



REPORT OF SUB-COMMITTEE-II  
ON  
MODEL GST LAW

**Empowered Committee of State Finance Ministers**

**September, 2015**

## **GOODS AND SERVICES TAX ACT, 2016**

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## **CHAPTER I**

### **PRELIMINARY**

#### **1. Short title, extent and commencement**

- (1) This Act may be called the Central / State Goods and Services Tax Act, 2016.
- (2) It extends to the whole of India / **State's name**.
- (3) It shall come into force on such date as the Central or a State Government may by notification in the Official Gazette, appoint in this behalf.

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

#### **2. Definitions**

In this Act, unless the context otherwise requires,-

- (1) "**actionable claim**" shall have the meaning assigned to it in section 3 of the Transfer of Property Act, 1882;
- (2) "**address on record**" means the address of the recipient as available in the records of the supplier;
- (3) "**adjudicating authority**" means any authority competent to pass any order or decision under this Act, but does not include the Board, the Commissioner (Appeals) and the Appellate Tribunal;
- (4) "**agriculture**" with all its grammatical variations and cognate expressions, includes floriculture, horticulture, the raising of crops, grass or garden produce and also grazing, but does not include dairy farming, poultry farming, stock breeding, the mere cutting of wood or grass, gathering of fruit, raising of man-made forest or rearing of seedlings or plants:

Explanation – For the purpose of this clause, the expression 'forest' means the forest to which the Indian Forest Act, 1927 applies.

- (5) "**agriculturist**" means a person who cultivates land personally, for the purpose of agriculture;
- (6) "**agricultural extension**" means application of scientific research and knowledge to agricultural practices through farmer education or training;
- (7) "**agricultural produce**" means any produce of agriculture on which either no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market;
- (8) "**Appellate Tribunal**" means the National Goods and Services Tax Appellate Tribunal constituted under section . . . of this Act;
- (9) "**appointed day**" means the date on which section 1 of this Act comes into effect;
- (10) "**assessment**" means determination of tax liability under this Act and includes self-assessment, re-assessment, provisional assessment and best judgement assessment;

(11) "**associated enterprise**" shall have the meaning assigned to it in section 92A of the Income Tax Act, 1961;

(12) "**Board**" means the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963;

(13) "**business**" includes –

(a) any trade, commerce, manufacture, profession, vocation or any other similar activity, whether or not it is for a pecuniary benefit;

(b) any transaction in connection with or incidental or ancillary to (a) above;

(c) any transaction in the nature of (a) above, whether or not there is volume, frequency, continuity or regularity of such transaction;

(d) supply or acquisition of goods including capital assets and services in connection with commencement or closure of business;

(e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members as the case may be;

(f) admission, for a consideration, of persons to any premises; and

(g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;

but does not include agriculture;

(14) "**capital assets**" shall have the meaning as assigned to it in the Income Tax Act, 1961 (43 of 1961) but the said expression shall not include jewellery held for personal use or property not connected with the business;

(15) "**capital goods**" means plant, machinery and equipment used directly or indirectly in the course of manufacture, trade, commerce, profession, vocation or any other similar activity;

(16) "**casual taxable person**" means a person who occasionally undertakes transactions involving supply or acquisition of goods and/or services in the course or furtherance of business whether as principal, agent or in any other capacity, in a taxable territory where he has no fixed place of business;

(17) "**chartered accountant**" means a chartered accountant within the meaning of the Chartered Accountants Act, 1949 (38 of 1949);

(18) "**Commissioner**" means the Commissioner of Central Goods and Services Tax /Commissioner of State Goods and Services Tax appointed under section 4 of the Central/State Goods and Services Tax Act, 2016;

(19) "**composite supply**" means a supply consisting of -

(a) two or more goods;

(b) two or more services; or

(c) a combination of goods and services

provided in the course or furtherance of business, whether or not the same can be segregated;

(20) "**consideration**" in relation to the supply of goods and/or services to any person, includes

(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods and/or services, whether by the person or by any other person;

(b) the monetary value of any act or forbearance, whether or not voluntary, in respect of, in response to, or for the inducement of, the supply of goods and/or services, whether by the person or by any other person:

Provided that a deposit, whether refundable or not, given in respect of the supply of goods and/or services shall not be considered as payment made for the supply unless the supplier applies the deposit as consideration for the supply;

(21) "**continuous supply of goods**" means a supply involving goods which is provided, or agreed to be provided, continuously or on recurrent basis whether or not by means of a wire, cable, pipeline or other conduit, and for which the supplier invoices the recipient on a regular or periodic basis;

(22) "**continuous supply of services**" means a supply of services which is provided, or agreed to be provided, continuously or on recurrent basis, under a contract, for a period exceeding three months with periodic payment obligations and includes supply of such service as the Central or a State Government may, whether or not subject to any condition, by notification, specify;

(23) "**cost accountant**" means a cost accountant within the meaning of the Cost and Works Accountants Act, 1959 (23 of 1959);

(24) "**Council**" means the Goods and Services Tax Council established under Article 279A of the Constitution;

(25) "**declared service**" means

(a) renting of immovable property;

(b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or before its first occupation, whichever is earlier.

Explanation. For the purposes of this clause-

(1) the expression "competent authority" means the Government or any authority authorized to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely:-

(i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972; or

(ii) a chartered engineer registered with the Institution of Engineers (India); or

(iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority;

(2) the expression "construction" includes additions, alterations, replacements or remodelling of any existing civil structure;

(c) temporary transfer or permitting the use or enjoyment of any intellectual property right;

(d) development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software;

(e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act; and

(f) works contract;

(26) "**document**" includes written or printed record of any sort and electronic record as defined in Information Technology Act, 2000 [21 of 2000];

(27) "**earlier law**" means any of the following laws, that is to say,

(a) . . .

(b) . . .

(c) . . .

as amended from time to time and includes enactments which have validated anything done or omitted to be done under any of the above mentioned laws and also any law repealed by the earlier laws but continued in force under any provisions of the above enumerated laws;

(28) "**exempt supply**" means supply of any goods and/or services which are not taxable under this Act and includes such supply of goods and/or services which are specified in Schedule . . . of the Act or which may be exempt from tax under section 10.

(29) "**export**" with its grammatical variations and cognate expressions, means taking out of India to a place outside India;

(30) "**fund**" means the Consumer Welfare Fund established under section \_\_\_\_;

(31) "**goods**" means every kind of movable property other than actionable claim and money but includes securities, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under the contract of supply;

(32) "**government**" means Central Government and its departments, a State Government and its departments and a Union territory and its departments, but shall not include any entity, whether created by a statute or otherwise, the accounts of which are not required to be kept in accordance with Article 150 of the Constitution or the rules made thereunder;

(33) "**import**" with its grammatical variations and cognate expressions, means bringing into India from a place outside India;

(34) "**IGST**" means the tax levied under the Integrated Goods and Services Tax Act;

(35) "**India**" means,-

(a) the territory of the Union as referred to in clauses (2) and (3) of Article 1 of the Constitution;

(b) its territorial waters, continental shelf, exclusive economic zone or any other maritime zone as defined in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976;

(c) the seabed and the subsoil underlying the territorial waters;

(d) the air space above its territory and territorial waters; and

(e) the installations, structures and vessels located in the continental shelf of India and the exclusive economic zone of India, for the purposes of prospecting or extraction or production of mineral oil and natural gas and supply thereof;

(36) "**input tax**" in relation to a taxable person, means the {IGST, CGST or SGST}/{IGST and CGST}/{IGST and SGST} charged on any supply of goods and/or services to him which are used, or are to be used, in the course or furtherance of his business;

(37) "**input tax credit**" means credit of 'input tax' as defined in section 2(36) of this Act;

(38) "**intangible property**" is any property other than tangible property and includes such things as contractual rights, options, intellectual property rights in relation to goods that are not in possession;

(39) "**invoice**" means a document raised by a supplier indicating, inter-alia, details of goods and/or services supplied, their value and tax charged thereon, if any;

(40) "**legal representative**" means any person who stands in place of, and represents the interests of another and includes the executor, administrator of an estate and a court appointed guardian of a minor;

(41) "**local authority**" means

- (a) a "Panchayat" as defined in clause (d) of Article 243 of the Constitution;
- (b) a "Municipality" as defined in clause (e) of Article 243P of the Constitution;
- (c) a Municipal Committee, a Zilla Parishad, a District Board, and any other authority legally entitled to, or entrusted by the Central or any State Government with the control or management of a municipal or local fund;
- (d) a Cantonment Board as defined in section 3 of the Cantonments Act, 2006;
- (e) a Regional Council or a District Council constituted under the Sixth Schedule to the Constitution;
- (f) a Development Board constituted under Article 371 of the Constitution; or
- (g) a Regional Council constituted under Article 371A of the Constitution;

(42) "**location of service provider**" means:

- (i) where a supply is made from a business establishment for which registration has been obtained, the location of such establishment;
- (ii) where a supply is made from a place other than the business establishment for which registration has been obtained, that is to say, a fixed establishment elsewhere, the location of such fixed establishment;
- (iii) where a supply is made from more than one establishment, whether business or fixed, the location of the establishment most directly concerned with the provision of the supply; and
- (iv) in absence of such places, the location of the usual place of residence of the person;

(43) "**location of service receiver**" means:

- (i) where a supply is received at a business establishment for which registration has been obtained, the location of such establishment;

(ii) where a supply is received at a place other than the business establishment for which registration has been obtained, that is to say, a fixed establishment elsewhere, the location of such fixed establishment;

(iii) where a supply is received at more than one establishment, whether business or fixed, the location of the establishment most directly concerned with the receipt of the supply; and

(iv) in absence of such places, the location of the usual place of residence of the person;

(44) "**market value**" shall mean the full amount which a recipient of a supply is required to pay in order to obtain the goods and/or services of like kind and quality at or about the same time and at the same commercial level where the recipient and the supplier are not related;

(45) "**money**" means Indian legal tender or any foreign currency, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, money order, postal or electronic remittance or any such similar instrument when used as consideration to settle an obligation or exchange with Indian legal tender of another denomination but shall not include any currency that is held for its numismatic value;

(46) "**non-resident taxable person**" means a taxable person who occasionally undertakes transactions involving supply or acquisition of goods and/or services whether as principal or agent or in any other capacity but who has no fixed place of business in India;

(47) "**non-taxable territory**" means the territory which is outside the taxable territory;

(48) "**notification**" means notification published in the Official Gazette and the expressions 'notify' and 'notified' shall be construed accordingly;

(49) "**output tax**" in relation to a taxable person, means the IGST/CGST/SGST chargeable under this Act on taxable supply of goods and/or services by him and includes tax payable by him on reverse charge basis;

(50) "**person**" includes—

(a) an individual;

(b) a Hindu undivided family;

(c) a company;

(d) a firm;

(e) an association of persons or a body of individuals, whether incorporated or not, in India or outside India;

(f) any corporation established by or under any Central, State or Provincial Act or a Government company as defined in section 2(45) of the Companies Act, 2013 (18 of 2013);

(g) any body corporate incorporated by or under the laws of a country outside India;

(h) a co-operative society registered under any law relating to cooperative societies;

(i) a local authority;

(j) government;

(k) society as defined under the Societies Registration Act, 1860;

(l) trust; and

(m) every artificial juridical person, not falling within any of the preceding sub-clauses;

(51) "**place of business**" includes

(a) 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, provides or receives goods and/or services; or

(b) a place where a taxable person maintains his books of account; or

(c) a place where a taxable person is engaged in business through an agent, by whatever name called;

(52) "**prescribed**" means prescribed by the rules, regulations or by any notification issued under this Act;

(53) "**proper officer**" in relation to any function to be performed under this Act, means the officer of goods and services tax who is assigned those functions by the Board/Commissioner of SGST;

(54) "**property**" means any property, whether real or personal, movable or immovable, corporeal or incorporeal, tangible or intangible, and includes a right or interest of any kind, but does not include money, actionable claims or negotiable instruments;

(55) persons shall be deemed to be "**related persons**" if only -

- (a) they are officers or directors of one another's businesses;
- (b) they are legally recognized partners in business;
- (c) they are employer and employee;
- (d) any person directly or indirectly owns, controls or holds five per cent or more of the outstanding voting stock or shares of both of them;
- (e) one of them directly or indirectly controls the other;
- (f) both of them are directly or indirectly controlled by a third person;
- (g) together they directly or indirectly control a third person; or
- (h) they are members of the same family.

Explanation I. - The term "person" also includes legal persons.

Explanation II. - Persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other shall be deemed to be related;

(56) "**removal**", in relation to goods, means -

- (a) dispatch of the goods for delivery by the supplier thereof or by any other person acting on behalf of such supplier, or
- (b) collection of the goods by the recipient thereof or by any other person acting on behalf of such recipient;

(57) "**reverse charge**" means the liability to pay tax by the person receiving services instead of the person supplying the services in respect of such categories of supplies as the Central or a State Government may, on the recommendation of the Council, by notification, specify;

(58) "**schedule**" means a schedule appended to this Act;

- (59) "**services**" mean anything other than goods;
- (60) "**SGST**" means the tax levied under the State Goods and Services Tax Act;
- (61) "**supply**" shall have the meaning as assigned to it in section 3 of this Act;
- (62) "**tangible property**" means any property other than incorporeal property;
- (63) "**tax**" means goods and services tax levied on the supply of goods and/or services except on the supply of alcoholic liquor for human consumption;
- (64) "**taxable person**" shall have the meaning as assigned to it in section 9 of this Act;
- (65) "**taxperiod**" means the period for which the tax return is required to be filed;
- (66) "**taxable supply**" means a supply of goods and/or services which is chargeable to tax under this Act;
- (67) "**tax return preparer**" means any individual who has been authorised to act as goods and services tax return preparer under this Act;
- (68) "**taxable territory**" means the territory to which the provisions of this Act apply;
- (69) "**telecommunication service**" means service of any description provided by means of any transmission, emission or reception of signs, signals, writing, images and sounds or intelligence or information of any nature, by wire, radio, optical, visual or other electro-magnetic means or systems, including the related transfer or assignment of the right to use capacity for such transmission, emission or reception by a person who has been granted a licence under the first proviso to sub-section (1) of section 4 of the Indian Telegraph Act, 1885 and includes—
  - (i) voice mail, data services, audio tex services, video tex services, radio paging;
  - (ii) fixed telephone services including provision of access to and use of the public switched telephone network for the transmission and switching of voice, data and video, inbound and outbound telephone service to and from national and international destinations;
  - (iii) cellular mobile telephone services including provision of access to and use of switched or non-switched networks for the transmission of voice, data and video, inbound and outbound roaming service to and from national and international destinations;
  - (iv) carrier services including provision of wired or wireless facilities to originate, terminate or transit calls, charging for interconnection, settlement or termination of domestic or international calls, charging for jointly used facilities including pole attachments, charging for the exclusive use of circuits, a leased circuit or a dedicated link including a speech circuit, data circuit or a telegraph circuit;
  - (v) provision of call management services for a fee including call waiting, call forwarding, caller identification, three-way calling, call display, call return, call screen, call blocking, automatic call-back, call answer, voice mail, voice menus and video conferencing;
  - (vi) private network services including provision of wired or wireless telecommunication link between specified points for the exclusive use of the client;
  - (vii) data transmission services including provision of access to wired or wireless facilities and services specifically designed for efficient transmission of data; and

(viii) communication through facsimile, pager, telegraph and telex, but does not include service provided by-

- (a) any person in relation to on-line information and database access or retrieval; and
- (b) a broadcasting agency or organisation in relation to broadcasting;

(70) "**time of supply of goods**" shall have the meaning as assigned to it in section 11 of this Act;

(71) "**time of supply of services**" shall have the meaning as assigned to it in section 12 of this Act;

(72) "**to cultivate personally**" means to carry on any agricultural operation on one's own account-

- (a) by one's own labour, or
- (b) by the labour of one's family, or
- (c) by servants on wages payable in cash or kind (but not in crop share) or by hired labour under one's personal supervision or the personal supervision of any member of one's family;

Explanation 1. A widow or a minor or a person who is subject to any physical or mental disability or is a serving member of the armed forces of the Union, shall be deemed to cultivate land personally if it is cultivated by her or his servants or by hired labour.

Explanation 2. In the case of a Hindu Undivided Family, land shall be deemed to be cultivated personally, if it is cultivated by any member of such family;

(73) "**turnover**" means the aggregate value of all taxable and non-taxable supplies, exempt supplies and exports, of goods and/or services, to be computed on all India basis and excludes taxes, if any, charged under this Act;

(74) "**Special Economic Zone**" shall have the meaning assigned to it in clause (za) of section 2 of the Special Economic Zones Act, 2005 [28 of 2005];

(75) "**works contract**" means an agreement for carrying out for cash, deferred payment or other valuable consideration, the building, construction, fabrication, erection, installation, fitting out, improvement, modification, repair, renovation or commissioning of any immovable property;

(76) "**year**" means the financial year; and

(77) "**zero-rated supply**" means a supply of any goods and/or services on which no tax is payable but credit of the input tax related to that supply is admissible;

Explanation: Exports shall be treated as zero-rated supply.

### **3. Meaning and scope of supply**

(1) Supply of goods and/or services includes all forms of supply such as sale, transfer, barter, exchange, license, rental, lease or disposal, and importation of services\*, made or agreed to be made for a consideration by a person in the course or furtherance of business and also includes a supply specified in Schedule I, made or agreed to be made without a consideration.

(2) Schedule II, in respect of matters mentioned therein, shall apply for determining what is, or is to be treated as a supply of goods or a supply of services.

(3) Subject to sub-section(2), the Central or a State Government may, upon recommendations of the Council, specify, by notification, the transactions that are to be treated as—

- (i) a supply of goods and not as a supply of services; or
- (ii) a supply of services and not as a supply of goods; or
- (iii) neither a supply of goods nor a supply of services.

## **CHAPTER II**

### **ADMINISTRATION**

#### **4. Classes of officers under the Central Goods and Services Tax Act**

- (1) There shall be the following classes of officers under the Central Goods and Services Tax Act, namely:
  - (a) Principal Chief Commissioners of CGST or Principal Directors General of CGST,
  - (b) Chief Commissioners of CGST or Directors General of CGST,
  - (c) Principal Commissioners of CGST or Principal Additional Directors General of CGST,
  - (d) Commissioners of CGST or Additional Directors General of CGST,
  - (e) Commissioner of CGST(Appeals)
  - (f) Additional Commissioners of CGST or Additional Directors of CGST,
  - (g) Joint Commissioners of CGST or Joint Directors of CGST,
  - (h) Deputy Commissioners of CGST or Deputy Directors of CGST,
  - (i) Assistant Commissioners of CGST or Assistant Directors of CGST, and
  - (j) such other class of officers as may be appointed for the purposes of this Act.

#### **4. Classes of officers under the State Goods and Services Tax Act**

- (1) There shall be the following classes of officers and persons under the State Goods and Services Tax Act namely.
  - a) Commissioner of SGST,
  - b) Special Commissioners of SGST,
  - c) Additional Commissioners of SGST,
  - d) Joint Commissioners of SGST,
  - e) Deputy Commissioners of SGST,
  - f) Assistant Commissioners of SGST, and
  - g) such other class of officers and persons as may be appointed for the purposes of this Act. [List is indicative]

(2) The Commissioner shall have jurisdiction over the whole of the State (...). All other officers shall have jurisdiction over the whole of the State or over such areas as the Commissioner may, by notification, specify.

**5. Appointment of officers under the Central Goods and Services Tax Act**

(1) The Board may appoint such persons as it may think fit to be officers under the Central Goods and Services Tax Act.

(2) Without prejudice to the provisions of sub-section (1), the Board may authorize a Principal Chief Commissioner/Chief Commissioner of Central Goods and Services Tax or a Principal Commissioner/Commissioner of Central Goods and Services Tax or an Additional/Joint or Deputy/Assistant Commissioner of Central Goods and Service Tax to appoint officers of Central Goods and Services Tax below the rank of Assistant Commissioner of Central Goods and Services Tax.

**6. Powers of officers under the Central Goods and Services Tax Act**

(1) Subject to such conditions and limitations as the Board may impose, an officer of the Central Goods and Services Tax may exercise the powers and discharge the duties conferred or imposed on him under this Act.

(2) An officer of Central Goods and Services Tax may exercise the powers and discharge the duties conferred or imposed under this Act on any other officer of Central Goods and Services Tax who is subordinate to him.

(3) Notwithstanding anything contained in this section, a Commissioner (Appeals) shall not exercise the powers and discharge the duties conferred or imposed on an officer of Central Goods and Services Tax other than those specified in .....of this Act.

## CHAPTER III

### LEVY AND COLLECTION OF TAX

#### **7. Levy and Collection of Central/State Goods and Services Tax**

- (1) There shall be levied a tax called the Central/State Goods and Services Tax (CGST/SGST) on all intra-State supplies of goods and/or services at the rate specified in the Schedule . . . to this Act and collected in such manner as may be prescribed.
- (2) The CGST/SGST shall be paid by every taxable person in accordance with the provisions of this Act.
- (3) The Central/State Government may, by notification, specify categories of supply of services the tax on which is payable on reverse charge basis and all the provisions of this Act shall apply *mutatis mutandis* for collection of such tax.

#### **8. Compounded Levy**

- (1) Notwithstanding anything to the contrary contained in the Act, the Central or a State Government may, subject to such conditions and restrictions as may be prescribed, permit a registered taxable person, whose turnover in a financial year does not exceed fifty lacs of rupees, to pay, in lieu of the tax payable by him, an amount calculated at such rate, not less than one percent, of the turnover during the year:

Provided that no such permission shall be granted to a taxable person who effects any inter-state supplies of goods and/or services or to a person who is liable to pay tax under sub-section (3) of section 7 of this Act.

- (2) A taxable person to whom the provisions of sub-section (1) apply shall not charge any tax on supplies made by him nor shall he be entitled to any credit of input tax.

- (3) If the proper officer has reasons to believe that a taxable person was not eligible to pay tax under sub-section (1), such person shall, in addition to any tax that may be payable by him under other provisions of this Act, be liable to a penalty equivalent to the amount of tax payable as aforesaid:

Provided that no penalty shall be imposed without affording a reasonable opportunity of being heard to the person proceeded against.

- (4) Notwithstanding anything to the contrary contained in the Act, the Central or a State Government may, subject to such conditions, restrictions and limitations as may be prescribed in this behalf, permit a registered taxable person engaged in providing a specified category of taxable service to pay, in lieu of the tax payable by him, an amount calculated at such rate not exceeding . . . percent, as may be notified by the Central or a State Government on the recommendation of the Council.

#### **9. Taxable person**

- (1) Taxable Person means a person who carries on any business at any place in India/State of \_\_\_\_\_ and who is registered or required to be registered under Schedule III of this Act for payment of tax.
- (2) The Central or a State Government may, by notification, specify the category of persons who may be exempted from obtaining registration under this Act.

(3) The Central Government, a State Government or any local authority shall be regarded as a taxable person in respect of activities or transactions in which they are engaged as public authorities other than the activities or transactions which may be exempted, by notification, by the Central or a State Government, on the recommendation of the Council.

(4) Any person who provides services as an employee to his employer in the course of, or in relation to his employment, or by any other legal ties creating the relationship of employer and employee as regards working conditions, remunerations and employer's liability, shall not be considered as a taxable person.

