeal has been filed either u/s 98, 101, 106 or 107 or a period of 3 years has expired after passing of the order.
- 22.3. Section 100 of the Act deals with the constitution of National Appellate Tribunal. The Appellate Tribunal shall have one branch for each state which shall be called as the State GST Tribunal.
- 22.4. Section 101 & 102 deals with the provisions relating to filing of an appeal before the Appellate Tribunal. The brief outline of the provisions relating to filing of an appeal before the first appellate authority is as under:
- The Tribunal may refuse to admit an appeal where the amount of dispute does not exceed ₹ 1 lacs
 - Appeal has to be filed within a period of 3 month from the date of communication of order against which appeal is

sought to be filed

- Cross objection has to be filed by the respondent within a period of 45 days of receipt of notice
- 10% pre-deposit to be paid of the tax amount in dispute in addition to the amount deposited at the time of First Appeal
- Department authorities in “serious cases” can apply to Appellate Tribunal for ordering a higher pre-deposit not exceeding 25% of the amount in dispute
- Not more than 3 adjournments will be granted for personal hearing
- Appellate Tribunal can rectify the order if there mistake apparent on records within a period of 3 months from the date of the order
- In case of enhancement of demand or reducing refund, opportunity of hearing has to be granted
- In possible cases, the Appellate Tribunal should hear and decide every appeal within a period of 1 year from the date on which appeal is filed

22.5. Section 104 deals with the provisions relating to interest payable to assessee in case of delay in refunding of pre-deposit made at the time of filing of an appeal before the Tribunal. The said section provides for payment of interest from the date of making the pre-deposit till the date of refund of such amount at a rate to be notified in this regards by the Central or State Government on the recommendation of the Council.

22.6. Section 106 deals with the provisions relating to appeal to be filed before High Court. Appeal has to be filed within a period of 180 days from date of communication of order against which appeal is sought to be filed. The said provision provides that no appeal shall lie to High Court against an order passed by the Appellate Tribunal in case of following:

- A matter where two or more states, or a State and Centre, have a difference of views regarding the treatment of a transaction being intra-state or inter-state
- A matter where two or more states, or a State and Centre, have a difference of views regarding place of supply

- 22.7. Section 107 deals with the provisions relating to appeal to be filed before Supreme Court. The said provisions provide that an appeal shall lie to the Supreme Court directly from any Order passed by the Appellate Tribunal in case of following:
- A matter where two or more states, or a State and Centre, have a difference of views regarding the treatment of a transaction being intra-state or inter-state
 - A matter where two or more states, or a State and Centre, have a difference of views regarding place of supply
- 22.8. Section 105 of the CGST/ SGST Act deals with provisions relating to appearance by an authorized representative on behalf of an assessee for any proceedings under the said act. Authorised Representative includes following:
- Relative or regular employee
 - Advocate in practice
 - Chartered Accountant, Cost Accountant or Company Secretary holding COP
- 22.9. The above appellate provisions have been made applicable to IGST Act also vide Section 27 of the said Act.

23. Advance Ruling

- 23.1. The provisions relating to applying for advance ruling are covered under chapter XXII of the CGST/SGST Act.
- 23.2. Any person registered or desirous of obtaining registration under the Act may make an application to Authority in such form and in such manner as may be prescribed accompanied by a fee as may be prescribed.
- 23.3. The Authority for Advance Ruling shall be located in each state. The Authority shall consist of Chief Commissioner of CGST as designated by Board and Commissioner of SGST having jurisdiction over the applicant.
- 23.4. The application for advance ruling shall be in respect of,
- classification of any goods and/or services under the Act;
 - applicability of a notification issued under provisions of the Act having a bearing on the rate of tax;
 - the principles to be adopted for the purposes of determination of value of the goods and/or services under the provisions of the Act;

- admissibility of input tax credit of tax paid or deemed to have been paid;
- determination of the liability to pay tax on any goods and/or services under the Act;
- whether applicant is required to be registered under the Act;
- whether any particular thing done by the applicant with respect to any goods and/or services amounts to or results in a supply of goods and/or services, within the meaning of that term.

23.5. No application for advance ruling shall be entertained by authority, if the question raised in the application is

- already pending in the applicant's case before any First Appellate Authority, the Appellate Tribunal or any Court;
- the same as in a matter already decided by the First Appellate Authority, the Appellate Tribunal or any Court;
- the same as in a matter already pending in any proceedings in the applicant's case under any of the provisions of the Act;
- the same as in a matter in the applicant's case already decided by the adjudicating authority or assessing authority, whichever is applicable

23.6. An application for advance ruling shall not be rejected without giving the applicant an opportunity of being heard and recording the reasons in writing.

23.7. An appeal against a ruling passed by an authority may be made to Appellate Authority within 30 days from the date of communication to applicant. The Appellate Authority shall pass an order within a period of ninety days from the date of filing an appeal.

23.8. The order passed by Authority or Appellate Authority can be rectify if any mistake is apparent from records within a period of six months from the date of the order.

23.9. The Advance Ruling shall be binding only on the applicant who has sought the ruling from the Authority/ Appellate Authority and the jurisdictional tax authorities in respect of the applicant.



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