#### **10. Power to grant exemption from tax**

(1) If the Central or a State Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by notification, exempt generally either absolutely or subject to such conditions as may be specified in the notification, goods and/or services of any specified description from the whole or any part of the tax leviable thereon.

Explanation: Where an exemption under sub-section (1) in respect of any goods and/or services from the whole of the tax leviable thereon has been granted absolutely, the taxable person providing such goods and/or services shall not pay the tax on such goods and/or services.

(2) If the Central or a State Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by special order in each case, exempt from payment of tax, under circumstances of an exceptional nature to be stated in such order, any goods and/or services on which tax is leviable.

(3) The Central or a State Government may, if it considers necessary or expedient so to do for the purpose of clarifying the scope or applicability of any notification issued under sub-section (1) or order issued under sub-section (2), insert an explanation in such notification or order, as the case may be, by notification at any time within one year of issue of the notification under sub-section (1) or order under sub-section (2), and every such explanation shall have effect as if it had always been the part of the first such notification or order, as the case may be.

(4) Every notification issued under sub-section (1) or sub-section (3) and every order issued under sub-section (2) shall

(a) unless otherwise provided, come into force on the date of its issue by the Central or a State Government for publication in the Official Gazette;

(b) also be made available in the official website of the department of the Central or a State Government.

#### **11. Time of supply of goods**

(1) The liability to pay CGST / SGST on the goods shall arise at the time of supply as determined in terms of the provisions of this section.

(2) The time of supply of goods shall be the earliest of the following dates, namely,-

(a) (i) the date on which the goods are removed by the supplier for supply to the buyer, in a case where the goods are required to be removed and

(ii) the date on which the goods are made available to the buyer, in a case where the goods are not required to be removed; or

(b) the date on which the supplier issues the invoice with respect to the supply; or

(c) the date on which the supplier receives the payment with respect to the supply; or

(d) the date on which the buyer shows the receipt of the goods in his books of account.

Explanation 1: The provisions of sub-clause (ii) of clause (a) shall apply in cases where the goods

(a) are physically not capable of being moved; or

(b) are supplied in assembled or installed form; or

(c) are supplied by the supplier to himself or to his agent or his principal.

Explanation 2: For the purposes of sub-**clause (ii) of clause (a)**, the expression 'made available to the buyer' shall mean when the goods are placed at the disposal of the buyer.

Explanation 3: For the purposes of clauses (b) and (c) of sub-section (2), the supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment.

(3) In case of continuous supply of goods, where successive statements of accounts or successive payments are involved, the time of supply shall be the date of expiry of the period to which such successive statements of accounts or successive payments relate. If there are no successive statements of account, the date of issue of the invoice (or any other document) or the date of receipt of payment, whichever is earlier, shall be the time of supply.

(4) For the purposes of sub section (3) above, the Central or a State Government may specify, by notification, the goods that shall be treated as continuous supply of goods;

(5) If the goods (being sent or taken on approval or sale or return or similar terms) are removed before it is known whether a supply will take place, the time of supply shall be at the time when it becomes knownthat the supply has taken place or twelve months from the date of removal, whichever is earlier.

(6) In case it is not possible to determine the time of supply under the provisions of sub-section (2), (3) or (5), the time of supply shall

(a) in a case where a periodical return has to be filed, be the date on which such return is to be filed, or

(b) in any other case,be the date on whichthe CGST/SGST is paid.

## **12. Time of supply of services**

(1) The liability to pay CGST/SGST on services shall arise at the time of supply, as determined in terms of the provisions of this section.

(2) The time of supply of services shall be :-

(a) the date of issue of invoice or the date of receipt of payment, whichever is earlier, if the invoice is issued within the prescribed period; or

(b) the date of completion of the provision of service or the date of receipt of payment, whichever is earlier, if the invoice is not issued within the prescribed period; or

(c) the date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or (b) do not apply.

Explanation: For the purposes of clauses (a) and (b), the supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment.

(3) In case of continuous supply of services, the time of supply shall be -

(a) where the due date of payment is ascertainable from the contract, the date on which the payment is liable to be made by the service receiver, whether or not any invoice has been issued or any payment has been received by the service provider;

(b) where the due date of payment is not ascertainable from the contract, each such time when the service provider receives the payment, or issues an invoice, whichever is earlier;

(c) where the payment is linked to the completion of an event, the time of completion of that event;

(4) For the purposes of sub section (3) above, the Central or a State Government may specify, by notification, the services that shall be treated as continuous supply of services;

(5) In case of supplies in respect of which tax is paid on reverse charge basis, the time of supply shall be the earliest of the following dates, namely-

(a) the date of receipt of services, or

(b) the date on which the payment is made, or

(c) the date of receipt of invoice, or

(d) the date of debit in the books of accounts.

(6) In a case where the supply of services ceases under a contract before the completion of the supply, such services shall be deemed to have been provided at the time when the supply ceases.

(7) Where it is not possible to determine the time of supply of services in the manner specified in sub-sections (2), (3), (5) and (6), the time of supply shall

(a) in a case where a periodical return has to be filed, be the date on which such return is to be filed; or

(b) in any other case, be the date on which the CGST/SGST is paid.

### **13. Change in rate of tax in respect of supply of services**

(1) Notwithstanding anything contained in section 12, the time of supply, in cases where there is a change in the effective rate of tax in respect of services, shall be determined in the following manner, namely:-

(a) in case the taxable service has been provided before the change in effective rate of tax -

(i) where the invoice for the same has been issued and the payment is also received after the change in effective rate of tax, the time of supply shall be the date of receipt of payment or the date of issue of invoice, whichever is earlier; or

(ii) where the invoice has been issued prior to change in effective rate of tax but the payment is received after the change in effective rate of tax, the time of supply shall be the date of issue of invoice; or

(iii) where the payment is received before the change in effective rate of tax, but the invoice for the same has been issued after the change in effective rate of tax, the time of supply shall be the date of receipt of payment;

(b) in case the taxable service has been provided after the change in effective rate of tax -

(i) where the payment is received after the change in effective rate of tax but the invoice has been issued prior to the change in effective rate of tax, the time of supply shall be the date of receipt of payment; or

(ii) where the invoice has been issued and the payment is received before the change in effective rate of tax, the time of supply shall be the date of receipt of payment or date of issue of invoice, whichever is earlier; or

(iii) where the invoice has been issued after the change in effective rate of tax but the payment is received before the change in effective rate of tax, the time of supply shall be the date of issue of invoice.

#### **14. Nature of supply**

(1) Subject to the provisions contained in section 15 of this Act, a supply of goods shall be -

(a) an inter-State supply if the supply involves the movement of goods from one State to another.

Explanation: Where the movement of goods commences and terminates in the same State it shall not be deemed to be a movement of goods from one State to another by reason merely of the fact that in the course of such movement the goods pass through the territory of any other State.

(b) an intra-State supply if the goods remain within the same State.

(2) Subject to the provisions contained in section 16 of this Act, a supply of services shall be -

(a) an inter-State supply if the service provider and the service recipient are located in different States,

(b) an intra-State supply if the service provider and the service recipient are located in the same State.

## **15. Place of supply of goods**

(1) The provisions of this section shall apply to determine the place of supply of goods.

[(2) Where the supply, including a distance supply, involves movement of goods, the place of supply of such goods shall be the location at which the goods are delivered to the receiver.]

Explanation—The expression "distance supply" shall mean a supply of goods which satisfies the following conditions: -

- (a) the goods are supplied to a buyer located in another State,
- (b) the supplier arranges the transport of goods.

(3) Where the supply does not involve movement of goods, the place of supply shall be the location of such goods at the time of the delivery to the receiver.

(4) Where the goods are assembled or installed at site, the place of supply shall be the place of such installation or assembly.

(5) 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.

(6) Where the place of supply of goods cannot be determined in terms of sub-section (2), (3), (4) and (5), the same shall be determined by law made by the Parliament in accordance with the recommendations of the Council.

## **16. Place of supply of services**

(1) The provisions of this section shall apply to determine the place of supply of services.

(2) The place of supply of all services, except those services specified in sub-sections (4), (5), (6), (7), (8), (9), (10), (11), (12) and (13), made to a registered person shall be the location of the service receiver.

(3) The place of supply of all services, except those services specified in sub-sections (4), (5), (6), (7), (8), (9), (10), (11), (12) and (13), made to any person other than a registered person shall be the location of the service provider.

(4) The place of supply of services,-

- (a) in relation to an immovable property, including services provided by architects, interior decorators, surveyors, engineers and other related experts or estate agents, any service provided by way of grant of rights

- to use immovable property or for carrying out or co-ordination of construction work, or
- (b) by way of lodging accommodation by a hotel, inn, guest house, homestay, club or campsite, by whatever name called and including a house boat or any other vessel, or
  - (c) by way of accommodation in any immovable property for organizing any marriage or reception or matters related therewith, official, social, cultural, religious or business function including services provided in relation to such function at such property,

shall be the location at which the immovable property or boat or vessel is located or intended to be located.

Explanation: Where the immovable property or boat or vessel is located in more than one State, the supply of service shall be treated as made in each of the States in proportion to the value for services separately collected or determined, in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other reasonable basis as may be prescribed in this behalf.

(5) The place of supply of restaurant and catering services and services in relation to training, performance appraisal, personal grooming, fitness, beauty treatment, health services including cosmetic and plastic surgery shall be the location where the services are actually performed.

(6) The place of supply of services provided by way of—

- (a) admission to a cultural, artistic, sporting, scientific, educational, or entertainment event or amusement park or any other place, or
- (b) organization of a cultural, artistic, sporting, scientific, educational or entertainment event including supply of service in relation to a conference, fair, exhibition, celebration or similar events, or
- (c) services ancillary to such admission to or organization of any of the above events or services, or
- (d) assigning of sponsorship of any of the above events,

shall be the place where the event is actually held.

Explanation: Where the event is held in more than one State and a consolidated amount is charged for supply of services relating to such event, the place of supply of such services shall be taken as being in the each of the States in proportion to the value of services so provided in each State as ascertained from the terms of the contract or agreement entered into in this regard or, in absence of such contract or agreement, on such other reasonable basis as may be prescribed in this behalf.

(7) The place of supply of services by way of transportation of goods, including by mail or courier to,

- (a) a registered person, shall be the location of such service receiver;

(b) a person other than a registered person, shall be the location at which such goods are handed over for their transportation.

(8) The place of supply of passenger transportation service shall be the place where the passenger embarks on the conveyance for a continuous journey.

Provided that where the right to passage is given for future use and the point of embarkation is not known at the time of issue of right to passage, the place of supply of such service shall be determined in the manner specified in sub-sections (2) or (3), as the case may be.

Explanation: For the purposes of this sub-section, the return journey shall be treated as a separate journey even if the right to passage for onward and return journey is issued at the same time.

(9) The place of supply of services on board a conveyance such as vessel, aircraft, train or motor vehicle, shall be the location of the first scheduled point of departure of that conveyance for the journey.

(10) The place of supply of telecommunication services including data transfer, broadcasting, cable and direct to home television services to any person shall—

- (a) in case of services by way of fixed telecommunication line, leased circuits, internet leased circuit, cable or dish antenna, be the location where the telecommunication line, leased circuit or cable connection or dish antenna is installed for receipt of services;
- (b) in case of mobile connection for telecommunication and internet services provided on post-paid basis, be the location of billing address of the service receiver on record of the service provider;
- (c) in cases where mobile connection for telecommunication and internet service are provided on pre-payment through a voucher or any other means, be the location where such pre-payment is received or such vouchers are sold:

Provided that if such pre-paid service is availed or the recharge is made through internet banking or other electronic mode of payment, the location of the service receiver on record of the service provider shall be the place of supply of such service.

(11) The place of supply of banking and other financial services including stock broking services to any person shall be the location of the service receiver on the records of the service provider:

Provided that if the service is not linked to the account of the receiver, the place of supply shall be location of the service provider.

(12) The place of supply of insurance services shall:

- (a) to a registered person, be the location of the service receiver; and
- (b) to a person other than a registered person, be the location of the service receiver on the records of the service provider.

Provided that for all general insurance services related to an immovable property, the place of supply of services shall be the location of the property.

(13) The place of supply of advertisement services to the Central Government, a State Government, a statutory body or a local authority meant for identifiable States, shall be taken as located in each of such States and the value of such supplies specific to each State shall be in proportion to amount attributable to service provided by way of dissemination in the respective States as may be determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other reasonable basis as may be prescribed in this behalf.

## **17. Value of taxable supply**

(1) The value of a supply of goods and/or services shall be the transaction value, that is the price actually paid or payable for the said supply of goods and/or services where the supplier and recipient of the supply are not related and the price is the sole consideration for the supply.

(2) The transaction value under sub-section(1) shall include:

- (a) any amount that the supplier is liable to pay but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods and/or services;
- (b) the value, apportioned as appropriate, of such goods and/or services as are supplied directly or indirectly by the recipient of the supply free of charge or at reduced cost for use in connection with the supply of goods and/or services being valued, to the extent that such value has not been included in the price actually paid or payable;
- (c) royalties and licence fees related to the supply of goods and/or services being valued that the recipient of supply must pay, either directly or indirectly, as a condition of the said supply, to the extent that such royalties and fees are not included in the price actually paid or payable;
- (d) any taxes, duties, fees and charges levied under any Statute other than the SGST Act or the CGST Act or the IGST Act;
- (e) incidental expenses such as commission, packing, charged by the supplier to the recipient of a supply, including any amount charged for anything done by the supplier in respect of the supply of goods and/or services at the time of, or before delivery of the goods or, as the case may be, provision of the services;
- (f) subsidies provided in any form or manner, linked to the supply;
- (g) any discount or incentive that may be allowed after the supply has been effected.

(3) The transaction value under sub-section (1) shall not include any discount allowed before or at the time of supply provided such discount is allowed in the course of normal trade practice and has been duly recorded in the invoice issued in respect of the supply.

(4) The value of the supply of goods and/or services in the following situations which cannot be valued under sub-section (1), shall be determined in such manner as may be prescribed in the rules.

- (i) the consideration, whether paid or payable, is not money, wholly or partly;
  - (ii) the supplier and the recipient of the supply are related;
  - (iii) there is reason to doubt the truth or accuracy of the transaction value declared by the supplier;
  - (iv) business transactions in the nature of pure agent, money changer, insurer, air travel agent and distributor or selling agent of lottery;
  - (v) such other supplies as may be notified by the Central or a State Government in this behalf.
- (5) Notwithstanding anything to the contrary contained in the Act or in any contract, the value of a supply of goods made by a taxable person to any person other than a taxable person shall be deemed to be the retail sale price less the tax leviable under this Act on such goods, in a case where such price is required to be declared on the package thereof under the provisions of the Legal Metrology Act, 2009 (1 of 2010) or the rules made thereunder or under any other law for the time being in force.

**Explanation 1 —** For the purposes of this sub-section, “**retail sale price**” means the maximum price at which the goods in packaged form may be sold to the ultimate consumer and includes all taxes, local or otherwise, freight, transport charges, commission payable to dealers, and all charges towards advertisement, delivery, packing, forwarding and the like and the price is the sole consideration for such sale:

**Explanation 2 —** For the purposes of this sub-section, -

- (a) where on the package of any goodsmore than one retail sale price is declared, the highest of such retail sale prices shall be deemed to be the retail sale price;
- (b) where the retail sale price, declared on the package of any goods at the time of its supply, is altered to increase the retail sale price, such altered retail sale price shall be deemed to be the retail sale price;
- (c) where different retail sale prices are declared on different packages for the sale of any goods in packaged form in different areas, each such retail sale price shall be the retail sale price for the purposes of valuation of the goods intended to be sold in the area to which the retail sale price relates.



## **CHAPTER IV**

### **INPUT TAX CREDIT**

#### **18. Manner of taking input tax credit and utilization thereof**

(1) Every taxable person shall, subject to such conditions and restrictions as may be prescribed in this behalf, be entitled to take credit of input tax and may deduct the amount of admissible credit in respect of a tax period from the output tax for the same period and pay the remaining amount, if any, to the credit of the appropriate Government within such time and in such manner, as may be prescribed.

**Explanation:** For the purposes of this section, "appropriate Government" means the Central Government in case of the IGST and the CGST, and the State Government in case of the SGST.

(2) Where the goods and/or services are used by the taxable person partly for the purpose of any business and partly for other purposes, the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business.

(3) Where the goods, other than capital goods, or services are used by the taxable person partly for effecting taxable supplies and partly for effecting non-taxable supplies, including exempt supplies but excluding zero-rated supplies, the amount of credit shall be restricted to so much of the input tax as is attributable to the taxable supplies including zero-rated supplies.

(4) The Central or a State Government may, by notification issued in this behalf, prescribe the manner in which the credit referred to in sub-sections (2) and (3) above may be attributed.

(5)(a) 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.

(b) 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.

(c) 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.

(d) No input tax credit on account of CGST shall be utilized towards payment of SGST.

(e) No input tax credit on account of SGST shall be utilized towards payment of CGST.

(6) Where the input tax credit in respect of a tax period exceeds the output tax for the same period, such excess credit may be carried forward for adjustment against the output tax of the subsequent tax period. The amount of input tax credit so carried forward shall be utilised in the order and in the manner specified in sub-section (5):

Provided that where a claim for refund of unadjusted credit is made in terms of sub-section (7), the said amount of unadjusted credit shall not be carried forward.

(7) Subject to the provisions of sub-section (8), any unadjusted input tax credit at the end of any tax period may be refunded in accordance with the provisions of section 22 of this Act:

Provided that no refund of unadjusted input tax credit shall be allowed in cases other than exports or in cases where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on outputs:

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

(8) Notwithstanding anything contained in sub-section (7), where anyrefund is due under the said sub-section to a taxable person who has defaulted in furnishing any return or who is required to pay any tax 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 submitted the return or paid the tax or penalty, as the case may be;
- (b) deduct from the refund due, any tax or penalty which the taxable person is liable to pay but which remains unpaid.

Explanation: For the purposes of this sub-section the expression "specified date" shall mean—

- (a) the last date for filing an appeal under this Act, in a case where no appeal has been filed
- (b) thirty days after the last date for filing an appeal under this Act, in a case where an appeal has been filed.

(9) Notwithstanding anything contained in sub-section (1), input tax credit shall not be available in respect of the following:

(a) motor vehicles, except when they are supplied in the usual course of business or are used for providing the following taxable services—

- (i) transportation of passengers,
- (ii) transportation of goods,
- (iii) imparting training on motor driving skills;

[(b) high speed diesel oil, motor spirit (commonly known as petrol), aviation turbine fuel, petroleum crude oil and aviation gasoline; ][the goods not liable to pay GST ?]

(c) goods or services provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as leave or home travel concession, when such goods and/or services are used primarily for personal use or consumption of any employee;

(d) goods and/or services acquired by the principal in the execution of works contract when such contract results in construction of immovable property, other than plant and machinery;

(e) goods acquired by a principal, the property in which is not transferred (whether as goods or in some other form) to any other person, which are used in the construction of immovable property, other than plant and machinery;

(f) goods and/or services on which tax has been paid under section 8 of the Act; and

(g) goods and/or services used for private or personal consumption, to the extent they are so consumed.

(10) Notwithstanding anything contained in this section, no taxable person shall be entitled to the credit of any input tax in respect of any supply of goods and/or services to him unless

(a) he is in possession of a tax invoice, issued by a supplier registered under this Act or the IGST Act; and

(b) the tax charged in respect of such supply has been paid to the credit of the appropriate Government, either in cash or through utilization of input tax credit admissible in respect of the said supply.

(11) Where there is a change in the constitution of a taxable person on account of sale, merger, demerger, amalgamation, lease or transfer of the business with the specific provision for transfer of liabilities, the said taxable person shall be allowed to transfer the input tax credit that remains unadjusted in its books of accounts to such transferred, sold, merged, demerged, leased or amalgamated business in the manner prescribed.

(12) Where credit has been taken wrongly, the same shall be recovered from the taxable person in the manner as may be prescribed in this behalf.

## **CHAPTER V**

### **REMISSION OF TAX**

#### **19. Remission of tax on supplies found deficient in quantity**

(1) The Central or a State Government may, by rules made under this sub-section, provide for remission of tax on such supplies which are found to be deficient in quantity due to any natural causes.

(2) Any rules made under sub-section (1) may, having regard to the nature of the supply fix the limit or limits of percentage beyond which no such remission shall be allowed.

## **PART – VI**

### **DEMANDS AND REFUNDS**

#### **Sec. 20 Recovery of tax not paid or short paid or erroneously refunded**

A. *Recovery of tax not paid or short paid or erroneously refunded for any reason other than fraud or any wilful misstatement or suppression of facts*

(1) Where any tax has not been paid or short paid or erroneously refunded, for any reason, other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax, the proper officer shall, within three years from the relevant date, serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

(2) Where a notice has been issued for any period under sub-section (1), the proper officer may serve, within one year from the date of service of the said notice, a statement, containing the details of tax not paid or short paid or erroneously refunded for the subsequent period, on the person chargeable with tax. The service of such statement shall be deemed to be service of notice on such person under the aforesaid sub-section (1), subject to the condition that the grounds relied upon for the subsequent period are the same as are mentioned in the earlier notice.

(3) The person chargeable with tax may, before service of notice under sub-section (1) or sub-section (2), pay the amount of tax along with interest payable thereon under section 21 on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment. The proper officer, on receipt of such information, shall not serve any notice under sub-section (1) in respect of the tax so paid or any penalty leviable under the provisions of this Act or the rules made there under.

(4) Where the proper officer is of the opinion that the amount paid under sub-section (3) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable within one year from the date of receipt of information under sub-section (3).

(5) Where any person chargeable with tax under sub-section (1) or under sub-section (2) pays the said tax alongwith interest payable under section 21 within thirty days of issue of show cause notice, no penalty shall be payable and all proceedings in respect of the said tax shall be deemed to be concluded.

(6) The proper officer shall, after considering the representation, if any, made by person chargeable with tax, determine the amount of tax, interest and a penalty not exceeding ten percent of tax or five thousand rupees, whichever is higher, due from such person and issue an order.

(7)The proper officer shall issue the order within one year from the date of issue of notice under sub-section (1) or, as the case may be, sub-section (4) or statement under sub-section (2).

***B. Recovery of tax not paid or short paid or erroneously refunded by reason of fraud or any wilful misstatement or suppression of facts***

(1) Where any tax has not been paid or short paid or erroneously refunded by reason of fraud, or any willful misstatement or suppression of facts to evade tax, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice along with interest payable thereon under section 21 and a penalty equivalent to the tax specified in the notice.

(2) Where a notice has been issued for any period under sub-section (1), the proper officer may serve, within one year from the date of service of the said notice, a statement, containing the details of tax not paid or short paid or erroneously refunded for the subsequent period, on the person chargeable with tax. The service of such statement shall be deemed to be service of notice on such person under the aforesaid sub-section (1), subject to the condition that the grounds relied upon for the subsequent period are the same as are mentioned in the earlier notice.

(3) The person chargeable with tax may, before service of notice under sub-section (1) or sub-section (2), pay the amount of tax along with interest payable under section 21 and a penalty equivalent to fifteen per cent of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment. The proper officer, on receipt of such information, shall not serve any notice under sub-section (1) in respect of the tax so paid or any penalty leviable under the provisions of this Act or the rules made thereunder.

(4) Where the proper officer is of the opinion that the amount paid under sub-section (3) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable within one year from the date of receipt of information under sub-section (3).

(5) Where any person chargeable with tax under sub-section (1) or under sub-section (2) pays the said tax along with interest payable under section 21 and a penalty equivalent to twenty five per cent of such tax within thirty days of communication of the notice, all proceedings in respect of the said tax shall be deemed to be concluded.

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

(7) The proper officer shall issue the order within a period of eighteen months from the date of issue of the notice under sub-section (1) or statement under sub-section (2).

(8) Where any person served with an order issued under sub-section (6) pays the tax along with interest payable thereon under section 21 and a penalty equivalent to fifty

percent of such tax within thirty days of the communication of order, all proceedings in respect of the said tax shall be deemed to be concluded.

**C. General provisions relating to demand of tax**

(1) Where the service of notice is stayed by an order of a Court or Tribunal, the period of such stay shall be excluded in computing the period of one year, three years or five years, as the case may be.

(2) Where any Appellate Authority or Tribunal or Court concludes that the notice issued under sub-section B(1) or B(2) is not sustainable for the reason that the charges of fraud or any wilful mis-statement or suppression of facts to evade tax has not been established against the person to whom the notice was issued, the proper officer shall determine the tax payable by such person for the period of three years, deeming as if the notice were issued under sub-section A(1) or A(2).

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

(4) The adjudicating authority shall, if sufficient cause is shown by the person chargeable with tax, grant time, from time to time, to the said person and adjourn the hearing for reasons to be recorded in writing:

Provided that no such adjournment shall be granted more than three times to a person during the proceeding.

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

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

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

(8) Interest on the tax short paid or not paid shall be payable whether or not specified in the order determining the tax liability.

(9) The officer issuing the order under sub-section A(6) or under sub-section B(6) shall be different from the officer who issued the notice to show cause.

(10) The adjudication proceedings shall be deemed to be concluded if the notice to show cause is not decided within one year as provided for in sub-section A(7) or within eighteen months as provided for in sub-section B(7).

D (1) The provisions of sub-section A, B, C above shall apply, *mutatis mutandis*, to the recovery of interest where interest payable has not been paid or part paid or erroneously refunded.

Explanation: For the purposes of this section, "relevant date" means,—

- (i) in the case of goods and/or services in respect of which tax has not been paid or short-paid:
  - a) the date of filing of return under this Act, in a case where a return has been filed;
  - b) the date on which the return was due to be filed under this Act, in a case where no return has been filed;
  - c) in cases other than (a) and (b), the date on which the tax is required to be paid under this Act or the rules made thereunder;
- (ii) in a case where the tax is provisionally assessed under this Act or the rules made thereunder, the date of adjustment of tax after the final assessment thereof;
- (iii) in a case where any sum relating to tax has erroneously been refunded, the date of such refund.

## **21. Interest on delayed payment of tax**

(1) Every person liable to pay tax in accordance with the provisions of the Act or rules made thereunder, who fails to pay the tax or any part thereof to the account of the Central or a State Government within the period prescribed, shall, on his own, for the period for which the tax or any part thereof remains unpaid, pay interest at such rate as may be notified by the Central or a State Government.

(2) The interest under sub-section (1) shall be calculated from the first day such tax was due to be paid.

## **22. Refund of tax**

(1) Any person claiming refund of any tax and interest, if any, paid on such tax may make an application in that regard to the proper officer of IGST/CGST/SGST before the expiry of two years from the relevant date in such form and in such manner as may be prescribed.

Provided that the limitation of two years shall not apply where such tax or interest has been paid under protest.

(2) 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 as the applicant may furnish to establish that the amount of tax and interest, if any, paid on such tax 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 by him to any other person.

(3) 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.

- (4) The proper officer shall issue the order under sub-section (3) within
- (a) sixty days from the date of receipt of application in case of refund arising from export of goods;
  - (b) ninety days from the date of receipt of application in case of refund arising from export of services;
  - (c) forty five days from the date of receipt of application in case of refund of unadjusted input tax credit under sub-section (7) of section 18;
  - (d) sixty days from the date of receipt of application in case of refund arising on account of a judgement, decree, order or direction of the Appellate Authority or Tribunal or any Court; and
  - (e) ninety days from the date of receipt of application for refund in any other case.

Explanation. The application for the purpose of this sub-section shall mean complete application containing all information as may be prescribed.

- (5) Notwithstanding anything contained in sub-section (3), 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 on goods and/or services exported out of India or on inputs used in the goods and/or services which are exported out of India;
  - (b) refund of unadjusted input tax credit under sub-section (7) of section 18 of the Act;
  - (c) the tax and interest, if any, paid by the applicant, if he had not passed on the incidence of such tax and interest to any other person;
  - (d) the tax or interest borne by such other class of applicants as the Central or a State Government may, by notification, specify.

- (6) Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the Appellate Tribunal or any Court or in any other provision 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 as provided in sub-section (5).

Explanation — For the purposes of this section -

- (A) "**refund**" includes **refund of tax on goods** and/or services exported out of India or on inputs used in the goods and/or services which are exported out of India, or refund of unadjusted input tax credit as provided under sub-section (7) of section 18 of this Act;
- (B) "**relevant date**" means –

- (a) in the case of goods and/or services exported out of India where a refund of tax paid is available in respect of the goods and/or services themselves or, as the case may be, the inputs used in such goods and/or services, the date on which the return relating to such export of goods and/or services is filed;

- (b) in the case of goods returned for being remade, refined, reconditioned, or subjected to any other similar process in any place of business, the date of entry into the place of business for the purposes aforesaid;
- (c) in case where the tax is paid provisionally under this Act or the rules made thereunder, the date of adjustment of tax after the final assessment thereof;
- (d) in case where the tax becomes refundable as a consequence of judgment, decree, order or direction of Appellate Authority, Appellate Tribunal or any Court, the date of communication of such judgment, decree, order or direction;
- (e) in the case of refund of unadjusted input tax credit under sub-section (7) of section 18, the end of the financial year in which such claim for refund arises; and
- (f) in any other case, the date of payment of tax.

### **23. Interest on delayed refunds**

If any tax refundable under section 22 to any applicant is not refunded within three months from the date of receipt of application under sub-section (1) of that section, interest at such rate as may be specified in the notification issued by the Central or a State Government shall be payable in respect of such refund from the date immediately after the expiry of three months from the date of receipt of such application till the date of refund of such tax.

Explanation: Where any order of refund is made by an Appellate Authority, Tribunal or any Court against an order of the proper officer under sub-section (3) of section 22, the order passed by the Appellate Authority, Tribunal or, as the case may be, by the Court shall be deemed to be an order passed under the said sub-section (3) for the purposes of this section.

### **24. Tax collected but not deposited with the Central or a State Government**

(1) Notwithstanding anything to the contrary contained in any order or direction of any Appellate Authority or Tribunal or Court or in any other provision of this Act or the rules made thereunder or any other law, every person who has collected from any other person any amount as representing the tax under this Act, and has not paid the said amount to the Central or a State Government, shall forthwith deposit the said amount to the credit of the Central or a State Government, regardless of whether the supplies in respect of which such amount was collected are taxable or not.

(2) Where any amount is required to be paid to the credit of the Central or a State Government under sub-section (1), and which has not been so paid, the proper officer may serve on the person liable to pay such amount a notice requiring him to show cause why the said amount as specified in the notice, should not be paid by him to the credit of the Central or a State Government.

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

(4) The person referred to in sub-section (1) shall in addition to paying the amount referred to in sub-section (1) or (3), as the case may be, also be liable to pay interest

thereon at the prescribed rate from the date such amount was collected by him to the date such amount is paid by him to the credit of the Central or a State Government.

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

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

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

(8) The person who has ultimately borne the incidence of the amount referred to in sub-section (1) and (3), may apply for the refund of the same and for such refund, the provisions of section 22 shall apply *mutatis mutandis*.

## **25. Recovery of tax**

(1) Where any amount payable by a person to the credit of the Central or a State Government under any of the provisions of this Act or of the rules made thereunder is not paid, the proper officer shall proceed to recover the amount by one or more of the modes mentioned below: -

(a) the proper officer may deduct or may require any other specified officer to deduct the amount so payable from any money owing to such person which may be under the control of the proper officer or such other specified officer.

(b) the proper officer may recover or may require any other specified officer to recover the amount so payable by detaining and selling any goods belonging to such person which are under the control of the proper officer or such other specified officer.

(c)(i) the proper officer may, by a notice in writing, require any other person from whom money is due or may become due to such person or who holds or may subsequently hold money for or on account of such person, to pay to the credit of the Central or a State Government either forthwith upon the money becoming due or being held, or at or within the time specified in the notice not being before the money becomes due or is held, so much of the money as is sufficient to pay the amount due from such person or the whole of the money when it is equal to or less than that amount;

(ii) every person to whom the notice is issued under this section shall be bound to comply with such notice, and in particular, where any such notice is issued to a post office, banking company or an insurer, it shall not be necessary to produce any pass book, deposit receipt, policy or any other document for the purpose of any entry, endorsement or the like being made before payment is made, notwithstanding any rule, practice or requirement to the contrary;

(iii) in case the person to whom a notice under this section has been issued, fails to make the payment in pursuance thereof to the Central or a State Government, he shall be deemed to be a defaulter in respect of the amount specified in the notice and all the consequences of this Act or the rules made thereunder shall follow;

(iv) the officer issuing a notice under sub-clause (i) may, at any time or from time to time, amend or revoke such notice or extend the time for making any payment in pursuance of the notice;

(v) any person making any payment in compliance with a notice issued under sub-clause (i) shall be deemed to have made the payment under the authority of the person in default and such payment being credited to the appropriate Government shall be deemed to constitute a good and sufficient discharge of the liability of such person to the person in default to the extent of the amount specified in the receipt;

(vi) any person discharging any liability to the person in default after service on him of the notice issued under sub-clause (1) shall be personally liable to the Central or a State Government to the extent of the liability discharged or to the extent of the liability of the person in default for tax, interest and penalty, whichever is less.

(vii) where a person on whom a notice is served under sub-clause (1) proves to the satisfaction of the officer issuing the notice that the money demanded or any part thereof was not due to the person in default or that he did not hold any money for or on account of the person in default, at the time the notice was served on him, nor is the money demanded or any part thereof, likely to become due to the said person or be held for or on account of such person, nothing contained in this section shall be deemed to require the person on whom the notice has been served to pay to the credit of the appropriate Government any such money or part thereof, as the case may be.

(d) the proper officer may, on an authorisation by the competent authority and in accordance with the rules made in this behalf, distrain any movable or immovable property belonging to or under the control of such person, and detain the same until the amount payable is paid; and in case, any part of the said amount payable or of the cost of the distress or keeping of the property, remains unpaid for a period of thirty days next after any such distress, may cause the said property to be sold and with the proceeds of such sale, may satisfy the amount payable and the costs including cost of sale remaining unpaid and shall render the surplus amount, if any, to such person;

(e) the proper officer may prepare a certificate signed by him specifying the amount due from such person and send it to the Collector of the district in which such person owns any property or resides or carries on his business and the said Collector, on receipt of such certificate, shall proceed to recover from such person the amount specified thereunder as if it were an arrear of land revenue.

(2) Where the terms of any bond or other instrument executed under this Act or any rules or regulations made thereunder provide that any amount due under such instrument may be recovered in the manner laid down in sub-section (1), the amount may, without prejudice to any other mode of recovery, be recovered in accordance with the provisions of that sub-section.

**PART – VII**  
**REGISTRATION**

**26. Registration**

- (1) Every person who is liable to be registered under Schedule III of this Act shall get himself registered within thirty days from the date on which he became liable to registration in such manner as may be prescribed.
- (2) A person having multiple business verticals in a State may obtain a separate registration for each business vertical in the State, subject to such conditions as may be prescribed.
- (3) A person, though not liable to be registered under Schedule III, may get himself registered voluntarily, and all provisions of this Act, as are applicable to a registered taxable person, shall apply to such person.
- (4) Every person shall have a Permanent Account Number issued under the Income Tax Act, 1961 (43 of 1961) in order to be eligible for grant of registration under sub-section (1), (2) or (3).
- (5) Where a person who is liable to be registered under this Act fails to obtain registration, the proper officer may proceed to register such person in the manner as may be prescribed.
- (6) Any 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 and any other person or class of persons as may be notified by the Board / Commissioner, shall obtain a Unique Identity Number, in the manner prescribed, for the purpose(s) notified, including refund of taxes on the notified supplies received by them.
- (7) The registration shall be granted after due verification in the manner and within such period as may be prescribed.
- (8) A registration shall be deemed to have been granted after the prescribed period, if no deficiency has been communicated to the applicant by the proper officer within that period.
- (9) Notwithstanding anything contained in sub-section (7), any rejection of application for registration under the CGST Act / SGST Act shall be deemed to be a rejection of application for registration under the SGST Act / CGST Act.

**27. Amendment of registration**

- (1) Every registered taxable person shall inform to the proper officer of any changes in the information furnished at the time of registration, or that furnished subsequently, in the manner and within such period as may be prescribed.

(2) The proper officer may, on the basis of information furnished under sub-section (1) or as ascertained by him, and after making such inquiry as he may deem fit, approve amendments in the registration particulars:

Provided that approval of the proper officer shall not be required in respect of amendment of such particulars as may be prescribed.

(3) Any rejection of amendments under the CGST Act/SGST Act shall be deemed to be a rejection of amendments under the SGST Act/CGST Act.

## **28. Cancellation of registration**

(1) The proper officer may, either on his own motion or on an application filed, in the prescribed manner, by the registered taxable person or by his legal heirs, in case of death of such person, cancel the registration from such date, including any anterior date, as he may deem fit, having regard to the circumstances where, -

- (a) the business has been discontinued, transferred fully for any reason including death of the proprietor, amalgamated with other legal entity, demerged or otherwise disposed of; or
- (b) there is any change in the constitution of the business; or
- (c) the taxable person, other than the person registered under sub-section (3) of section 26, is no longer liable to be registered under Schedule III.

(2) The proper officer may, in the manner as may be prescribed, cancel the registration of taxable person from such date, including any anterior date, as he may deem fit, where, -

- (a) the registered taxable person has contravened the provisions of the Act or the rules made thereunder as may be prescribed; or
- (b) the taxable person has not filed the return for a continuous period of six months; or
- (c) any person who has taken voluntary registration under sub-section (3) of section 26 has not commenced business operations within six months from the date of registration.

(3) The proper officer shall not cancel the registration without giving a notice to show cause and without giving the person a reasonable opportunity of being heard.

(4) The cancellation of registration under this section shall not affect the liability of the taxable person to pay tax and other dues under the Act for any period prior to the date of cancellation whether or not such tax and other dues are determined before or after the date of cancellation.

(5) The cancellation of registration under the CGST Act/SGST Act shall be deemed to be a cancellation of registration under the SGST Act/CGST Act.

(6) Every registered taxable person whose registration is cancelled shall pay, in respect of all goods held in stock on the date of cancellation, an amount equal to the input tax credit availed of on such goods or the output tax payable on such goods, whichever is higher, calculated in such manner as may be prescribed:

Provided that in case of capital goods, the taxable person shall pay an amount equal to the input tax credit taken on the said capital goods reduced by the percentage points as may be specified in this behalf.

## **29. Revocation of cancellation of registration**

(1) Subject to such conditions and in such circumstances as may be prescribed, any registered taxable person, whose registration is cancelled by the proper officer on his own motion, may apply to such officer for revocation of cancellation of the registration in the prescribed manner within thirty days from the date of service of the cancellation order.

(2) The proper officer may, by way of an order, to be passed within thirty days, either revoke cancellation of the registration or reject the application for revocation for good and sufficient reasons after providing the applicant an opportunity of being heard.

(3) Revocation of cancellation of registration under the CGST Act / SGST Act shall be deemed to be a revocation of cancellation of registration under the SGST Act / CGST Act.

### **Suggestions in respect of Schedule III of the report of the Sub-Committee-I**

In Schedule III, after item (iii) of paragraph 5, the following items may be added:

- (iv) non-resident taxable persons;
- (v) persons who are required to deduct tax under section 48;
- (vi) persons who supply goods and/or services on behalf of other persons whether as an agent or otherwise ; and
- (vii) such other person or class of persons as may be notified by the Central Government or a State Government on the recommendations of the Council.

**PART - VIII**  
**ACCOUNTS AND RECORDS**

**30. Tax invoice**

A registered taxable person supplying taxable goods and/or services shall issue, at the time of the supply, a tax invoice showing the amount of tax which will form part of the price at which such goods and/or services are supplied and such other particulars as may be prescribed:

Provided that a registered taxable person supplying non-taxable goods and/or services or paying tax under the provisions of section 8 of this Act shall issue, instead of a tax invoice, a bill of supply containing such particulars as may be prescribed.

**31. Credit and debit notes**

(1) Where a tax invoice has been issued for supply of any goods and/or services and the taxable value and/or tax charged in that tax invoice is found to exceed the taxable value and/or tax payable in respect of such supply, the taxable person, who has supplied such goods and/or services, may issue to the recipient a credit note containing such particulars as may be prescribed on or before the thirtieth day of September following the end of the financial year in which such supply was made, or the date of filing of the relevant annual return, whichever is earlier.

(2) Where a tax invoice has been issued for supply of any goods and/or services and the taxable value and/or tax charged in that tax invoice is found to be less than the taxable value and/or tax payable in respect of such supply, the taxable person, who has supplied such goods and/or services, shall issue to the recipient a debit note containing such particulars as may be prescribed on or before the thirtieth day of November following the end of the financial year in which such supply was made, or the date of filing of the relevant annual return, whichever is earlier.

(3) Any registered taxable person who issues or receives a credit or debit note in relation to a supply of goods and/or services shall declare the details of such credit or debit note, as the case may be, in the return for the month during which such credit or debit note has been issued or received or in the return for any subsequent month but not later than September or November, as the case may be, following the end of financial year in which such supply was made, or the date of filing of the relevant annual return, whichever is earlier, and the tax liability shall be adjusted in the manner specified in this Act.

**32. Accounts and other records**

(1) Every registered taxable person shall keep and maintain, at his principal place of business, as mentioned in the certificate of registration, a true and correct account of production or manufacture of goods, of inward or outward supply of goods and/or services, of stock of goods, of input tax credit availed, of output tax payable and paid, and such other particulars as may be prescribed in this behalf:

Provided that where more than one place of business is specified in the certificate of registration, the accounts relating to each place of business shall be kept at such places of business concerned.

(2) The [Commissioner/Chief Commissioner] may notify a class of taxable persons to maintain additional accounts or documents for such purpose as may be specified.

(3) Where the [Commissioner/ Chief Commissioner] considers that any class of taxable persons is not in a position to keep and maintain accounts in accordance with the provisions of this section, he may, for reasons to be recorded in writing, permit such class of taxable persons to maintain accounts in the manner as may be prescribed.

(4) Every registered taxable person whose turnover during a financial year exceeds the prescribed limit shall get his accounts audited by a chartered accountant or a cost accountant and shall submit to the proper officer a copy of the audited statement of accounts, the reconciliation statement under sub-section (2) of section 43 and such other documents in the form and manner as may be prescribed in this behalf.

### **33. Period of retention of accounts**

(1) Every registered taxable person required to keep and maintain books of account or other records under sub-section (1) of section 32 shall retain them until the expiry of sixty months from the date of filing of Annual Return for the year pertaining to such accounts and records:

Provided that a taxable person, who is a party to an appeal [or revision] or any other proceeding before any Appellate Authority or Tribunal or Court, whether filed by him or by the department, shall retain the books of account and other records pertaining to the subject matter of such appeal [or revision] or proceeding for a period of one year after final disposal of such appeal [or revision] or proceeding, or for the period specified under sub-section (1), whichever is later.

**PART - IX****RETURNS****34. Furnishing details of outward supplies**

(1) Every registered taxable person, other than a person paying tax under the provisions of section 8 of this Act, shall furnish, electronically, the details of outward supplies of taxable goods and/or services effected, including outward supplies of goods and/or services taxable under the IGST Act, and credit or debit notes issued in respect of such supplies during a tax period on or before the tenth day of the month succeeding the tax period in the manner and format as may be prescribed:

Provided that the Board / Commissioner may, for valid and sufficient reasons, by notification, extend the time limit for furnishing such details.

(2) The details of outward supplies furnished under sub-section (1) shall be communicated, in the manner prescribed, to the registered taxable persons receiving such supplies within the period prescribed for furnishing the details of inward supplies under sub-section (2) of section 35.

(3) The details of credit or debit notes issued by the supplier and furnished under sub-section (1) shall be communicated, in the manner prescribed, to the corresponding registered taxable person receiving such supplies within the period prescribed for furnishing the details under sub-section (2) of section 35.

(4) Any registered taxable person, who has furnished the details under sub-section (1) for any tax period, shall, upon discovery of any error therein relating to tax paid by him or input tax credit availed of by the recipient but remaining unmatched under section 38, rectify such error in the tax period during which such error is noticed and shall pay the tax and interest, if any, in case there was a short payment of tax on account of such error, in the return to be furnished for such tax period:

Provided that no rectification of error in respect of outward supply or a debit note issued by the supplier shall be allowed after filing of the return under section 36 for the month of November following the end of the financial year to which the supply pertains, or filing of the relevant annual return, whichever is earlier:

Provided further that no rectification of error in respect of a credit note issued by the supplier shall be allowed after filing of the return under section 36 for the month of September following the end of the financial year to which the supply pertains, or filing of the relevant annual return, whichever is earlier.

### **35. Furnishing details of inward supplies**

(1) Every registered taxable person, including a person paying tax under the provisions of section 8 of this Act, shall verify, validate, modify or, if required, delete the outward supplies and credit or debit notes communicated under sub-section (2) or under sub-section (3) of section 34, as the case may be, to prepare details of his inward supplies and credit or debit notes and may include therein, the details of inward supplies and credit or debit notes received by him in respect of such supplies that have not been declared by the supplier under sub-section (1) of section 34.

(2) Every registered taxable person shall furnish, electronically, the details of inward supplies of taxable goods and/or services, including inward supplies of services on which the tax is payable on reverse charge basis under this Act and inward supplies of goods and/or services taxable under the IGST Act, and credit or debit notes received in respect of such supplies during a tax period on or before the fifteenth day of the month succeeding the tax period in the manner and format as may be prescribed:

Provided that the Board/Commissioner may, for valid and sufficient reasons, by notification, extend the time limit for furnishing such details.

(3) Any registered taxable person, who has furnished the details under sub-section (2) for any tax period, shall, upon discovery of any error therein relating to input tax credit availed of by him or tax paid by the supplier but remaining unmatched under section 38, rectify such error in the tax period during which such error is noticed and shall pay the tax and interest, if any, in case there was a short payment of tax on account of such error, in the return to be furnished for such tax period:

Provided that no rectification of error in respect of inward supply or a debit note received by him shall be allowed after filing of the return under section 36 for the month of September following the end of the financial year to which the supply pertains, or filing of the relevant annual return, whichever is earlier:

Provided further that no rectification of error in respect of a credit note received by him shall be allowed after filing of the return under section 36 for the month of November following the end of the financial year to which the supply pertains, or filing of the relevant annual return, whichever is earlier.

### **36. Returns**

(1) Every registered taxable person shall, for every tax period, furnish a return, electronically, of inward and outward supplies of goods and/or services, input tax credit availed, tax payable, tax paid and other particulars as may be prescribed within twenty days after the end of such tax period:

Provided that a registered taxable person paying tax under the provisions of section 8 of this Act shall furnish a return for each quarter, electronically, in such form and in such manner as may be prescribed, within eighteen days after the end of such quarter:

Provided further that a registered taxable person shall not be allowed to furnish return for a tax period if return for any previous tax period has not been furnished by him.

(2) Every taxable person, who is required to furnish a return under sub-section (1), shall pay to the credit of the appropriate Government the tax due as per such return not later than the last date on which he is required to furnish such return.

(3) A return furnished under sub-section (1) by a taxable person without payment of full tax due as per such return shall not be treated as a valid return for allowing input tax credit in respect of supplies made by such person.

(4) Every registered taxable person shall furnish a return for every tax period underin sub-section (1), whether or not any supplies of goods and/or services have been effected during such tax period.

(5) Every person required to deduct tax at source shall furnish a return, electronically, in such form and in such manner as may be prescribed, for the month in which such deductions have been made along with the payment of tax so deducted, within ten days after the end of such month.

(6) If any taxable person after furnishing a return under sub-section (1) discovers any omission or incorrect particulars therein, other than as a result of audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission or incorrect particulars in the return to be filed for the month or quarter, as the case may be,during which such omission or incorrect particulars are noticed, subject to payment of interest, where applicable and as specified in the Act:

Provided 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 Novemberor any earlier month mentioned in section 34 or 35 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.

### **37. Claim of input tax credit and provisional acceptance thereof**

(1) Every taxable person may claim the input tax credit in the return furnished under section 36.

(2) On filing of the return, the claim of input tax credit under sub-section (1) shall be provisionally allowed and credited to the input tax credit ledger of such taxable person.

[Note. States of Karnataka and Tamil Nadu strongly felt that credit of ITC should not be allowed on provisional basis in the event of short payment of tax. However, States of Bihar, Madhya Pradesh, Delhi and Maharashtra felt that credit of ITC should be allowed provisionally even if there was a short payment of tax].

### **38. Matching of input tax credit claimed by the recipient and tax paid by the supplier**

(1) After expiry of the due date for furnishing of return for a tax period, the input tax credit claimed by a taxable person and credited to his input tax credit ledger in respect of each inward supply and/or debit note received by him shall be verified to check if there is any duplication of claims and shall be matched with the corresponding outward supply and/or debit note declared by the supplier in his valid return for the same or any previous tax period.

(2) The input tax credit claimed by a taxable person in respect of goods imported by him shall be matched with the additional duty of customs paid under section 3 of the Customs Tariff Act, 1975 (51 of 1975) on such goods.

(3) Where the input tax credit claimed by a taxable person in his return in respect of inward supply and/or debit note received matches with the tax paid on the corresponding outward supply and/or debit note declared by the supplier in his valid return, or the additional duty of customs paid by him in case of imported goods, the claim shall be deemed to have been finally accepted and such acceptance shall be communicated to the taxable person claiming the input tax credit:

Provided that no claim for input tax credit shall be deemed to have been finally accepted if the goods and/or services are not eligible for such credit under sub-section (9) of section 18.

(4) After the claim for input tax credit has been accepted under sub-section (3), the taxable person making the outward supply shall not be allowed to reduce the amount of tax payable in respect of such supply except where the taxable person issues a credit note for such supply.

(5) In case the input tax credit claimed by a taxable person in respect of a supply is in excess of the tax paid by the supplier for the same supply or the outward supply is not declared by the supplier in his valid returns, the discrepancy shall be notified to both such taxable persons in the manner prescribed.

### **39. Reversal of input tax credit allowed provisionally for a supply**

(1) Where the input tax credit provisionally allowed under sub-section (2) of section 37 is found, upon verification under sub-section (1) of section 38, to be a duplication of claims, the excess credit so claimed shall be reduced in the input tax credit ledger of the taxable person during the month in which the verification is carried out.

(2) Where the taxable person making the outward supply does not rectify the discrepancy communicated under sub-section (5) of section 38 in his valid return for the tax period succeeding the period in which the input tax credit was claimed by the recipient, the input tax credit provisionally allowed earlier shall stand reduced to the extent of discrepancy in the input tax credit ledger of the recipient.

(3) Where input tax credit is reduced under sub-section (1) on account of duplication of claims or under sub-section (2) on account of failure to rectify the discrepancy, the taxable person claiming the input tax credit shall be informed in the manner prescribed.

(4) On being informed, the taxable person shall pay an amount equal to the input tax credit reduced along with applicable interest in the return for the tax period in which the reduction is communicated under sub-section (3).

#### **40. Matching of credit note issued by a supplier and reduction in input tax credit by the recipient**

(1) After expiry of the due date for furnishing of return for a tax period, the reduction of tax liability in respect of outward supplies by a taxable person on account of inclusion of a credit note in the details furnished under sub-section (1) of section 34 shall be verified to check if there is any duplication of claims and matched with the reduction in input tax credit claimed by the recipient of such supplies in his valid return for the same or any previous tax period.

(2) Where the reduction of tax liability in respect of outward supplies by a taxable person matches with the reduction in input tax credit claimed by the recipient, such reduction in the tax liability shall be deemed to have been finally accepted and such acceptance shall be communicated to the supplier.

(3) Where the reduction of tax liability in respect of outward supplies by a taxable person is in excess of the reduction in the input tax credit claimed by the recipient in his valid return or the corresponding credit note is not declared by the recipient under sub-section (1) of section 35, the discrepancy shall be notified to both such taxable persons in the manner prescribed.

#### **41. Reversal of reduction in tax liability**

(1) Where any reduction in output tax liability is found, upon verification under sub-section (1) of section 40, to be on account of duplication of claims, the tax liability of the supplier shall be enhanced to the extent of such duplicate claim during the month in which the verification is carried out.

(2) Where a taxable person, on being notified under sub-section (3) of section 40 in respect of his inward supplies, does not rectify the discrepancy and reduce his input tax credit claim in his valid return, to be furnished within the due date, for the tax period in which the discrepancy was notified, the tax liability of the supplier shall be enhanced to the extent of the discrepancy.

(3) Where the tax liability of the supplier is enhanced under sub-section (1) on account of duplication of claims or under sub-section (2) for failure of the recipient to rectify the discrepancy, the supplier shall be informed in the manner prescribed.

(4) On being informed, the supplier shall pay an amount equal to the tax liability enhanced along with applicable interest in the return for the tax period in which the enhancement is communicated under sub-section (3).

#### **42. Reclaim of input tax credit and reduction in tax liability after its reversal**

(1) A taxable person shall be eligible to reclaim the input tax credit reversed under section 39 only after the concerned supplier has furnished the details of the invoice and/or debit note in his valid return:

Provided that where the concerned supplier has not furnished the details of the invoice and/or debit note in his valid return, the input tax credit so reclaimed shall stand reversed and the taxable person shall be liable to pay the tax and penal interest at such rate as may be specified in the same tax period.

(2) A taxable person shall be eligible to reclaim the reduction in tax liability reversed under section 41 only after the concerned recipient has furnished the details of the credit note in his valid return:

Provided that where the concerned recipient has not furnished the details of the credit note in his valid return, the reduction in tax liability so reclaimed shall stand reversed and the taxable person shall be liable to pay the tax and penal interest at such rate as may be specified in the same tax period.

(3) After successful reclaim under sub-section (1) and (2), the interest paid by the taxable person as per sub-section (4) of section 39 and sub-section (4) of section 41 shall be refunded by crediting to the corresponding head in the cash ledger of the such taxable person:

Provided that the amount of interest to be credited in any case shall not exceed the amount of interest paid by the taxable person.

(4) No reclaim under sub-section (1) and (2) shall be allowed after the due date for filing of the return for the tax period of September following the end of the financial year or the date of filing of relevant annual return, whichever is earlier.

#### **43. Annual return**

(1) Every registered taxable person, other than a casual or non-resident taxable person, shall furnish an annual return for every financial year electronically in such form and in such manner as may be prescribed on or before the thirty first day of December following the end of such financial year.

(2) Every taxable person who is required to get his accounts audited under sub-section (4) of section 32 shall furnish, electronically, the annual return along with the audited copy of the annual accounts and a reconciliation statement, reconciling the value of supplies declared in the returns furnished for the year with the audited annual financial statement, and such other particulars as may be prescribed.

#### **44. Final return**

Every registered taxable person who applies for cancellation of registration shall furnish a final return along with the application for cancellation of registration in such form and in such manner as may be prescribed.

#### **45. Levy of late fee**

Any registered taxable person who fails to furnish the details of outward or inward supplies or return required under this Act by the due date shall be liable to a late fee of rupees one hundred for every day during which such failure continues subject to a maximum of rupees five thousand.

#### **46. Submission of returns through Tax Return Preparers**

- (1) A registered taxable person may, in the manner prescribed, authorise an approved Tax Return Preparer to furnish the details of outward supplies under section 34, the details of inward supplies under section 35 and the return under section 36, 43 or section 44, as the case may be, and such other tasks as are prescribed in the rules.
- (2) The appropriate Government may, by rules, prescribe the manner of approval of Tax Return Preparers, their eligibility conditions, duties and obligations, manner of removal and such other conditions as may be relevant for their functioning as a Tax Return Preparer.
- (3) Notwithstanding anything contained in sub-section (1), the responsibility for correctness of any particulars furnished in the return and other details filed by the Tax Return Preparer shall continue to rest with the registered taxable person on whose behalf such return and details are filed.

## PART-X

### PAYMENT OF TAX

#### **47. Payment of tax, penalty, interest and other amounts**

(1) Every deposit made towards tax, interest, penalty, fee or any other amount by a taxable person by any of the prescribed modes shall be credited to the electronic cash ledger of such person to be maintained in the manner as may be prescribed.

(2) The input tax credit as self-assessed in the return of a taxable person shall be credited to his electronic credit ledger to be maintained in the manner as may be prescribed.

(3) The tax, interest, penalty, fee or any other amount payable under the provisions of the Act or the rules made there under shall be paid by debiting the electronic cash or credit ledger in such manner and subject to such conditions and limitations and within such time as may be prescribed.

(4) After fully utilizing the balance in the electronic [cash and] credit ledgers under this Act, the balance available in the credit ledger under IGST Act may be utilized to pay the tax dues under this Act.

[(4B) Subject to the conditions and limitations specified under sub-section (7) of section 18, the balance in the cash or credit ledger after payment of tax, interest, penalty, fee or any other amount payable under the Act or the Rules made thereunder shall belong to the taxable person. Such balance shall represent the amount not due to the appropriate government and not be construed as a part of the consolidated fund of the State/India.]

(5) All liabilities of a taxable person under this Act shall be recorded and maintained in an electronic register as may be prescribed.

(6) Where the amount available in the electronic cash or the credit ledger falls short of the aggregate of tax, interest, penalty, fee or any other amount due, the said amount shall be liable to be debited in the following order:

- (a) interest liability related to returns of previous tax periods;
- (b) tax liability related to returns of previous tax periods;
- (c) tax liability of the current tax period; and
- (d) any other amount payable under the Act including the demand determined under section 20.

(7) A taxable person, after fully discharging his liability under this Act, may utilize the balance or any part thereof available in his electronic credit ledger under sub-section (2) for discharging his tax dues under the IGST Act in the manner prescribed.

(8) Where input tax credit availed of under the CGST Act is utilised for payment of tax dues under the IGST Act as per sub-section (7) above, the Central Government shall

transfer to the IGST account, in the manner prescribed, an amount equal to the credit so utilised.

**Note. CGST Act**

(8) Where input tax credit availed of under the SGST Act is utilised for payment of tax dues under the IGST Act as per sub-section (7) above, the State Government shall pay to the Central Government, in the manner prescribed, an amount equal to the credit so utilised.

**Note. SGST Act**

(9) On an application filed by a taxable person, the [Commissioner/Chief Commissioner] may, for reasons to be recorded in writing, extend the time for payment or allow payment of any amount due under the Act, other than the amount due as per the liability self-assessed in any return, by such person in monthly installments not exceeding twelve, subject to payment of interest under section 21 with such restrictions and conditions as may be prescribed:

Provided that where there is default in payment of any one instalment on its due date, the whole outstanding balance payable on such date shall become due and payable forthwith and shall, without any further notice being served on the person, be liable for recovery.

**48. Tax deduction at source**

(1) Notwithstanding anything contained to the contrary in this Act, the Central or a State Government may mandate, -

- (a) a department of the Central or State Government, or
- (b) Local authority,
- (c) Governmental agencies, or
- (d) such category of entities as may be notified, by the Central or a State Government on the recommendations of the Council,

[hereinafter referred to in this section as the deductor], to deduct tax at the rate of one percent from the payment made or credited to the supplier [hereinafter referred to in this section as the deductee] of taxable goods and/or services, notified by the Central or a State Government on the recommendations of the Council, where the total value of such supply, under a contract, exceeds rupees ten lakhs.

Explanation – For the purpose of deduction of tax specified above, the value of supply shall be taken as the amount excluding the tax indicated in the invoice.

(2) The amount deducted as tax under this section shall be paid to the credit of the appropriate Government by the deductor within ten days after the end of the month in which such deduction is made, in the manner prescribed.

(3) The deductor shall furnish to the deductee a certificate mentioning therein the contract value, rate of deduction, amount deducted, amount paid to the appropriate Government and such particulars as may be prescribed in this behalf.

(4) If any deductor fails to furnish to the deductee the certificate, after deducting the tax at source, within five days of crediting the amount so deducted to the appropriate Government, the deductor shall be liable to pay, by way of a late fee, a sum of rupees one hundred per day from the specified period until the failure is rectified:

Provided that the amount of fee payable under this sub-section shall not exceed rupees five thousand.

(5) The deductee shall claim credit, in his cash ledger, of the tax deducted and reflected in the return of the deductor filed under sub-section (7), in the manner prescribed.

(6) Every deductor responsible for making deduction of tax under this section shall obtain a registration within the time specified and in the manner prescribed:

Provided that where the deductor is already registered under this Act, no separate registration is required.

(7) Every deductor shall, within the period specified, furnish a return in the form and manner prescribed.

(8) Any deductor who fails to comply with the requirement under sub-section (6) and (7) shall be liable to pay a late fee of rupees one hundred per day from the day on which such requirement arose until the failure is rectified:

Provided that the amount of late fee payable under this sub-section shall not exceed rupees five thousand.

(9) If any deductor fails to pay to the credit of the appropriate Government the amount deducted as tax under sub-section (1), he shall be liable to pay interest in accordance with the provisions of section 21 of the Act, in addition to the amount of tax deducted.

(10) Recovery of the amount in default under this section shall be made in the manner specified in section 20 of this Act.

(11) Refund to the deductor, arising on account of excess or erroneous deduction shall be dealt with in accordance with the provisions of section 22 of this Act.

**PART – XI**

**ASSESSMENT AND AUDIT**

**49. Self-Assessment**

Every registered taxable person shall himself assess the taxes payable under this Act and furnish a return for each tax period as specified under section 36.

**50. Scrutiny of returns**

- (1) The proper officer may scrutinize the return and related particulars furnished by the taxable person to verify the correctness of the return in such manner as may be prescribed.
- (2) The proper officer shall inform the taxable person of the discrepancies noticed, if any, after such scrutiny in such manner as may be prescribed and seek his explanation thereto.
- (3) In case the explanation is found acceptable, the taxable person shall be informed accordingly and no further action shall be taken in this regard.
- (4) In case no explanation is furnished or the explanation furnished is not found satisfactory or the taxable person fails to take the corrective measure after accepting the discrepancies, the proper officer may initiate appropriate action including those under section 54, 55 or section 68, or proceed to determine the tax and other dues under sub-section (6) of section 20A or under sub-section (6) of section 20B of this Act.

**51. Assessment of non-filers of returns**

- (1) Where a registered taxable person fails to furnish his periodical or final return even after issue of a notice to do so, the proper officer may proceed to assess the tax liability of the said person to the best of his judgement taking into account all the relevant material which is available or which he has gathered and issue an assessment order.
- (2) Where the taxable person furnishes a valid return within thirty days of the service of the assessment order under sub-section (1), the proper officer may withdraw the said assessment order.

**52. Assessment of unregistered persons**

Where a taxable person fails to obtain registration even though liable to do so, the proper officer may proceed to assess the tax liability of such taxable person to the best of his judgement for the relevant tax periods and issue an assessment order:

Provided that no such assessment order shall be passed without giving a notice to show cause and without giving the person a reasonable opportunity of being heard.

**53. Summary assessment in certain special cases**

The proper officer may, on any evidence showing a tax liability of a person coming to his notice, with previous permission of [Additional/Joint Commissioner], proceed to assess the tax liability of such person to protect the interest of revenue and issue an assessment order, if he has sufficient grounds to believe that any delay in doing so will adversely affect the interest of revenue:

Provided that no such assessment order shall be issued without complying with the principles of natural justice:

Provided further that where the taxable person to whom the liability pertains is not ascertainable and such liability pertains to supply of goods, the person in charge of such goods shall be deemed to be the taxable person liable to be assessed and pay tax and amount dueunder this section.

#### **54. Audit**

(1) The [Commissioner of CGST/Commissioner of SGST] or any officer authorised by him, by way of a general or a specific order, may undertake audit of the business transactions of any taxable person for such period, at such frequency and in such manner as may be prescribed.

(2) The tax authoritiesreferred to in sub-section (1) may conduct audit atthe place of business of the taxable person and/or in their office.

(3) The taxable person shall be informed, by way of a notice, sufficiently in advance, not less than fifteen working days, prior to the conduct of audit in the manner prescribed.

(4) The audit under sub-section (1) shall be carried out in a transparent manner and completed within a period of three months from the date of commencement of audit:

Provided that where the [Commissioner] is satisfied that audit in respect of such taxable person cannot be completed within three months from the date of commencement of audit, he may, upon giving the taxable person an opportunity of being heard and for the reasons to be recorded in writing, extend the period for another three months.

Explanation. For the purposes of this sub-section, '**commencement of audit**' shall mean the date on which the records and other documents, called for by the tax authorities, are made available by the taxable person or the actual institution of audit at the place of business, whichever is earlier.

(5) During the course of audit, the authorised officer may require the taxable person,

- (i) to afford him the necessary facility to verify the books of account or other documents as he may require and which may be available at such place,
- (ii) to furnish such information as he may require and render assistance for timely completion of the audit.

(6) On conclusion of audit, the proper officer shall without delay notify the taxable person, whose records are audited, of the findings, the taxable **person's rights and obligations** and the reasons for the findings.

(7) Where the audit conducted under sub-section (1) results in detection of tax not paid or short paid or erroneously refunded, or input tax credit erroneously availed, the proper officer may initiate action under section 20 of the Act.

## **55. Special audit**

(1) If at any stage of scrutiny, enquiry, investigation or any other proceedings before him, any officer not below the rank of [Deputy/Assistant Commissioner] having regard to the nature and complexity of the case and the interest of revenue, is of the opinion that the value has not been correctly declared or the credit availed is not within the normal limits, he may, with the prior approval of the [Commissioner], direct such taxable person by notice in writing to get his records including books of account examined and audited by a chartered accountant or a cost accountant as may be nominated by the [Commissioner] in this behalf.

(2) The chartered accountant or cost accountant so nominated shall, within the period of ninety days, submit a report of such audit duly signed and certified by him to the said [Deputy/Assistant Commissioner] mentioning therein such other particulars as may be specified:

Provided that the proper officer may, on an application made to him in this behalf by the taxable person or the chartered accountant or cost accountant for any material and sufficient reason, extend the said period by another ninety days.

(3) The provision of sub-section (1) shall have effect notwithstanding that the accounts of the taxable person have been audited under any other provision of this Act or any other law for the time being in force or otherwise.

(4) The taxable person shall be given an opportunity of being heard in respect of any material gathered on the basis of audit under sub-section (1) which is proposed to be used in any proceedings under this Act or rules made there under.

(5) The expenses of, and incidental to, the examination and audit of records under sub-section (1), including the remuneration of such chartered accountant or cost accountant, shall be determined and paid by the [Commissioner] and that such determination shall be final.

## **CHAPTER – XII**

### **OFFENCES AND PENALTIES**

#### **56. Offences and penalties**

- (1) Where a taxable person who -
- (i) supplies any goods and/or services without issue of any invoice or issues an incorrect or false invoice with regard to any such supply;
- (ii) issues any invoice or bill without supply of goods and/or services in violation of the provisions of this Act, or the rules made thereunder;
- (iii) collects any amount as tax but fails to pay the same to the credit of the appropriate Government beyond a period of three months from the date on which such payment becomes due;
- (iv) collects any tax in contravention of the provisions of this Act but fails to pay the same to the credit of the appropriate Government beyond a period of three months from the date on which such payment becomes due;
- (v) takes and/or utilizes input tax credit without actual receipt of goods and/or services either fully or partially, in violation of the provisions of this Act, or the rules made thereunder;
- (vi) obtains fraudulently refundunder this Act;
- (vii) falsifies or substitutes financial records or produces fake accounts and/or documents or furnishes any false information or return with an intention to evade payment of tax due under this Act;
- (viii) is liable to be registered under this Act but fails to obtain registration;
- (ix) furnishes any false information with regard to particulars specified as mandatory, either at the time of applying for registration, or subsequently;
- (x) obstructs or prevents any officer in discharge of his duties under the Act;
- (xi) transports any taxable goods without the cover of documents as may be specified in this behalf;
- (xii) suppresses his turnover leading to evasion of taxunder this Act;
- (xiii) fails to keep, maintain or retain books of account and other documents in accordance with the provisions of this Act or the rules made thereunder;
- (xiv) fails to furnish information and/or documents called for by a CGST/SGST officer in accordance with the provisions of this Act or rules made thereunder or furnishes false information and/or documents during any proceedings under this Act;
- (xv) supplies, transports or stores any goods which he has reason to believe are liable to confiscation under this Act;

- (xvi) issues any invoice or document by using the identification number of another taxable person;
- (xvii) tampers with, or destroys any material evidence;
- (xviii) disposes off or tampers with any goods that have been detained, seized, or attached under this Act;

shall be liable to a penalty of rupees ten thousand or an amount equivalent to the tax evaded or input tax credit availed of or passed on irregularly, or the refund claimed fraudulently, as the case may be, whichever is higher.

(2) Any registered taxable person who repeatedly makes short payment of tax shall be liable to a penalty of rupees ten thousand or ten percent of the tax short paid, whichever is higher;

**Explanation.-** For the purposes of this sub-section, a taxable person shall be deemed to have made short payments 'repeatedly', if there were short payments in three returns during any six consecutive tax periods;

- (3) Any person who
  - (a) aids or abets any of the offences specified in clauses (i) to (xviii) of sub-section (1) above;
  - (b) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with any goods which he knows or has reason to believe are liable to confiscation under this Act or the rules made thereunder;
  - (c) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reason to believe are in contravention of any provisions of this Act or the rules made thereunder;
  - (d) fails to appear before the CGST/SGST officer, when issued with a summon for appearance to give evidence or produce a document in an enquiry;
  - (e) fails to issue invoice in accordance with the provisions of this Act or rules made thereunder, or fails to account for an invoice in his books of account;

shall be liable to a penalty which may extend to rupees twenty five thousand.

## **57. General penalty**

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

## **58. General disciplines related to penalty**

(1) No tax authority shall impose substantial penalties for minor breaches of tax regulations or procedural requirements. In particular, no penalty in respect of any omission or mistake in documentation which is easily rectifiable and obviously made without fraudulent intent or gross negligence shall be greater than necessary to serve merely as a warning.

Explanation. For the purpose of this sub-section –

(a) a breach shall be considered a 'minor breach' if the amount of tax involved is less than rupees five thousand.

(b) an omission or mistake in documentation shall be considered to be easily rectifiable if the same is an error apparent on record.

(2) The penalty imposed shall depend on the facts and circumstances of the case and shall be commensurate with the degree and severity of the breach.

(3) No penalty shall be imposed on any taxable person without giving a notice to show cause and without giving the person a reasonable opportunity of being heard.

(4) The tax authority shall ensure that when a penalty is imposed in an order for a breach of the laws, regulations or procedural requirements, an explanation is provided therein to the persons upon whom the penalty is imposed, specifying the nature of the breach and the applicable law, regulation or procedure under which the amount or range of penalty for the breach has been prescribed.

(5) When a person voluntarily discloses to a tax authority the circumstances of a breach of the tax law, regulation or procedural requirement prior to the discovery of the breach by the tax authority, the tax authority may consider this fact as a potential mitigating factor when establishing a penalty for that person.

(6) The provisions of this section will not apply in such cases where the penalty prescribed under the Act is either a fixed sum or expressed as a fixed percentage.

## **59. Detention of goods and levy of penalty**

(1) Where any person –

(i) transports any goods or stores such goods while they are in transit in violation of the provisions of this Act; or

(ii) stores or keeps in stock goods or supplies goods which have not been accounted for in the books or records maintained by him in the manner required by this Act;

all such goods shall be liable to detention, in the manner prescribed, by the proper officer and shall be released only after payment of applicable tax, interest and penalty leviable thereon or upon furnishing a security, in such form as may be prescribed, equivalent to the amount of the applicable tax, interest and penalty.

(2) No tax, interest or penalty shall be determined under sub-section (1) without giving a notice to show cause and without giving the person a reasonable opportunity of being heard.

## **60. Confiscation of goods and levy of penalty**

(1) If any person –

- (i) supplies any goods in contravention of any of the provisions of this Act or rules made thereunder leading to evasion of tax; or
- (ii) does not account for any goods on which he is liable to pay tax under this Act; or
- (iii) supplies any goods liable to tax under this Act without having applied for the registration; or
- (iv) contravenes any of the provisions of this Act or rules made thereunder with intent to evade payment of tax,

then, all such goods shall be liable to confiscation and the person shall be liable to penalty under section 56 of the Act.

(2) Whenever confiscation of any goods is authorized by this Act, the CGST/SGST officer adjudging it shall give to the owner of the goods or, where such owner is not known, the person from whose possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit:

Provided that such fine shall not exceed the market price of the goods confiscated, less the tax chargeable thereon.

(3) Where any fine in lieu of confiscation of goods is imposed under sub-section (2), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any tax and charges payable in respect of such goods.

(4) No order of confiscation of goods and/or imposition of penalty shall be issued without giving a notice to show cause and without giving the person a reasonable opportunity of being heard.

(5) Where any goods are confiscated under this Act, the title of such goods shall thereupon vest in the appropriate Government.

(6) The proper officer adjudging confiscation shall take and hold possession of the things confiscated and every Officer of Police, on the requisition of such proper officer, shall assist him in taking and holding such possession.

## **61. Confiscation of conveyances**

Any conveyance used as a means of transport for carriage of taxable goods without the cover of documents as may be prescribed in this behalf shall be liable to confiscation, unless the owner of the conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance:

Provided that where any such conveyance is used for the carriage of the goods or passengers for hire, the owner of the conveyance shall be given an option to pay in lieu of the confiscation of the conveyance a fine equal to the tax payable on the goods being transported thereon.

## **62. Confiscation or penalty not to interfere with other punishments**

No confiscation made or penalty imposed under the provisions of this Act or of any rule made thereunder shall prevent the infliction of any other punishment to which the person affected thereby is liable under the provisions of this Act or under any other law.

## **63. Prosecution**

- (1) Whoever commits any of the following offences, namely—
- (a) supplies any goods and/or services without issue of any invoice or issues an incorrect or false invoice with regard to any such supply;
- (b) issues any invoice or bill without supply of goods and/or services in violation of the provisions of this Act, or the rules made thereunder;
- (c) collects any amount as tax but fails to pay the same to the credit of the appropriate Government beyond a period of three months from the date on which such payment becomes due;
- (d) collects any tax in contravention of the provisions of this Act but fails to pay the same to the credit of the appropriate Government beyond a period of three months from the date on which such payment becomes due;
- (e) takes and/or utilizes input tax credit without actual receipt of goods and/or services either fully or partially, in violation of the provisions of this Act, or the rules made thereunder;
- (f) fraudulently obtains refund of any CGST/SGST;
- (g) falsifies or substitutes financial records or produces fake accounts and/or documents or furnishes any false information with an intention to evade payment of tax due under this Act;
- (h) who obstructs or prevents any officer in the discharge of his duties under this Act;
- (i) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with, any goods which he knows or has reason to believe are liable to confiscation under this Act or the rules made thereunder;
- (j) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reason to believe are in contravention of any provisions of this Act or the rules made thereunder;
- (k) fails to supply any information which he is required to supply under this Act or the rules made thereunder or (unless with a reasonable belief, the burden of proving which

shall be upon him, that the information supplied by him is true) supplies false information; or

(I) attempts to commit, or abets the commission of, any of the offences mentioned in clauses (a) to (k) of this section;

shall be punishable –

(i) in cases where the amount of tax evaded exceeds two hundred and fifty lakh rupees, with imprisonment for a term which may extend to five years and with fine;

(ii) in cases where the amount of tax evaded exceeds fifty lakh rupees but does not exceed two hundred and fifty lakh rupees, with imprisonment for a term which may extend to three years and with fine;

(iii) in the case of any other offence where the amount of tax evaded exceeds twenty five lakh rupees but does not exceed fifty lakh rupees, with imprisonment for a term which may extend to one year and with fine.

(2) If any person convicted of an offence under this section is again convicted of an offence under this section, then, he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to five years and with fine:

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court, the imprisonment referred to in sub-sections (1) and (2) shall not be for a term of less than six months.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), all offences under this Act, except the offences referred to in sub-section (4) shall be non-cognizable and bailable.

(4) The offences relating to taxable goods and/or services where the amount of tax evaded exceeds two hundred and fifty lakh rupees shall be cognizable and non-bailable.

(5) A person shall not be prosecuted for any offence under this section except with the previous sanction of the designated authority.

#### **64. Cognizance of offences**

No Court shall take cognizance of any offence punishable except with the previous sanction of the [competent authority], and no Court inferior to that of a Magistrate of the First Class, shall try any such offence.

#### **65. Presumption of culpable mental state**

(1) In any prosecution for an offence under this Act which requires a culpable mental state on the part of the accused, the Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation. — In this section, “culpable mental state” includes intention, motive, knowledge of a fact, and belief in, or reason to believe, a fact.

(2) For the purposes of this section, a fact is said to be proved only when the Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

## **66. Relevancy of statements under certain circumstances**

(1) A statement made and signed by a person before any gazetted officer of CGST/IGST/SGST during the course of any inquiry or proceeding under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains,-

(a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable; or

(b) when the person who made the statement is examined as a witness in the case before the Court and the Court is of the opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interests of justice.

(2) The provisions of sub-section (1) shall, so far as may be, apply in relation to any proceeding under this Act, other than a proceeding before a Court, as they apply in relation to a proceeding before a Court.

## **67. Offences by Companies and certain other persons**

(1) Where an offence committed by a person under this Act is a company, every person who, at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any negligence on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation. - For the purposes of this section, -

(a) "**company**" means a body corporate and includes a firm or other association of individuals; and

(b) "**director**", in relation to a firm, means a partner in the firm.

(3) Where an offence under this Act has been committed by a taxable person being a partnership firm or a Limited Liability Partnership or a Hindu Undivided Family or a trust, the partner or karta or managing trustee, as the case may be, shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly and the provisions of sub-section (2) shall apply mutatis mutandis to such persons.

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

## **PART - XIII**

### **INSPECTION, SEARCH, SEIZURE AND ARREST**

#### **68. Power of inspection, search and seizure**

(1) Where the CGST/SGST officer, not below the rank of Joint Commissioner, has reasons to believe that -

(a) a taxable person has suppressed any transaction relating to supply of goods and/or services or the stock of goods in hand, or has claimed input tax credit in excess of his entitlement under the Act or has indulged in contravention of any of the provisions of this Act or rules made thereunder to evade tax under this Act; or

(b) any person engaged in the business of transporting goods or an owner or operator of a warehouse or a godown or any other place is keeping goods which have escaped payment of tax or has kept his accounts or goods in such a manner as is likely to cause evasion of tax payable under this Act,

he may authorize in writing any other officer of CGST/SGST to inspect any places of business of the taxable person or the persons engaged in the business of transporting goods or the owner or the operator of warehouse or godown or any other place.

(2) Where the CGST/SGST officer, not below the rank of Joint Commissioner, either pursuant to an inspection carried out under sub-section (1) or otherwise, has reasons to believe that any goods liable to confiscation or any documents or books or things, which in his opinion shall be useful for or relevant to any proceedings under this Act, are secreted in any place, he may authorize in writing any other CGST/SGST officer to search and seize or may himself search and seize such goods, documents or books or things:

Provided that the goods, documents or books or things so seized shall be retained by such officer only for so long as may be necessary for their examination and for any inquiry or proceeding under this Act.

(3) The officer authorised under sub-section (2) shall have the power to seal or break open the door of any premises or to break open any almirah, box, receptacle in which any goods, accounts, registers or documents of the person are suspected to be concealed, where access to such premises, almirah, box or receptacle is denied.

(4) The person from whose custody any documents are seized under sub-section (2) shall be entitled to make copies thereof or take extracts therefrom in the presence of an officer of CGST/SGST.

(5) Where any goods are seized under sub-section (2) and no notice in respect thereof is given within sixty days of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized:

Provided that the aforesaid period of sixty days may, on sufficient cause being shown, be extended by the [competent authority] for a further period not exceeding sixty days at a time subject to a maximum of six months.

(6) The Central or a State Government may, having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations, by notification, specify the goods or class of goods which shall, as soon as may be after its seizure under sub-section (1), be disposed of by the proper officer in such manner as the Central or a State Government may determine.

(7) Where any goods, being goods specified under sub-section (5), have been seized by a proper officer under sub-section (2), he shall prepare an inventory of such goods in the manner as may be prescribed in this behalf.

(8) The provisions of the Code of Criminal Procedure, 1973 (Act 2 of 1974), relating to search and seizure, shall, so far as may be, apply to search and seizure under this section subject to the modification that sub-section (5) of section 165 of the said Code **shall have effect as if for the word "Magistrate", wherever it occurs, the words [Principal Commissioner/Commissioner of CGST/Commissioner of SGST]** were substituted.

## **69. Power to arrest**

(1) If the [Commissioner of CGST or the Commissioner of SGST] has reason to believe that any person has committed an offence punishable under clause (i) or (ii) of sub-section (1) or under sub-section (2) of section 63, he may, by order, authorise any CGST/SGST officer to arrest such person.

(2) Where a person is arrested for any cognizable offence, every officer authorised to arrest a person shall inform such person of the grounds of arrest and produce him before a magistrate within twenty four hours.

(3) In the case of a non-cognizable and bailable offence, the Deputy Commissioner or the Assistant Commissioner of CGST/SGST, as the case may be, shall, for the purpose of releasing an arrested person on bail or otherwise, have the same powers and be subject to the same provisions as an officer-in-charge of a police station has, and is subject to, under section 436 of the Code of Criminal Procedure, 1973.

(4) All arrests made under this section shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973 relating to arrest.

## **70. Power to summon persons to give evidence and produce documents in inquiries under this Act**

(1) Any [CGST/SGST officer], duly authorised by the competent authority in this behalf, shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry which such officer is making for any of the purposes of this Act.

(2) A summons to produce documents or other things may be for the production of certain specified documents or things or for the production of all documents or things of a certain description in the possession or under the control of the person summoned.

(3) All persons so summoned shall be bound to attend, either in person or by an authorised agent, as such officer may direct; and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements and produce such documents and other things as may be required:

Provided that the exemptions under Sections 132 and 133 of the Code of Civil Procedure, 1908 (5 of 1908) shall be applicable to requisitions for attendance under this section.

(4) Every such inquiry as aforesaid shall be deemed to be a "judicial proceeding" within the meaning of section 193 and section 228 of the Indian Penal Code, 1860 (45 of 1860).

## **71. Access to business premises**

(1) Any CGST/SGST officer authorized by the [Additional/Joint Commissioner of CGST or SGST] shall have access to any business premises to inspect books of account, documents, computers, computer programs, computer software (whether installed in a computer or otherwise) and such other things as he may require and which may be available at such premises, for the purposes of carrying out any audit, scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.

(2) Every person in charge of premises referred to in sub-section (1) shall, on demand, make available to the officer authorized under sub-section (1) or the audit party deputed by the Additional/Joint Commissioner of CGST or SGST or the Comptroller and Auditor General of India or a cost accountant or chartered accountant nominated under section 55 of the Act, as the case may be,-

- (i) the records as prepared or maintained by the registered taxable person and declared to the CGST/SGST officer as may be prescribed;
- (ii) trial balance or its equivalent;
- (iii) Statements of annual financial accounts, duly audited, wherever required;
- (iv) cost audit report, if any, under section 148 of the Companies Act, 2013 (18 of 2013);
- (v) the income-tax audit report, if any, under section 44AB of the Income-tax Act, 1961 (43 of 1961); and
- (v) any other relevant record,

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

## **72. Officers required to assist CGST/SGST officers**

(1) All officers of Police, Customs and those of State/Central Government engaged in collection of goods and services tax and all officers of State/Central Government engaged in the collection of land revenue, and all village officers are hereby empowered and required to assist the CGST/SGST Officers in the execution of this Act.

(2) The [Board/Commissioner of SGST] may, by notification, empower and require any other class of officers to assist the CGST/SGST Officers in the execution of this Act.

**PART – XIV**  
**MISCELLANEOUS**

**73. GST compliance rating**

- (1) Every taxable person shall be assigned a GST compliance rating score based on his record of compliance with the provisions of this Act.
- (2) The GST compliance rating score shall be determined on the basis of parameters to be prescribed in this behalf.
- (3) The GST compliance rating score shall be updated at periodic intervals and intimated to the taxable person and also placed in the public domain in the manner prescribed.

**74. Inspection of goods in movement**

- (1) With a view to improving tax compliance, the Central or a State Government may, by notification, require the person in charge of a goods vehicle or a boat, ship or similar vessel to carry with him such documents and in respect of such goods as may be notified in this behalf.
- (2) Where any vehicle referred to in sub-section (1) is intercepted by the proper officer at any place, he may require the person in charge of the said vehicle to produce such documents for verification and the said person shall be liable to produce the documents.

**75. Obligation to furnish information return**

- (1) Any person, being—
  - (a) a registered taxable person; or
  - (b) a local authority or other public body or association; or
  - (c) any authority of the State Government responsible for the collection of value added tax or sales tax; or
  - (d) an income tax authority appointed under the provisions of the Income-tax Act, 1961; or
  - (e) a banking company within the meaning of clause (a) of section 45A of the Reserve Bank of India Act, 1934; or
  - (f) a State Electricity Board; or an electricity distribution or transmission licensee under the Electricity Act, 2003, or any other entity entrusted, as the case may be, with such functions by the Central Government or the State Government; or
  - (g) the Registrar or Sub-Registrar appointed under section 6 of the Registration Act, 1908; or
  - (h) a Registrar within the meaning of the Companies Act, 2013; or
  - (i) the registering authority empowered to register motor vehicles under Chapter IV of the Motor Vehicles Act, 1988; or
  - (j) the Collector referred to in clause (c) of section 3 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013; or

(k) the recognised stock exchange referred to in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956; or  
 (l) a depository referred to in clause (e) of sub-section (1) of section 2 of the Depositories Act, 1996; or  
 (m) an officer of the Reserve Bank of India, constituted under section 3 of the Reserve Bank of India Act, 1934,  
 who is responsible for maintaining record of registration or statement of accounts or any periodic return or document containing details of payment of tax and other details of transaction of goods or services or transactions related to a bank account or consumption of electricity or transaction of purchase, sale or exchange of goods or property or right or interest in a property, under any law for the time being in force, shall furnish an information return of the same in respect of such periods, within such time, in such form (including electronic form) and manner, to such authority or agency as may be prescribed.

(2) Where the prescribed authority considers that the information submitted in the information return is defective, he may intimate the defect to the person who has furnished such information return and give him an opportunity of rectifying the defect within a period of thirty days from the date of such intimation or within such further period which, on an application made in this behalf, the prescribed authority may allow and if the defect is not rectified within the said period of thirty days or, as the case may be, the further period so allowed, then, notwithstanding anything contained in any other provision of this Act, such information return shall be treated as not submitted and the provisions of this Act shall apply.

(3) Where a person who is required to furnish information return has not furnished the same within the time specified in sub-section (1) or sub-section (2), the prescribed authority may serve upon him a notice requiring furnishing of such information return within a period not exceeding ninety days from the date of service of the notice and such person shall furnish the information return.

## **76. Penalty for failure to furnish information return**

If a person who is required to furnish an information return under section 75 fails to do so within the period specified in the notice issued under sub-section (3) thereof, the prescribed authority may direct that such person shall pay, by way of penalty, a sum of one hundred rupees for each day of the period during which the failure to furnish such return continues.

## **77. Presumption that the incidence of tax has been passed on to the buyer**

Every person who has paid the tax on goods and/or services under this Act shall, unless the contrary is proved by him, be deemed to have passed on the full incidence of such tax to the buyer of such goods and/or services.

## **78. Consumer Welfare Fund**

- (1) There shall be established by the Central or a State Government a fund, to be called the Consumer Welfare Fund.
- (2) There shall be credited to the Fund, in such manner as may be prescribed, -
- the amount of tax referred to in sub-section (3) of section 22; and
  - any income from investment of the amount credited to the Fund and any other monies received by the Central or a State Government for the purposes of this Fund.

### **79. Powers of CGST/SGST officers**

A CGST/SGST officer may exercise the powers and discharge the duties conferred or imposed under this Act on any other CGST/SGST officer who is subordinate to him.

### **80. Test purchase of goods and/or services**

The [Commissioner] of CGST/SGST or an officer authorized by him may cause purchase of any goods and/or services by any person authorized by him from the business premises of any taxable person, to check issue of tax invoices or bills of supply by such taxable person, and on return of goods so purchased by such officer, such taxable person or any person in charge of the business premises shall refund the amount paid towards the goods after cancelling any tax invoice or bill of supply issued.

### **81. Drawal of samples**

The [Commissioner] of CGST/SGST or an officer authorized by him may take samples of goods from the possession of any taxable persons, where he considers it necessary, and provide a receipt for any samples so taken.

## **PART – XV**

### **APPEALS AND REVIEW**

### **82. First Appeals to First Appellate Authority—**

- (1) Any person aggrieved by any decision or order passed under this Act by an adjudicating authority<sup>1,2</sup> may appeal to the First Appellate Authority.
- (2) The Commissioner of GST may, of his own motion, call for and examine the record of any proceeding in which an adjudicating authority has passed any decision or order under this Act, for the purpose of satisfying himself as to the legality or propriety of the said decision or order and may, by order, direct any GST Officer subordinate to him to apply to the first appellate authority for the determination of such points arising out of the said decision or order as may be specified by the Commissioner of

<sup>1</sup>To be defined by sub-committee I in the definitions section

<sup>2</sup> As informed by CCT Gujarat (on 5<sup>th</sup> August), after the last full committee meeting on 22<sup>nd</sup> – 23<sup>rd</sup> July, some states (Karnataka, Kerala etc.) want to retain the reassessment / revision model. Subject to a final decision on this issue, the words adjudicating authority in this provision would be defined appropriately.

GST in his order.<sup>3</sup>

(3) Where, in pursuance of an order under sub-section (2), the authorised officer makes an application to the first appellate authority, such application shall be dealt with by the first appellate authority as if it were an appeal made against the decision or order of the GST Officer and the provisions of this Act relating to appeals shall, so far as may be, apply to such application.

(4) Every appeal under this section shall be filed within three months from the date on which the decision or order sought to be appealed against is communicated to the Commissioner of GST, or, as the case may be, the other party preferring the appeal.

PROVIDED that the first appellate authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months, allow it to be presented within a further period of one month.

(5) Every appeal under this section shall be in the prescribed form and shall be verified in the prescribed manner.

(6) No appeal shall be filed under sub-section (1) unless the appellant has deposited an amount of ten percent of the amount in dispute in pursuance of the decision or order sought to be appealed against.

Explanation: For the purposes of this sub-section, the expression "amount in dispute" shall include –

- i. amount determined under section ----- (*the section relating to demands*)
- ii. amount of erroneous or irregular input tax credit
- iii. amount payable under rule-----of the GST Credit Rules 201...
- iv. amount of penalty imposed

PROVIDED that nothing in this sub-section shall affect the right of the departmental authorities to apply to the first appellate authority for ordering a higher amount of pre-deposit in a case which is considered by the Commissioner of GST to be a "serious case".

Explanation :- For the purpose of this proviso, the expression "serious case" shall mean a case involving a disputed tax liability of not less than Rupees Twenty Five Crores and where the Commissioner of GST is of the opinion (for reasons to be recorded in writing) that the department has a very good case against the taxpayer.

(7) The First Appellate Authority shall give an opportunity to the appellant to be heard, if he so desires.

(8) The First Appellate Authority may, if sufficient cause is shown at any stage of hearing of an appeal, grant time, from time to time, to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing.

PROVIDED that no such adjournment shall be granted more than three times to a party during hearing of the appeal.

(9) The First Appellate Authority may, at the hearing of an appeal, allow an appellant to go into any ground of appeal not specified in the grounds of appeal, if the First Appellate Authority is satisfied that the omission of that ground from the grounds of appeal was not willful or unreasonable.

(10) The First Appellate Authority shall, after making such further inquiry as may be necessary, pass such order, as he thinks just and proper, confirming, modifying or

<sup>3</sup> Depending on the decision regarding the issue in footnote 2 above, this review provision may have to be deleted / amended/ supplemented with revision.

annulling the decision or order appealed against, or may (for reasons to be recorded) refer the case back to the adjudicating authority with such directions as the First Appellate Authority may think fit, for a fresh adjudication or decision, as the case may be, after taking additional evidence, if necessary.

PROVIDED that an order enhancing any penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order.

PROVIDE FURTHER that where the First Appellate Authority is of the opinion that any tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, no order requiring the appellant to pay such tax shall be passed unless the appellant is given notice within the time limit specified in section -----<sup>4</sup> to show cause against the proposed order.

(11) The order of the First Appellate Authority disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for the decision.

(12) The First Appellate Authority shall, where it is possible to do so, hear and decide every appeal within a period of one year<sup>5</sup> from the date on which it is filed.

(13) On disposal of the appeal, the First Appellate Authority shall communicate the order passed by him to the appellant and to the adjudicating authority.

(14) A copy of the order passed by the First Appellate Authority shall also be sent to the jurisdictional Commissioner of CGST (or the authority designated by him in this behalf) and the jurisdictional Commissioner of SGST (or the authority designated by him in this behalf)<sup>6</sup>.

### **83. Constitution of the National Appellate Tribunal**

(1) The Central Government shall on the recommendation of the GST Council constitute a National Goods and Services Tax Appellate Tribunal (hereinafter referred to as the appellate tribunal)<sup>7</sup>.

(2) The Appellate Tribunal shall be headed by a National President.

(3) The Appellate Tribunal shall have one branch at every place where a High Court has a Bench, which shall be called as the State GST Tribunal.

(4) Every State GST Tribunal will be headed by a State President.

(5) Every State GST Tribunal shall consist of as many Members (Judicial), Members (Technical - CGST) and Members (Technical - SGST) as may be prescribed, to exercise the powers and discharge the functions conferred on the Appellate Tribunal by this Act.

<sup>4</sup> From sub-committee I/II

<sup>5</sup> There was a view that it is preferable to put fixed time limit here in line with the fixed time limits for the initial adjudication adopted by the sub-committee I in section 20 of their draft.

<sup>6</sup> The reference to the phrase “designated authority” was added in view of the apprehensions expressed by the states about the infeasibility of the Commissioner receiving a copy of each appellate order, considering that states have only one Commissioner.

<sup>7</sup> While finalizing this section and the related statutory provisions regarding appointment etc., the federal constitutional independence of the Centre and the States will need to be kept in mind. **This sub-committee has therefore kept only the basic minimum provisions in this draft so that the other questions can be decided at the appropriate levels separately.**

(6) The qualifications, eligibility conditions and the manner of selection and appointment of the National President, the State Presidents, and the Members shall be as may be prescribed.

(7) The powers and functions of the National President and the State Presidents shall be as may be prescribed

(8) On ceasing to hold office, the National President, the State Presidents or other Members of the Appellate Tribunal shall not be entitled to appear, act or plead before the Appellate Tribunal.

#### **84. Second Appeals to the Appellate Tribunal**

(1) Any person aggrieved by an order passed by the first appellate authority under sub-section (10) of section 82 may appeal to the Appellate Tribunal against such order.

(2) The Appellate Tribunal may, in its discretion, refuse to admit any such appeal where the tax involved or the difference in tax involved or the amount of fine or penalty determined by such order, does not exceed two lakh rupees.

(3) The Board\*\* (*\*\*or the corresponding body in the states*) may by order constitute such Committees as may be necessary for the purposes of filing appeals against the orders of the first Appellate Authority. Every such Committee shall consist of two designated officers<sup>8</sup> of GST.

(4) The Committee of designated officers of GST may, if it is of the opinion that an order passed by the first Appellate Authority under sub-section (10) of section 82, is not legal or proper, direct any GST Officer authorized by it in this behalf to apply to the Appellate Tribunal for the determination of such points arising out of the order passed by the first Appellate Authority as may be specified by the Committee in its order.

PROVIDED that where the Committee of designated officers of GST differs in its opinion, it shall be deemed that the Committee has formed the opinion that the order under review is not legal or proper.

(5) Where in pursuance of an order under sub-section (4) the authorized officer makes an application to the Appellate Tribunal, such application shall be dealt with by the Appellate Tribunal as if it were an appeal made against the order of the first Appellate Authority and the provisions of this Act shall, so far as may be, apply to such application, as they apply in relation to appeals filed under sub-section (1).

(6) Every appeal under this section shall be filed within three months from the date on which the order sought to be appealed against is communicated to the Commissioner of GST, or, as the case may be, the other party preferring the appeal.

(7) On receipt of notice that an appeal has been preferred under this section, the party against whom the appeal has been preferred may, notwithstanding that he may not have appealed against such order or any part thereof, file, within forty-five days of the receipt of the notice, a memorandum of cross-objections, verified in the prescribed manner, against any part of the order appealed against and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in sub-section (6).

(8) The Appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross-objections after the expiry of the period referred to in sub-section

<sup>8</sup> For reasons of difficulties of the states as mentioned earlier

(6) or sub-section (7) respectively, if it is satisfied that there was sufficient cause for not presenting it within that period.

(9) An appeal to the Appellate Tribunal shall be in the prescribed form and shall be verified in the prescribed manner and shall be accompanied by a prescribed fee.

PROVIDED that no such fee shall be payable in the case of an appeal referred to in sub-section (5) or a memorandum of cross-objections referred to in sub-section (7).

(10)(a) No appeal shall be filed under sub-section (1) unless the appellant has deposited an amount of ten percent of the amount in dispute in pursuance of the decision or order sought to be appealed against (in addition to the amounts deposited under sub-section (6) of section 82).

Explanation: For the purposes of this sub-section, the expression "amount in dispute" shall include –

- i. amount determined under section ----- (*the section relating to demands*).
- ii. amount of erroneous or irregular input tax credit
- iii. amount payable under rule-----of the GST Credit Rules 201...
- iv. amount of penalty imposed

PROVIDED that nothing in this sub-section shall affect the right of the departmental authorities to apply to the appellate tribunal for ordering a higher amount of pre-deposit in a case which is considered by the Committee of designated officers of GST to be a "serious case".

Explanation : - For the purpose of this proviso, the expression "serious case" shall mean a case involving a disputed tax liability of not less than Rupees Twenty Five Crores and where the Committee of designated officers of GST is of the opinion (for reasons to be recorded in writing) that the department has a very good case against the taxpayer.

(b) The provisions of clause (a) shall also apply mutatis mutandis to cross objections filed under sub-section (7).

(11) Every application made before the Appellate Tribunal, —

- (a) in an appeal for rectification of mistake or for any other purpose; or
- (b) for restoration of an appeal or an application,

shall be accompanied by a prescribed fee :

PROVIDED that no such fee shall be payable in the case of an application filed by or on behalf of the Commissioner of GST under this sub-section.

## **85. Orders of Appellate Tribunal**

(1) The Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the decision or order appealed against or may refer the case back to the First Appellate Authority who passed the decision or order appealed against, or to the original adjudicating authority, with such directions as the Appellate Tribunal may think fit, for a fresh adjudication or decision, as the case may be, after taking additional evidence, if necessary.

(2) The Appellate Tribunal may, if sufficient cause is shown, at any stage of hearing of an appeal, grant time, from time to time, to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing:

PROVIDED that no such adjournment shall be granted more than three times to a party during hearing of the appeal.

(3) The Appellate Tribunal may amend any order passed by it under sub-section (1) so as to rectify any mistake apparent from the record, if such mistake is brought to its notice by the Commissioner of GST or the other party to the appeal within a period of three months from the date of the order:

PROVIDED that no amendment which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the other party, shall be made under this sub-section, unless the Appellate Tribunal has given notice to him of its intention to do so and has allowed him a reasonable opportunity of being heard.

(4) The Appellate Tribunal shall, where it is possible to do so, hear and decide every appeal within a period of one year from the date on which it is filed.

(5) The Appellate Tribunal shall send a copy of every order passed under this section to the First Appellate Authority against whose order the appeal was filed, the appellant (or where the appeal was filed by the Department, then the respondent), the jurisdictional Commissioner of CGST and the jurisdictional Commissioner of SGST.

(6) Save as provided in section 89 or section 90, orders passed by the Appellate Tribunal on an appeal shall be final.

## **86. Procedure of Appellate Tribunal**

(1) The powers and functions of the Appellate Tribunal may be exercised and discharged by Benches constituted by the National President or the State Presidents from amongst the members thereof.

(2) Subject to the provisions contained in sub-section (3), a Bench shall consist of one Member (Judicial), one Member (Technical - CGST) and one Member (Technical - SGST).

(3) The National President or a State President, or any other member of the Appellate Tribunal authorized in this behalf by the National President or a State President, may, sitting singly, dispose of any case which has been allotted to the Bench of which he is a member, where in any disputed case, the tax involved or the difference in tax involved or the amount of fine or penalty involved, does not exceed fifty lakh rupees.

(4) If the members of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority, if there is a majority; but if the members are equally divided, they shall state the point or points on which they differ and make a reference to the National President or the State President who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other members of the Appellate Tribunal and such point or points shall be decided according to the opinion of the majority of these members of the Appellate Tribunal who have heard the case, including those who first heard it.

(5) Subject to the provisions of this Act, the Appellate Tribunal shall have power to regulate its own procedure and the procedure of the Benches thereof in all matters arising out of the exercise of its powers or of the discharge of its functions, including the places at which the Benches shall hold their sittings.

(6) The Appellate Tribunal shall, for the purposes of discharging its functions, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908), when trying a suit in respect of the following matters, namely :-

- a) discovery and inspection;
- b) enforcing the attendance of any person and examining him on oath;
- c) compelling the production of books of account and other documents; and
- d) Issuing commissions.

(7) Any proceeding before the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purpose of section 196 of the Indian Penal Code (45 of 1860), and the Appellate Tribunal shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

## **87. Interest on delayed refund of pre-deposit**

Where an amount deposited by the appellant under sub-section (6) of section 82 or under sub-section (10) of section 84 is required to be refunded consequent upon the order of first Appellate Authority or of the Appellate Tribunal, as the case may be, there shall be paid to the appellant interest at such rate, not below five percent per annum and not exceeding thirty-six percent per annum, as is for the time being fixed by the Central Government (or the state government), on the recommendation of the GST Council, by notification in the Official Gazette, on such amount from the date of payment of the amount till the date of refund of such amount.

## **88. Appearance by authorised representative**

(1) Any person who is entitled or required to appear before a GST Officer or the Appellate Tribunal in connection with any proceedings under the Act, may, otherwise than when required under this Act to appear personally for examination on oath or affirmation, subject to the other provisions of this section, appear by an authorized representative.

(2) For the purposes of this section, "authorised representative" means a person authorised by the person referred to in sub-section (1) to appear on his behalf, being —

- (a) his relative or regular employee; or
- (b) any legal practitioner who is entitled to practise in any civil court in India; or
- (c) any person who has acquired such qualifications as the Central Government (or the state government) may prescribe for this purpose.

(3) Notwithstanding anything contained in this section, no person who was serving in the indirect tax departments of the Government of India or of any State Government, and has retired or resigned from such service after having served for not less than three

years as a Gazetted officer in that department shall be entitled to appear as an authorised representative in any proceedings before a GST Officer for a period of two years from the date of his retirement or resignation, as the case may be.

(4) No person, —

- a) who has been dismissed or removed from government service; or
- b) who is convicted of an offence connected with any proceeding under this Act, the Central Excise Act, 1944 (1 of 1944) or Chapter V of the Finance Act 1994 (25 of 2014) or under any of the Acts passed by a state legislature dealing with the imposition of taxes on sale of goods or supply of goods and services, or
- c) who has become an insolvent,

shall be qualified to represent any person under sub-section (1) --

- (i) for all times in the case of a person referred to in clause (a),
- (ii) for such time as the Commissioner of GST or the competent authority under the Acts referred to in clause (b) may, by order, determine in the case of a person referred to in clause (b), and
- (iii) for the period during which the insolvency continues in the case of a person referred to in clause (c).

(5) If any person, —

- (a) who is a legal practitioner, is found guilty of misconduct in his professional capacity by any authority entitled to institute proceedings against him, an order passed by that authority shall have effect in relation to his right to appear before a GST Officer or the Appellate Tribunal as it has in relation to his right to practice as a legal practitioner;
- (b) who is not a legal practitioner, is found guilty of misconduct by the prescribed authority in connection with any proceedings under this Act or under any of the Acts referred to in clause (b) of sub-section (4), the prescribed authority may direct that he shall thenceforth be disqualified to represent any person under sub-section (1).

(6) Any order or direction under clause (b) of sub-section (4) or clause (b) of sub-section (5) shall be subject to the following conditions, namely:—

- a) no such order or direction shall be made in respect of any person unless he has been given a reasonable opportunity of being heard;
- b) any person against whom any such order or direction is made may, within one month of the making of the order or direction, appeal to the Board to have the order or direction cancelled; and
- c) no such order or direction shall take effect until the expiration of one month from the making thereof, or, where an appeal has been preferred, until the disposal of the appeal.

## **89. Appeal to the High Court**

(1) The Commissioner of GST or the other party aggrieved by any order passed by the Appellate Tribunal under section 104 may file an appeal to the High Court and the High Court may admit such appeal if it is satisfied that the case involves a substantial question of law.

(2) Notwithstanding the provisions of sub section (1), no appeal shall lie to High

Court against an order passed by the appellate tribunal under section 85 if such order relates, among other things, to:-

- i) a matter where two or more states, or a state and center, have a difference of views regarding the treatment of a transaction(s) being intra-State or inter-State; or
- ii) a matter where two or more states, or a state and center, have a difference of views regarding place of supply.

(3) An appeal under sub-section (1) shall be -

- a) filed within one hundred and eighty days from the date on which the order appealed against is received by the Commissioner of GST or the other party;
- b) accompanied by a prescribed fee ;
- c) in the form of a memorandum of appeal precisely stating therein the substantial question of law involved.

(4) The High Court may admit an appeal after the expiry of the period of one hundred and eighty days referred to in clause (a) of sub-section (3), if it is satisfied that there was sufficient cause for not filing the same within that period.

(5) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(6) The appeal shall be heard only on the question so formulated, and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question.

PROVIDED that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question.

(7) The High Court shall decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit.

(8) The High Court may determine any issue which -

- a) has not been determined by the Appellate Tribunal; or
- b) has been wrongly determined by the Appellate Tribunal, by reason of a decision on such question of law as is referred to in sub-section (1)or sub-section (6).

(9) When an appeal has been filed before the High Court, it shall be heard by a bench of not less than two Judges of the High Court, and shall be decided in accordance with the opinion of such Judges or of the majority, if any, of such Judges.

(10) Where there is no such majority, the Judges shall state the point of law upon which they differ and the case shall, then, be heard upon that point only, by one or more

of the other Judges of the High Court and such point shall be decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it.

(11) Where the High Court delivers a judgment in an appeal filed before it under this section, effect shall be given to such judgment by either side on the basis of a certified copy of the judgment.

(12) Save as otherwise provided in this Act, the provisions of the Code of Civil Procedure, 1908 (5 of 1908), relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under this section.

#### **90. Appeal to the Supreme Court**

(1) An appeal shall lie to the Supreme Court from any judgment or order passed by the High Court in an appeal made under section 89, in any case which, on its own motion or on an oral application made by or on behalf of the party aggrieved, immediately after passing of the judgment or order, the High Court certifies to be a fit one for appeal to the Supreme Court.

(2) An appeal shall lie to the Supreme Court from any order passed by the Appellate Tribunal under section 85 where such order is of the nature referred to in sub section (2) of section 89.

#### **91. Hearing before Supreme Court**

(1) The provisions of the Code of Civil Procedure, 1908 (5 of 1908), relating to appeals to the Supreme Court shall, so far as may be, apply in the case of appeals under section 109 as they apply in the case of appeals from decrees of a High Court :

PROVIDED that nothing in this sub-section shall be deemed to affect the provisions of section 92.

(2) The costs of the appeal shall be in the discretion of the Supreme Court.

(3) Where the judgment of the High Court is varied or reversed in the appeal, effect shall be given to the order of the Supreme Court in the manner provided in section 89 in the case of a judgment of the High Court.

#### **92. Sums due to be paid notwithstanding appeal etc.**

Notwithstanding that an appeal has been preferred to the High Court or the Supreme Court, sums due to the Government as a result of an order passed by the Appellate Tribunal under sub-section (1) of section 85 or an order passed by the High Court under section 89, as the case may be, shall be payable in accordance with the order so passed.

#### **93. Exclusion of time taken for copy**

In computing the period of limitation prescribed for an appeal or application under this Chapter, the day on which the order complained of was served, and if the party preferring the appeal or making the application was not furnished with a copy of the order when the notice of the order was served upon him, the time requisite for obtaining a copy of such order, shall be excluded.

#### **94. Appeal not to be filed in certain cases**

(1) The Board or the State Government may, from time to time, issue orders or instructions or directions fixing such monetary limits, as it may deem fit, for the purposes of regulating the filing of appeal or application by the GST officer under the provisions of this Chapter.

(2) Where, in pursuance of the orders or instructions or directions, issued under sub-section (1), the GST officer has not filed an appeal or application against any decision or order passed under the provisions of this Act, it shall not preclude such GST officer from filing appeal or application in any other case involving the same or similar issues or questions of law.

(3) Notwithstanding the fact that no appeal or application has been filed by the GST Officer pursuant to the orders or instructions or directions issued under sub-section (1), no person, being a party in appeal or application shall contend that the GST officer has acquiesced in the decision on the disputed issue by not filing an appeal or application.

(4) The Appellate Tribunal or court hearing such appeal or application shall have regard to the circumstances under which appeal or application was not filed by the GST Officer in pursuance of the orders or instructions or directions issued under sub-section (1).

#### **95. Non Appealable decisions and orders:**

Notwithstanding anything to the contrary in any provisions of this Act, no appeal shall lie against any decision taken or order passed by a GST officer if such decision taken or order passed relates to any one or more of the following matters: -

- a) An order of the Commissioner or other competent authority for transfer of proceeding from one officer to another officer;
- b) An order pertaining to the seizure or retention of books of account, register and other documents; or
- c) An order sanctioning prosecution under the Act.

**96. Exclusion of time taken for copy.** — In computing the period of limitation prescribed for an appeal or application under the Act, the day on which the order complained of was served, and if the party preferring the appeal or making the application was not furnished with a copy of the order when the notice of the order was served upon him, the time requisite for obtaining a copy of such order shall be excluded.

#### **97. Definitions**

In this Chapter —

"High Court" means, —

- (i) in relation to any State, the High Court for that State;
- (ii) in relation to a Union Territory to which the jurisdiction of the High Court of a State has been extended by law, that High Court;
- (iii) in relation to the Union Territories of Dadra and Nagar Haveli and Daman and Diu, the High Court at Bombay;
- (iv) in relation to any other Union Territory, the highest court of civil appeal for that territory other than the Supreme Court of India;

## **PART – XVI**

### **ADVANCE RULING**

**98. Definitions.** — In this Chapter, unless the context otherwise requires, -

- (a) "advance ruling" means the determination, by the authority of a question specified in sub-section (2) of section 120 in an application regarding the liability of an applicant to pay tax in relation to the supply of goods or services or both proposed to be undertaken or being undertaken by the applicant;
- (b) "applicant" means any person registered or desirous of obtaining registration under the Act.
- (c) "application" means an application made to the Authority under sub-section (1) of section 120;
- (d) "Authority" means the Authority for Advance Ruling, constituted under section 118 of the Act;

**99. The Authority for Advance Ruling-**

- (1) The Authority shall have as many benches as may be prescribed.
- (2) Each bench shall comprise one member CGST and one member SGST to be appointed respectively by the Central Government and the State Government.
- (3) The qualifications, eligibility conditions, method and the process of appointment of the members shall be as may be prescribed.

**100. Vacancies, etc., not to invalidate proceedings -**

No proceeding before the Authority (including the pronouncement of advance ruling) under this Chapter shall be questioned or shall be invalid on the ground merely of the existence of any vacancy or defect in the constitution of the Authority.

**101. Application for advance ruling. –**

- (1) An applicant desirous of obtaining an advance ruling under this Chapter may make an application in such form and in such manner as may be prescribed, stating the question on which the advance ruling is sought.

- (2) The question on which the advance ruling is sought shall be in respect of,
- classification of any goods or services or both 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 under the provisions of the Act;
  - notifications issued, in respect of tax under 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 or services or both under the Act;
  - whether applicant is required to be registered under the Act;
  - whether any particular thing done by applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.

(3) The application shall be accompanied by a fee as may be prescribed.

## **102. Procedure on receipt of application.-**

(1) On receipt of an application, the Authority shall cause a copy thereof to be forwarded to the officers as may be prescribed and, if necessary, call upon him to furnish the relevant records:

PROVIDED that where any records have been called for by the Authority in any case, such records shall, as soon as possible, be returned to the said prescribed officers.

(2) The Authority may, after examining the application and the records called for and after hearing the applicant or authorized representative of the applicant as well as the authorized representative of the prescribed officers, by order, either admit or reject the application:

PROVIDED that the Authority shall not admit the application where the question raised in the application is, -

- already pending in the applicant's case before any Appellate authority, the Appellate Tribunal or any Court;
- the same as in a matter already decided by 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 provision 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.

PROVIDE FURTHER that no application shall be rejected under this sub-section unless an opportunity has been given to the applicant of being heard:

PROVIDED also that where the application is rejected, reasons for such rejection shall be given in the order.

(3) A copy of every order made under sub-section (2) shall be sent to the applicant and to the prescribed officers.

(4) Where an application is admitted under sub-section (2), the Authority shall, after examining such further material as may be placed before it by the applicant or obtained by the Authority and after providing an opportunity of being heard to the applicant or authorized representative of the applicant as well as to the authorized representative of the prescribed officers, pronounce its advance ruling on the question specified in the application.

**Explanation.** - For the purposes of this sub-section, "authorized representative" shall have the meaning assigned to it in sub-section .....

(5) Where the members of the Authority differ on any question on which the advance ruling is sought, they shall state the point of difference which shall be referred to another member of the Authority and the final decision shall be as per the majority.

(6) The Authority shall pronounce its advance ruling in writing within ninety days of the receipt of application.

(7) A copy of the advance ruling pronounced by the Authority, duly signed by the Members and certified in the prescribed manner shall be sent to the applicant and to the prescribed officers, as soon as may be, after such pronouncement.

### **103. Applicability of advance ruling. –**

(1) The advance ruling pronounced by the Authority under this chapter shall be binding only -

- (a) on the applicant who had sought it in respect of any matter referred to in sub-section (2) of Section 101 of the application for advance ruling;
- (b) on the jurisdictional tax authorities in respect of the applicant.

(2) The advance ruling referred to in sub-section (1) shall be binding as aforesaid unless there is a change in law or facts on the basis of which the advance ruling has been pronounced.

### **104. Advance ruling to be void in certain circumstances. –**

(1) Where the Authority finds that advance ruling pronounced by it under sub-section 4 or 5 of section 102 has been obtained by the applicant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void ab-initio and thereupon all the provisions of the Act shall apply (after excluding the period beginning with the date of such advance ruling and ending with the date of order under this sub-section) to the applicant as if such advance ruling had never been made.

PROVIDED that no order shall be passed under this sub-section unless an opportunity has been given to the applicant of being heard.

(2) A copy of the order made under sub-section (1) shall be sent to the applicant and the prescribed officers.

### **105. Powers of Authority. –**

(1) The Authority shall, for the purpose of exercising its powers regarding discovery and inspection, enforcing the attendance of any person and examining him on oath, issuing commissions and compelling production of books of account and other records, have all the powers of a civil court under the Code of Civil Procedure, 1908 (5 of 1908).

(2) The Authority shall be deemed to be a civil court for the purposes of section 195, but not for the purposes of Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974), and every proceeding before the Authority shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code (45 of 1860).

**106. Procedure of Authority:—**

The Authority shall, subject to the provisions of this Chapter, have power to regulate its own procedure in all matters arising out of the exercise of its powers under the Act.

## **PART XVII**

### **SETTLEMENT OF CASES**

*In the full Committee Meeting held on 22<sup>nd</sup>& 23<sup>rd</sup> July 2015 at New Delhi, majority of the States were of the view that in the GST regime, settlement provision may not be there as it creates discrimination. Presently, very few States have such provisions (Odisha, UP, Kerala). In the Centre, there is a robust Settlement Commission mechanism.*

*After discussion, it was decided in that meeting that for the purpose of drafting the model law, we may not keep the settlement provision. The issue can be revisited later.*

## **PART XVIII**

### **COMPOUNDING OF OFFENCES**

#### **107. Compounding of offences.**

(1) Any offence under the Act may, either before or after the institution of prosecution, be compounded by the Competent Authority on payment, by the person accused of the offence to the Central Government or the State Government as the case be, of such compounding amount and in such manner of compounding as may be prescribed:

PROVIDED that nothing contained in this section shall apply to ---

- (a) a person who has been allowed to compound once in respect of any of the following offences;
  - (i) ..... of the CGST Act
  - (ii) ..... of the SGST Act of the State
  - (iii).....of the IGST Act
- (b) a person who has been allowed to compound once in respect of any offence (other than those in clause (a)) under the Act or under the provisions of any other SGST Act or IGST Act in relation to supplies of value exceeding rupees one crore;
- (c) a person who has been accused of committing an offence under the Act which is also an offence under the Narcotic Drugs and Psychotropic Substance Act, 1985 (61 of 1985), the Foreign Exchange Management Act, 1999 (42 of 1999) or any other Act;
- (d) any other class of persons or offences as may be prescribed.

PROVIDE FURTHER that any compounding allowed under the provision of this section shall not affect the proceedings if any, instituted under any other law.

PROVIDED also that compounding shall be allowed only after making payment of tax, interest and penalty involved in such offences.

(2) The fees for compounding of offences under this section shall be as may be prescribed under the rules to be made under sub-section (1), subject to the minimum fee not being less than rupees ten thousand or fifty per cent of the tax involved, whichever is greater, and the maximum fee not being more than rupees thirty thousand or one hundred and fifty per cent of the tax, whichever is greater.

(3) On payment of such sum as may be determined by the prescribed authority, no further proceedings shall be initiated under the Act against the accused person in respect of the same offence and any criminal proceedings, if already initiated in respect of the said offence, shall stand abated.

## **PART XVIII**

### **MISCELLANEOUS PROVISIONS**

**108. Burden of Proof:-**

If any person claims that he is not liable to pay tax under the Act in respect of any supply of goods or services or both, or that he is eligible for a tax credit under ......., or that he ....., the burden of proving such claim or claims shall lie on him.

**109. Power to collect statistics.**

(1) The competent authority, if it considers that for the purposes of the better administration of the Act, it is necessary so to do, may by notification, direct that statistics be collected relating to any matter dealt with, by or in connection with to the Act.

(2) Upon such notification being issued, the Commissioner, or any person authorised by the Commissioner in this behalf may call upon all concerned persons to furnish such information or returns as may be specified therein relating to any matter in respect of which statistics is to be collected.

(3) The form in which the persons to whom or, the authorities to which, such information or returns should be furnished, the particulars which they should contain, and the intervals in which such information or returns should be furnished, shall be as may be specified.

**110. Disclosure of information required under section 128:-**

(1) No information of any individual return or part thereof, with respect to any matter given for the purposes of section **128** shall, without the previous consent in writing of the taxpayer or person or his authorised agent, be published in such manner as to enable any particulars to be identified as referring to a particular taxpayer and no such information shall be used for the purpose of any proceedings under the provisions of the Act.

(2) Except for the purposes of prosecution under the Act, or any other Act, no person who is not engaged in the collection of statistics under the Act or of compilation or computerization thereof for the purposes of the Act, shall be permitted to see or have access to any information or any individual return referred to in that section.

(3) If any person required to furnish any information or return under section **128**,

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

he shall, on conviction, be punished with fine which may extend to one hundred rupees and in case of a continuing offence to a further fine which may extend to one hundred

rupees for each day after the first day during which the offence continues subject to a maximum limit of one thousand rupees.<sup>9</sup>

(4) If any person engaged in connection with the collection of statistics under section 109 or compilation or computerization thereof wilfully discloses any information or the contents of any return given or made under that section, otherwise than in execution of his duties under that section or for the purposes of the prosecution of an offence under the Act or under any other Act, he shall, on conviction, be punished with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both.

PROVIDED that, no prosecution shall be instituted under the subsection, except with the previous sanction of the Central Government or State Government.

(5) Nothing in this section shall apply to the publication of any information relating to a class of dealers or class of transactions, if in the opinion of the Commissioner, it is desirable in the public interest, to publish such information.

**111. Persons discharging functions under the Act shall be deemed to be public servants.**— All persons discharging functions under the Act shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code, 1860 (45 of 1860).

### **112. Indemnity:**

No legal proceedings shall lie against any goods and services tax officer, for anything which is done or intended to be done in good faith under the Act or the rules.

### **113. Disclosure of information by a public servant:-**

(1) All particulars contained in any statement made, return furnished or accounts or documents produced in accordance with the Act, or in any record of evidence given in the course of any proceedings under the Act (other than proceeding before a Criminal Court), or in any record of any proceedings under the Act shall, save as provided in sub-section (3), be treated as confidential;

(2) Notwithstanding anything contained in the Indian Evidence Act, 1872, no Court shall save as aforesaid, be entitled to require any GST officer to produce before it or to give evidence before it in respect of particulars referred to in sub-section (1).

(3) Save as provided in sub-section (4), if any GST officer discloses any of the particulars referred to in sub-section (1), he shall, on conviction, be punished with imprisonment which may extend to six months or with fine or with both:

PROVIDED that, no prosecution shall be instituted under this section except with the previous sanction of the Central Government or the State Government, as the case may be.

(4) Nothing contained in this section shall apply to the disclosure of, -

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<sup>9</sup> This provision needs to be shifted to the chapter relating to offences and penalties being drafted by the Sub-Committee II.

- (a) any such particulars in respect of any such statement, return, accounts, documents, evidence, affidavit or deposition, for the purpose of any prosecution under the Indian Penal Code (45 of 1860) or the Prevention of Corruption Act, 1988 (49 of 1988), or the Act, or any other law for the time being in force; or
- (b) any such particulars to the Central Government or the State Government or to any person acting in the execution of this Act, for verification of such particulars or for the purpose of carrying out the object of the Act; or
- (c) any such particulars when such disclosure is occasioned by the lawful employment under the Act of any process for the service of any notice or the recovery of any demand; or
- (d) any such particulars to a Civil Court or Tribunal constituted under any Central law in any suit or proceeding, to which the Government or any authority under the Act is a party, which relates to any matter arising out of any proceeding under the Act or under any other law for the time being in force authorising any such authority to exercise any powers thereunder; or
- (e) any such particulars to any officer appointed for the purpose of audit of tax receipts or refunds of the tax imposed by the Act; or
- (f) any such particulars where such particulars are relevant the purposes of any inquiry into the conduct of any GST officer, to any person or persons appointed as an inquiry officer under any relevant law; or
- (g) such facts to an officer of the Central Government or any State Government as may be necessary for the purpose of enabling that Government to levy or realise any tax or duty imposed by it; or
- (h) any such particulars, when such disclosure is occasioned by the lawful exercise by a public servant or any other statutory authority, of his or its powers under any law for the time being in force; or
- (i) any such particulars relevant to any inquiry into a charge of misconduct in connection with any proceedings under the Act against a practising advocate, tax practitioner, a practising cost accountant, a practising chartered accountant, a practising company secretary to the authority empowered to take disciplinary action against the members practising the profession of a legal practitioner, cost accountant, chartered accountant or company secretary, as the case may be; or
- (j) any such particulars to any agency appointed for the purposes of data entry on any automated system or for the purpose of operating, upgrading or maintaining any automated system where such agency is contractually bound not to use or disclose such particulars except for the aforesaid purposes; or
- (k) any such particulars to an officer of the Central Government or any State Government as may be necessary for the purposes of any other law in force in India; and
- (l) any information relating to any class of taxpayers or class of transactions for publication, if, in the opinion of the Competent authority, it is desirable in the public interest, to publish such information.

#### **114. Publication of information respecting persons in certain cases.**

(1) If the Competent Authority is of opinion that it is necessary or expedient in the public interest to publish the names of any person and any other particulars relating to

any proceedings or prosecutions under the Act in respect of such person, it may cause to be published such names and particulars in such manner as it thinks fit.

(2) No publication under this section shall be made in relation to any penalty imposed under the Act until the time for presenting an appeal to the first appellate authority under section 101 has expired without an appeal having been presented or the appeal, if presented, has been disposed of.

Explanation. – In the case of firm, company or other association of persons, the names of the partners of the firm, directors, managing agents, secretaries and treasures or managers of the company, or the members of the association, as the case may be, may also be published if, in the opinion of the Competent Authority, circumstances of the case justify it.

#### **115. Assessment proceedings, etc. not to be invalid on certain grounds.—**

(1) No assessment, re-assessment, adjudication, review, revision, appeal, rectification, notice, summons or other proceedings done, accepted, made, issued, initiated, or purported to have been done, accepted, made, issued, initiated in pursuance of any of the provisions of the Act shall be invalid or deemed to be invalid merely by reason of any mistake, defect or omission therein, if such assessment, re-assessment, adjudication, review, revision, appeal, rectification, notice, summons or other proceedings is/are in substance and effect in conformity with or according to the intents, purposes and requirements of the Act or any earlier law.

(2) The service of any notice, order or communication shall not be called in question if the notice, order or communication, as the case may be, has already been acted upon by the person to whom it is issued or where such service has not been called in question at or in the earliest proceedings commenced, continued or finalised pursuant to such notice, order or communication.

#### **116. Bar of Jurisdiction of civil courts.**

(i) Save as provided by section 89 and 90, no civil court shall have jurisdiction to deal with or decide any question arising from or relating to anything done or purported to be done under the Act;

(ii) ..... (*to see if any specific protections need to be provided to the taxpayer/citizen for being able to approach a civil court for valid reasons*)

#### **117. Levy of fees.**

Wherever a copy of any order or document is to be provided to any person on an application made by him for that purpose, there shall be paid such fee as may be prescribed, which may include a fee for such application also.

#### **118. Power of Central (or State) Government to make rules:**

(1) The Central Government (or the State Government) may make rules, including rules conferring the power to issue notifications with retrospective effect under those rules, to carry into effect the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may –

- 1) provide for the date for determination of rate of tax and the place of supply of goods or services or both;
- 2) having regard to the normal practice in the supply of goods or services, define or specify the kinds of trade discount to be excluded from the value under section---- including the circumstances in which and the conditions subject to which such discount is to be so excluded;
- 3) provide for determining the value of taxable supplies in the situations mentioned under section---- ;
- 4)** provide, subject to such conditions as may be prescribed, for the grant of input tax credit of tax paid on the input supplies of goods or services used in or in relation to the providing of the output taxable supplies of goods or services, and the manner of utilization of such credit.
- 5) provide for the lapsing of input tax credit lying unutilized, in the circumstances as may be specified in the rules;
- 6) provide for withdrawal of facilities or imposition of restrictions (including restrictions on utilisation of input tax credit) on taxable person or suspension or revocation of registration of taxable person, for dealing with evasion of tax or misuse of input tax credit;
- 7) provide, subject to such conditions as may be prescribed, for the carrying forward<sup>10</sup> of the unutilized balances of cenvat credit of the duties of excise and the service tax, under the Cenvat Credit Rules 2004, (or of VAT credit under the state VAT credit rules) lying with the taxable persons on the date of their switching over to GST;
- 8) provide for the remission of tax leviable on any taxable supplies, which due to any natural causes are found to be deficient in quantity, the limit or limits of percentage beyond which no such remission shall be allowed and the different limit or limits of percentage for different varieties of the same taxable supply or for different areas or for different seasons;
- 9) specify the persons who shall get themselves registered under section ----- and the time, manner and form in which application for registration shall be made;
- 10) provide for the manner of verification of application and issue of registration under the Act and the fees, if any, to be charged therefor ;
- 11) provide for the situations and manner of grant of deemed registration under the Act;
- 12) provide for the manner of migration, amendment, surrender, revocation, suspension, cancellation of registration under the Act ;
- 13) provide for the assessment and collection of tax, the authorities by whom functions under the Act are to be discharged, the issue of notices requiring payment, the manner in which tax shall be payable, and the recovery of tax not paid;
- 14) impose on taxable persons or other persons as may be specified, the duty of furnishing information, maintaining records and filing returns, and may also prescribe the nature of such information and the form of such records and returns, the particulars to be contained therein, and the manner in which they shall be verified;

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<sup>10</sup> This is added for the purposes of transition

- 15) provide for the form, manner and frequency of the returns to be furnished and the late fee for delayed furnishing of return under relevant section ;
- 16) provide for charging or payment of interest under the various provisions of the Act;
- 17) provide for the detention or attachment of goods, plant, machinery or material and other movable or immovable properties for the purpose of exacting the tax on taxable supplies in respect of which breaches of the Act or rules made thereunder have been committed and the disposal of things so detained or attached or confiscated;
- 18) authorise and regulate the composition of offences against, or liabilities incurred under the Act or the rules made thereunder;
- 19) provide for the amount to be paid for compounding and the manner of compounding of offences under sub-section (---) of section-----;
- 20) provide for publication, subject to such conditions as may be specified, the names and other particulars of persons found guilty of contravention of any provision of the Act or of any rule made thereunder;
- 21) provide for the manner of recovery of any amount due to the Central Government (or state government) under section --- ;
- 22) authorise and regulate the inspection and audit of business premises and provide for the taking of samples, and for the making of tests, of any substance produced therein, and for the inspection or search of any place or conveyance used for the production, storage, sale, supply or transport of goods, and so far as such inspection or search is essential for the proper levy and collection of the tax imposed by the Act, of any other taxable supply of goods or services;
- 23) specify the form and manner in which application for refund shall be made under section ----- ;
- 24) provide for the manner in which amounts shall be credited to the Consumer Welfare Fund, their utilization, and the form in which the accounts and records relating to the Fund shall be maintained;
- 25) specify the forms in which appeals, applications and memoranda of cross objections shall be filed and verified under Chapter----- of the Act;
- 26) provide for the qualifications and the manner of appointment of the National President, the State President, and the Members of the Appellate Tribunal under section.....of the Act, and other matters related or incidental thereto;
- ~~27) provide for the settlement of cases, in accordance with Chapter \_\_\_\_ of this Act;~~
- 28) regulate in such manner as the Central Government / State Government thinks fit, the movement of supplies from any part of India to any other part thereof;
- 29) regulate the removal of taxable supplies of goods from the place where produced, stored or manufactured or subjected to any process of production or manufacture and their transport to or from the premises of a registered person, or a bonded warehouse, or to a market;
- 30) provide for the appointment, licensing, management and supervision of bonded warehouses and the procedure to be followed for entry of goods into such warehouses and clearance of goods therefrom;
- 31) provide for the distinguishing of supply of goods which have been manufactured after registration, of materials which have been imported, and of supply of goods on which tax has been paid, or which are exempt from tax under this Act, or any other class of goods as may be specified in such rules;

- 32) require that taxable supplies of specified goods shall not be made except in prescribed containers, bearing a banderol, stamp or label of such nature and affixed in such manner as may be prescribed;
  - 33) provide for the grant of a rebate of the tax paid on supply of goods or services which are exported out of India or shipped for consumption on a voyage to any port outside India including interest thereon;
  - 34) provide for rebate of tax paid or payable on the taxable supply of services used as input services in the supply of goods or services exported out of India under section -----;
- (Comment: It appears that sub-Committee I has in section 22 of the draft report used the generic word "refund" to also refer to rebate on export. Accordingly, whether the word rebate or refund is to be used may be decided later on)*
- 35) provide for the charging of fees for the examination of goods intended for export out of India and for rendering any other service by a GST Officer under this Act or the rules made thereunder;
  - 36) authorise the Board (or competent authority) or officers of GST, as the case may be, appointed for the purposes of this Act to provide, by written instructions, for supplemental matters arising out of any rule made by the Central Government (or the State Government) under this section;
  - 37) provide for the manner of provisional attachment of property under section ---- --;
  - 38) make provisions for determining export of taxable supply of services;
  - 39) provide for grant of exemption to, or rebate of tax paid on, taxable supply of services which are exported out of India;
  - 40) provide for manner of administering of payment of taxes under the compounding of tax
  - 41) provide for dealing with situations where goods are returned
  - 42) provide for specifying the details to be given in the invoices, the maintenance of accounts, the furnishing of audit reports, and matters related thereto;
  - 43) provide for the qualifications and the manner of appointment of the Advance Ruling authority under section.....of the Act, and other matters related to functioning of the authority;
  - 44) provide for the qualifications of tax return preparers, tax practitioners and authorized representatives under various provisions of the Act, the manner of their selection or appointment or nomination, their codes of conduct, and other matters related or incidental thereto;
  - 45) provide for matters relating to tax deducted at source;
  - 46) provides for matters covered by section 149
  - 47) any other matter related to administering or enforcing the provisions of the Act.

(3) The power to make rules conferred by this section shall on the first occasion of the exercise thereof include the power to give retrospective effect to the rules or any of them from a date not earlier than the date on which the provisions of this Chapter come into force.

(4) In making rules under this section, the Central Government (or State Government) may provide that any person committing a breach of any rule shall, where no other penalty is provided by the Act, be liable to a penalty not exceeding ten thousand rupees.

**119. Delegation of powers.** - The Competent Authority may, by notification in the Official Gazette direct that subject to such conditions, if any, as may be specified in the notification, any power exercisable by any authority or officer under the Act may be exercisable also by another authority or officer as may be specified in such notification.

**120. Instructions to GST Officers.** — The Competent Authority may, if it considers it necessary or expedient so to do for the purpose of uniformity in the implementation of the Act, issue such orders, instructions or directions to the GST Officers as it may deem fit, and thereupon all GST officers and all other persons employed in the execution of the Act shall observe and follow such orders, instructions or directions.

PROVIDED that no such orders, instructions or directions shall be issued—

- a) so as to require any GST Officer to make a particular assessment or to dispose of a particular case in a particular manner; or
- b) so as to interfere with the discretion of the first appellate authority in the exercise of his appellate functions.

**121. Removal of difficulties:-**

(1) If any difficulty arises in giving effect to any provision of the Act, the Central Government / State Government may, by general or special order published in the Official Gazette, do anything not inconsistent with the provisions of the Act which appears to it to be necessary or expedient for the purpose of removing the difficulty. PROVIDED that no such order shall be made after the expiry of a period of two years from the date of effect of the provision giving rise to the difficulty.

(2) Every order made under this section shall be laid, as soon as may be, after it is made, before Parliament / State Legislature.

**122. Service of Notice in certain circumstances.**

(1) Any decision, order, summons, notice or other communication under the Act or the rules made thereunder shall be served by any one of the following methods, namely: -

- (a) by giving or tendering it directly or by a messenger including a courier to the addressee or the taxpayer or to his manager or to agent duly authorized or an advocate or a tax practitioner holding authority to appear in the proceeding on behalf of the taxpayer or to a person regularly employed by him in connection with the business, or to any adult member of family residing with the taxpayer, or
- (b) by post or courier with acknowledgement due, to the person for whom it is intended or his authorised agent, if any at his last known place of business or residence, or
- (c) by facsimile message, if such address is furnished, or
- (d) by sending an authenticated communication to his e-mail address, or
- (e) on **dashboard** of the taxpayer if available on the web-site, or
- (f) by sending a message on his registered mobile number, or
- (g) by publication in a newspaper circulating in the locality in which the taxpayer or the person to whom it is issued is last known to have resided, carried on business or personally worked for gain, or

- (h) if none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence, or
  - (i) if the mode prescribed under (h) is also not practicable for any reason, then by affixing a copy thereof on the notice board of the officer or authority who or which passed such decision or order or issued such summons or notice.
- (2) Every decision, order, summons, notice or any communication shall be deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed in the manner provided in sub-section (1).
- (3) When such decision, order, summons, notice or any communication is sent by registered post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by a registered letter in transit unless the contrary is proved.

### **123. Rounding off of tax etc.-**

The amount of tax, interest, penalty, fine or any other sum payable, and the amount of refund or any other sum due, under the provisions of the Act shall be rounded off **to the nearest rupee** and, for this purpose, where such amount contains a part of a rupee consisting of paise then, if such part is fifty paise or more, it shall be increased **to one rupee** and if such part is less than fifty paise it shall be ignored.

### **124. Effect of amendments, etc., of rules, notifications or orders. —**

Where any rule, notification or order made or issued under the Act or any notification or order issued under such rule, is amended, repealed, superseded or rescinded, then, unless a different intention appears, such amendment, repeal, supersession or rescinding shall not -

- (a) revive anything not in force or existing at the time at which the amendment, repeal, supersession or rescinding takes effect; or
- (b) affect the previous operation of any rule, notification or order so amended, repealed, superseded or rescinded or anything duly done or suffered thereunder; or
- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any rule, notification or order so amended, repealed, superseded or rescinded; or
- (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed under or in violation of any rule, notification or order so amended, repealed, superseded or rescinded; or
- (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if the rule, notification or order, as the case may be, had not been amended, repealed, superseded or rescinded.

### **125. Publication of rules and notifications and laying of rules before Parliament / State Legislature. —**

(1) All rules made and notifications issued under the Act shall be published in the Official Gazette.

(2) Every rule made under the Act, every notification issued under section ----, section ----, section ---- and section ---- (*depending on the final full draft*) and every order made under section ----, section ----, section ---- and section ---- (*depending on the final full draft*), other than an order relating to goods or services or both of strategic, secret, individual or personal nature, shall be laid, as soon as may be after it is made or issued, before Parliament / State Legislature, while it is in session, for a total period of thirty days which may be comprised in one session, or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, Parliament / State Legislature agree in making any modification in the rule or notification or order, or Parliament / State Legislature agree that the rule should not be made or notification or order should not be issued or made, the rule or notification or order shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification or order.

## PART XIX

### PRESUMPTION AS TO DOCUMENTS

**126. Presumption as to documents in certain cases:** - Where any document-

- (i) is produced by any person under the Act or any other law, or
- (ii) has been seized from the custody or control of any person under the Act or any other law, or
- (iii) has been received from any place within or outside India in the course of any proceedings under the Act or any other law

and such document is tendered by the prosecution in evidence against him or any other person who is tried jointly with him, the court shall-

- (a) unless the contrary is proved by such person, presume —
  - (i) the truth of the contents of such document;
  - (ii) that the signature and every other part of such document which purports to be in the handwriting of any particular person or which the Court may reasonably assume to have been signed by, or to be in the handwriting of, **any particular person, is in that person's handwriting, and in the case of a document executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;**
- (b) admit the document in evidence notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence.

**127. Admissibility of micro films, facsimile copies of documents and computer printouts as documents and as evidence. —**

- (1) Notwithstanding anything contained in any other law for the time being in force, —
  - a) a micro film of a document or the reproduction of the image or images embodied in such micro film (whether enlarged or not); or
  - b) a facsimile copy of a document; or
  - c) a statement contained in a document and included in a printed material produced by a computer (**hereinafter referred to as a "computer printout"**), if the conditions mentioned in sub-section (2) and the other provisions contained in this section are satisfied in relation to the statement and the computer in question; or
  - d) any information stored electronically in any device or media, including any hard copies made of such information

shall be deemed to be also a document for the purposes of the Act and the rules made there under and shall be admissible in any proceedings there under, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

- (2) The conditions referred to in sub-section (1) in respect of a computer printout shall be the following, namely: —

- a) the computer printout containing the statement was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;
- b) during the said period, there was regularly supplied to the computer in the ordinary course of the said activities, information of the kind contained in the statement or of the kind from which the information so contained is derived;
- c) throughout the material part of the said period, the computer was operating properly or, if not, then any respect in which it was not operating properly or was out of operation during that part of that period was not such as to affect the production of the document or the accuracy of the contents; and
- d) the information contained in the statement reproduced or is derived from information supplied to the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether —

- a) by a combination of computers operating over that period; or
- b) by different computers operating in succession over that period; or
- c) by different combinations of computers operating in succession over that period; or
- d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers,

all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings under this Act and the rules made thereunder where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say, —

- a) identifying the document containing the statement and describing the manner in which it was produced;
- b) giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer;
- c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate, and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this section, —

- a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;

- b) whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;
- c) a document shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

Explanation. — For the purposes of this section, —

- a) "**computer**" means any device that receives, stores and processes data, applying stipulated processes to the information and supplying results of these processes; and includes the hard disc thereof or a mirror image of hard disc thereof; and
- b) any reference to information being derived from other information shall be a reference to its being derived there from by calculation, comparison or any other process.

## PART XX

### TRANSITIONAL PROVISIONS

**128. Repeal and saving:-**

(1) From the date of commencement of the Act, the (State) General Sales Tax Act, the Central Excise Act 1944, and the Central Excise Tariff Act 1985 shall apply only in respect of goods included in the entry 84 and entry 54 of the Union List and the State List of the Schedule VII to the Constitution of India.

PROVIDED that the aforesaid restriction of the application of the statutes referred above shall not—

- (a) Revive anything not in force or existing at the time at which the restriction takes effect; or
- (b) Affect the previous operation of the unrestricted Acts or anything duly done or suffered thereunder; or
- (c) Affect any right, privilege, obligation, or liability acquired, accrued or incurred under the Unrestricted Acts; or
- (d) Affect any tax, surcharge, penalty, interest as are due or may become due or any forfeiture or punishment incurred or inflicted in respect of any offence or violation committed under the provisions of the Unrestricted Acts; or
- (e) Affect any investigation, enquiry, assessment proceeding, any other legal proceeding or remedy in respect of any such tax, surcharge, penalty, interest, right, privilege, obligation, liability, forfeiture or punishment, as aforesaid, and any such investigation, enquiry, assessment proceeding, other legal proceeding or remedy may be instituted, continued or enforced, and any such tax, surcharge, penalty, interest, forfeiture or punishment may be levied or imposed as if these Acts had not been so restricted.

(2) The following Acts are hereby repealed, to the extent mentioned hereunder, namely: -(as per the taxes subsumed under GST .....

- (a) The Entry Tax Act,.....
- (b) The Entertainment Tax, .....
- (c) The Luxury Tax Act, .....
- (d) Duty of Excise on Medicinal and Toilet Preparation Act, .....
- (e) Chapter V of the Finance Act, 1994.

*(Comments: Presently, under the provisions of the Central Sales Tax Act, 1956, a deeming fiction has been created empowering the adoption of VAT Statutes and machinery for the purpose of collection/administration of CST under the State law. The officers drafting the IGST Act would need to see as to in what manner the repealing of the CST Act is to be drafted and in what manner and to what extent the savings are to be provided)*

(3) The repeals referred to in sub-section (2) shall not—

- (a) Revive anything not in force or existing at the time at which the repeal takes effect; or

- (b) Affect the previous operation of the repealed Acts or anything duly done or suffered thereunder; or
- (c) Affect any right, privilege, obligation, or liability acquired, accrued or incurred under the repealed Acts; or
- (d) Affect any tax, surcharge, penalty, interest as are due or may become due or any forfeiture or punishment incurred or inflicted in respect of any offence or violation committed under the provisions of the repealed Acts; or
- (e) Affect any investigation, enquiry, assessment proceeding, any other legal proceeding or remedy in respect of any such tax, surcharge, penalty, interest, right, privilege, obligation, liability, forfeiture or punishment, as aforesaid, and any such investigation, enquiry, assessment proceeding, other legal proceeding or remedy may be instituted, continued or enforced, and any such tax, surcharge, penalty, interest, forfeiture or punishment may be levied or imposed as if these Acts had not been enacted.

### **129. Transitional provisions.**

Notwithstanding anything contained elsewhere in the Act and until specifically so or otherwise prescribed or notified or done in accordance with the provisions of the Act,

- (a) All persons appointed by the respective Governments for discharging various functions under the Central/State laws relating to taxes on goods or services (which are being subsumed in GST) and continuing in office on the appointed day, shall be deemed to have been appointed as GST officers/Competent Authorities under the respective provisions of the Act.
- (b) The continuation or otherwise of any incentive schemes (including deferment schemes) under which any assessee or dealer may be operating on the appointed day, shall be decided in the manner as may be prescribed.
- (c) The migration of the existing registration to the registration under the GST laws shall be done as may be prescribed.
- (d) The Central Government (or the State Government) may issue orders or make rules consistent with the need for smooth transition to GST including the need to take care of matters not specifically covered hereinbefore so long as such matters are not in conflict with the purposes of the Act.

### **130. Tax credit for stock on 31st March, 20....**

The taxable person may carry forward the unutilized balances of cenvat credit of the duties of excise and the service tax, under the Cenvat Credit Rules 2004, (or of VAT credit under the state VAT Act / rules) lying with him on the date of his switching over to GST in such manner as may be prescribed.

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## **Suggestions of Sub-Committee-II on section 21 drafted by Sub-Committee-I**

In case a taxable person makes an undue or excess claim of input tax credit, he shall be liable to pay interest on such undue or excess claim at the prescribed rate for the period computed in the manner prescribed.

### **Suggestions of Sub-Committee-II to include additional definitions**

**"address of delivery"** means the address of the recipient of goods and/or services indicated on the tax invoice issued by a taxable person for delivery of such goods and/or services;

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

**"business vertical"** shall have the meaning assigned to a 'business segment' in Accounting Standard 17 issued by the Institute of Chartered Accountants of India;

**"credit note"** means a document issued by a taxable person as referred to in sub-section (1) of section 31 of this Act;

**"debit note"** means a document issued by a taxable person as referred to in sub-section (2) of section 31 of this Act;

**"return"** means any return prescribed or otherwise required to be furnished by or under this Act;

**"tax invoice"** shall have the meaning as assigned to it under section 30 of this Act;

**"Tax Return Preparer"** means any person who has been approved to act as a Tax Return Preparer under the Scheme framed under section 46 of this Act;

**"valid return"** shall have the meaning assigned to it under sub-section (3) of section 36.

## **SCHEDULE I**

### **MATTERS TO BE TREATED AS SUPPLY WITHOUT CONSIDERATION**

1. Permanent transfer/disposal of business assets.
2. Temporary application of business assets to a private or non-business use.
3. Services put to a private or non-business use.
4. Self supply of goods and/or services.
5. Assets retained after deregistration.

## **SCHEDULE II**

### **MATTERS TO BE TREATED AS SUPPLY OF GOODS OR SERVICES**

1. Transfer
  - (1) Any transfer of the title in goods is a supply of goods.
  - (2) Any transfer of goods or of right in goods or of undivided share in goods without the transfer of title thereof, is a supply of services.
  - (3) Any transfer of title in goods under an agreement which stipulates that property in goods will pass at a future date upon payment of full consideration as agreed, is a supply of goods.
2. Land and Building
  - (1) Any lease, tenancy, easement, licence to occupy land is a supply of services.
  - (2) Any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly, is a supply of services.
3. Treatment or process  
**Any treatment or process which is being applied to another person's goods is a supply of services.**
4. Transfer of business assets
  - (1) Where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, whether or not for a consideration, such transfer or disposal is a supply of goods by the person.
  - (2) Where, by or under the direction of a person carrying on a business, goods held or used for the purposes of the business are put to any private use or are used, or made available to any person for use, for any purpose other than a purpose of the business, whether or not for a consideration, the usage or making available of such goods is a supply of services.
  - (3) Where any goods, forming part of the business assets of a taxable person, are sold by any other person who has the power to do so to recover any debt owed by the taxable person, the goods shall be deemed to be supplied by the taxable person in the course or furtherance of his business.

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

- (a) the business is transferred as a going concern to another person; or
- (b) the business is carried on by a personal representative who is deemed to be a taxable person.

...

## **SCHEDULE III**

### **LIABILITY TO BE REGISTERED**

1. Every person who, on the appointed day, is registered or holds a license under an earlier law, shall be liable to be registered under this Act with effect from the said day.

2. Every person to whom the provisions of paragraph 1 above do not apply, shall be liable to be registered under this Act if his turnover in a financial year exceeds the [taxable threshold].

Explanation 1: For the purposes of this Schedule, the taxable threshold shall be such amount as may be specified in the notification issued in this behalf by the Central or a State Government on the recommendations of the Council.

Explanation 2: The taxable threshold shall include all supplies made by the taxable person, whether on his own account or made on behalf of all his principals.

3. Where a business carried on by a taxable person registered under this Act is transferred, whether on account of succession or otherwise, to another person as a going concern, the transferee, or the successor, as the case may be, shall be liable to be registered with effect from the date of such transfer or succession.

4. Notwithstanding anything contained in paragraph 1 and 2 above, in a case of transfer pursuant to sanction of a scheme or an arrangement for amalgamation or, as the case may be, de-merger of two or more companies by an order of a High Court, the transferee shall be liable to be registered, where required, with effect from the date on which the Registrar of Companies issues a certificate of incorporation giving effect to such order of the High Court.

5. Notwithstanding anything contained in paragraph 1 and 2 above, the following categories of persons shall be required to be registered under this Act:

- (i) persons making any inter-State supply, irrespective of the taxable threshold specified under paragraph 2;
- (ii) casual taxable persons; and
- (iii) persons who are required to pay tax under reverse charge.

### **GST Valuation (Determination of the Value of Supply of Goods and Services) Rules, 2016**

1. Short title, commencement and application.
  - (1) These rules may be called the GST Valuation (Determination of Value of Supply of Goods and Services) Rules, 2016.
  - (2) These Rules shall come into force on the day the Act comes into force.
  - (3) They shall apply to the supply of goods and/or services under the IGST/CGST/SGST Act.
  
2. Definitions—(1) In these rules, unless the context otherwise requires:
  - (a) "Act" means the IGST Act or the CGST Act or, as the case may be, the SGST Act;
  - (b) "**goods of like kind and quality**" means goods which are identical or similar in physical characteristics, quality and reputation as the goods being valued, and perform the same functions or are commercially interchangeable with the goods being valued and supplied by the same person or by a different person;
  - (c) "**services of like kind and quality**" means services which are identical or similar in nature, quality and reputation as the services being valued and supplied by the same person or by a different person; and
  - (d) "**transaction value**" means the value of goods and/or services within the meaning of section 17 of the IGST / CGST / SGST Act.
  
- (2) Words, expressions and terms not defined in these Rules shall have the same meaning as is assigned to them in the Act.
  
3. Methods of determination of value—
  - (1) Subject to rule 7, the value of goods and/or services shall be the transaction value.
  - (2) **The "transaction value" shall be the value determined in monetary terms.**
  - (3) Where the supply consists of both taxable and non-taxable supply, the taxable supply shall be deemed to be for such part of the monetary consideration as is attributable thereto.
  - (4) The transaction value shall be accepted even where the supplier and recipient of supply are related, provided that the relationship has not influenced the price.
  - (5) Where goods are transferred from—
    - (a) one place of business to another place of the same business,
    - (b) the principal to an agent or from an agent to the principal,

whether or not situated in the same State, the value of such supply shall be the transaction value.
  - (6) The value of supplies specified in sub-section (4) of section 17 of the Act shall be determined by proceeding sequentially through rules 4 to 6.
  
4. Determination of value of supply by comparison—
  - (1) Where the value of a supply cannot be determined under rule 3, the value shall be determined on the basis of the transaction value of goods and/or services of like kind and quality supplied at or about the same time to other customers, adjusted in accordance with the provisions of sub-rule (2).
  - (2) In determining the value of goods and/or services under sub-rule (1), the proper officer shall make such adjustments as appear to him reasonable, taking into consideration the relevant factors, including—

- (a) difference in the dates of supply,
- (b) difference in commercial levels and quantity levels,
- (c) difference in composition, quality and design between the goods and/or services being valued and the goods and/or services with which they are compared,
- (d) difference in freight and insurance charges depending on the place of supply.

5. Computed value method— If the value cannot be determined under rule 4, it shall be based on a computed value which shall include the following: -

- (a) the cost of production, manufacture or processing of the goods or, the cost of provision of the services;
- (b) charges, if any, for the design or brand;
- (c) an amount towards profit and general expenses equal to that usually reflected in supply of goods and/or services of the same class or kind as the goods and/or services being valued which are made by other suppliers.

6. Residual method— Where the value of the goods and/or services cannot be determined under the provisions of rule 5, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules.

7. Rejection of declared value—

(1)(a) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any goods and/or services, he may ask the supplier to furnish further information, including documents or other evidence and if, after receiving such further information, or in the absence of any response from such supplier, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such goods and/or services cannot be determined under the provisions of sub-rule (1) of rule 3.

(b) The reasons to doubt the truth or accuracy of the value of the supply declared by the supplier shall include, but not be limited to the following:

- (i) the significantly higher value at which goods and/or services of like kind or quality supplied at or about the same time in comparable quantities in a comparable commercial transaction were assessed;
- (ii) the significantly lower or higher value of the supply of goods and/or services compared to the market value of goods and/or services of like kind and quality at the time of supply; or
- (iii) any mis-declaration of goods and/or services in parameters such as description, quality, quantity, year of manufacture or production.

(2) The proper officer shall intimate the supplier in writing the grounds for doubting the truth or accuracy of the value declared in relation to the supply of goods and/or services by such supplier and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1).

(3) If after hearing the supplier as aforesaid, the proper officer is, for reasons to be recorded in writing, not satisfied with the value declared, he shall proceed to determine the value in accordance with the provisions of rule 4 or rule 5 or rule 6, proceeding sequentially.

Explanation: For removal of doubts, it is hereby declared that this rule by itself does not provide a method for determination of value. It provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value.

## 8. Valuation in certain cases

### (1) Pure Agent

- (a) Notwithstanding anything contained in these rules, the expenditure or costs incurred by the service provider as a pure agent of the recipient of service, shall be excluded from the value of the taxable service if all the following conditions are satisfied, namely: -
  - (i) the service provider acts as a pure agent of the recipient of service when he makes payment to third party for the goods and/or services procured;
  - (ii) the recipient of service receives and uses the goods and/or services so procured by the service provider in his capacity as pure agent of the recipient of service;
  - (iii) the recipient of service is liable to make payment to the third party;
  - (iv) the recipient of service authorises the service provider to make payment on his behalf;
  - (v) the recipient of service knows that the goods and/or services for which payment has been made by the service provider shall be provided by the third party;
  - (vi) the payment made by the service provider on behalf of the recipient of service has been separately indicated in the invoice issued by the service provider to the recipient of service;
  - (vii) the service provider recovers from the recipient of service only such amount as has been paid by him to the third party; and
  - (viii) the goods and/or services procured by the service provider from the third party as a pure agent of the recipient of service are in addition to the services he provides on his own account.

Explanation: For the purposes of this sub-rule, "**pure agent**" means a person who-

- (a) enters into a contractual agreement with the recipient of service to act as his pure agent to incur expenditure or costs in the course of providing taxable service;
- (b) neither intends to hold nor holds any title to the goods and/or services so procured or provided as pure agent of the recipient of service;
- (c) does not use such goods and/or services so procured; and
- (d) receives only the actual amount incurred to procure such goods and/or services.

### (2) Money Changer

The value of taxable service provided for the services in so far as it pertains to purchase or sale of foreign currency, including money changing, shall be determined by the service provider in the following manner: -

For a currency, when exchanged from, or to, Indian Rupees (INR), the value shall be equal to the difference in the buying rate or the selling rate, as the case may be, and the Reserve Bank of India (RBI) reference rate for that currency at that time, multiplied by the total units of currency:

Provided that in case where the RBI reference rate for a currency is not available, the value shall be 1% of the gross amount of Indian Rupees provided or received, by the person changing the money:

Provided further that in case where neither of the currencies exchanged is Indian Rupee, the value shall be equal to 1% of the lesser of the two amounts the person changing the money would have received by converting any of the two currencies into Indian Rupee on that day at the reference rate provided by RBI.

## **THE INTEGRATED GOODS AND SERVICES TAX ACT, 2016**

### **PART - I PRELIMINARY**

1. Short title, extent and commencement
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### **PART - II**

#### **PRINCIPLES FOR DETERMINING SUPPLY OF GOODS AND/OR SERVICES IN THE COURSE OF INTER-STATE TRADE OR COMMERCE**

3. Supplies of goods and/or services in the course of inter-State trade or commerce

### **PART - III LEVY AND COLLECTION OF TAX**

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### **PART - IV PLACE OF SUPPLY OF GOODS AND/OR SERVICES**

5. Place of supply of goods
6. Place of supply of services

### **PART - V PAYMENT OF TAX**

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11. Application of certain provisions of the CGST Act, 2016
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## **PART - IX ADMINISTRATION**

14. Classes of officers under the Integrated Goods and Services Tax Act, 2016
15. Appointment of officers under the Integrated Goods and Services Tax Act, 2016

## **PART- I PRELIMINARY**

### **1. Short title, extent and commencement**

- (1) This Act may be called the Integrated Goods and Services Tax Act, 2016.
- (2) It extends to the whole of India.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act.

### **2. Definitions**

- (1) In this Act, unless the context otherwise requires,-

- (a) "**appropriate State**" means -
  - (i) in relation to a taxable person who has one or more places of business situated in one State, that State;
  - (ii) in relation to a taxable person who has places of business situated in more than one State, every such State with respect to the place or places of business situated within its territory.

**Explanation:** For the purpose of this Act, "State" includes Union Territory with Legislature.

- (b) "**Government**" means the Central Government;
- (c) "**IGST**" means tax levied under this Act on the supply of any goods and/or services in the course of inter-State trade or commerce.

Explanation: A supply of goods and/or services in the course of import into the territory of India shall be deemed to be a supply of goods and/or services in the course of inter-State trade or commerce.

(d) "**input tax**" in relation to a taxable person, means the IGST charged on any supply of goods and/or services to him which are used, or are to be used, in the course or furtherance of his business;

(e) "**supply of goods and/or services**" includes all forms of supply such as sale, transfer, barter, exchange, license, rental, lease or disposal, and importation of services\*, made or agreed to be made, whether or not for a consideration, by a person in the course or furtherance of business.

(2) Words and expressions not defined in this Act shall have the meaning assigned to them in the Central Goods and Service Tax Act, 2016.

## **PART - II**

### **PRINCIPLES FOR DETERMINING SUPPLY OF GOODS AND/OR SERVICES IN THE COURSE OF INTER-STATE TRADE OR COMMERCE**

#### **3. Supplies of goods and/or services in the course of inter-State trade or commerce**

(1) Subject to the provisions of section 5, a supply of goods shall be deemed to take place in the course of inter-State trade or commerce if the location of the supplier and the place of such supply are in different States.

(2) Subject to the provisions of section 6, a supply of services shall be deemed to take place in the course of inter-State trade or commerce if the location of the service provider and the place of supply of service are in different States.

**PART- III**  
**LEVY AND COLLECTION OF TAX**

**4. Charge of tax**

(1) There shall be levied a tax called the Integrated Goods and Services Tax on all supplies of goods and/or services made in the course of inter-State trade or commerce at the rate specified in the Schedule to this Act and collected in such manner as may be prescribed.

(2) The Integrated Goods and Service Tax shall be paid by every taxable person in accordance with the provisions of this Act.

(3) The Central Government may, by notification, specify categories of supply of services the tax on which is payable on reverse charge basis and the tax thereon shall be paid by the person receiving such service in such manner as may be prescribed at the rate specified in sub-section (1) and all the provisions of this Act shall apply to such person as if he is the person liable for paying the tax in relation to such service.

(4) Notwithstanding anything contained in this Act but subject to such conditions as may be notified in this behalf, no tax under this Act shall be payable by any taxable person in respect of such supplies of goods and/or services as are specified in Schedule . . . to the Act.

**PART - IV**  
**PLACE OF SUPPLY OF GOODS AND/OR SERVICES**

**5. Place of supply of goods**

(1) The provisions of this section shall apply to determine the place of supply of goods.

(2) Where the supply, including a distance supply, involves movement of goods, the place of supply of such goods shall be the location at which the goods are delivered to the receiver.

Explanation: The expression 'distance supply' shall mean a supply of goods which satisfies the following conditions: -

- (a) the goods are supplied to a recipient located in another State, and
- (b) the supplier arranges the transport of goods.

(3) Where the supply does not involve movement of goods, the place of supply shall be the location of such goods at the time of the delivery to the receiver.

(4) Where the goods are assembled or installed at site, the place of supply shall be the place of such installation or assembly.

(5) 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.

(6) The place of supply of gas shall be the location at which the gas is used and consumed.

**6. Place of supply of services**

(1) The provisions of this section shall apply to determine the place of supply of services.

(2) The place of supply of all services, except those services specified in sub-sections (4), (5), (6), (7), (8), (9), (10), (11), (12) and (13), made to a registered taxable person shall be the location of the service receiver.

(3) The place of supply of all services, except those services specified in sub-sections (4), (5), (6), (7), (8), (9), (10), (11), (12) and (13), made to any person other than a registered taxable person shall be the location of the service provider.

(4) The place of supply of services, -

(a) in relation to an immovable property, including services provided by architects, interior decorators, surveyors, engineers and other related experts or estate agents, any service provided by way of grant of rights to use immovable property or for carrying out or co-ordination of construction work, or

(b) by way of lodging accommodation by a hotel, inn, guest house, homestay, club or campsite, by whatever name called and including a house boat or any other vessel, or

(c) by way of accommodation in any immovable property for organizing any marriage or reception or matters related therewith, official, social, cultural, religious or business function including services provided in relation to such function at such property, shall be the location at which the immovable property or boat or vessel is located or intended to be located.

Explanation: Where the immovable property or boat or vessel is located in more than one State, the supply of service shall be treated as made in each of the States in proportion to the value for services separately collected or determined, in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other reasonable basis as may be prescribed in this behalf.

(5) The place of supply of restaurant and catering services and services in relation to training, performance appraisal, personal grooming, fitness, beauty treatment, health services including cosmetic and plastic surgery shall be the location where the services are actually performed.

(6) The place of supply of services provided by way of—

(a) admission to a cultural, artistic, sporting, scientific, educational, or entertainment event or amusement park or any other place, or

(b) organization of a cultural, artistic, sporting, scientific, educational or entertainment event including supply of service in relation to a conference, fair, exhibition, celebration or similar events, or

(c) services ancillary to such admission to or organization of any of the above events or services, or

(d) assigning of sponsorship of any of the above events,

shall be the place where the event is actually held.

Explanation: Where the event is held in more than one State and a consolidated amount is charged for supply of services relating to such event, the place of supply of such services shall be taken as being in the each of the States in proportion to the value of services so provided in each State as ascertained from the terms of the contract or agreement entered into in this regard or, in absence of such contract or agreement, on such other reasonable basis as may be prescribed in this behalf.

(7) The place of supply of services by way of transportation of goods, including by mail or courier to,

(a) a registered person, shall be the location of such service receiver;

(b) a person other than a registered person, shall be the location at which such goods are handed over for their transportation.

(8) The place of supply of passenger transportation service shall be the place where the passenger embarks on the conveyance for a continuous journey:

Provided that where the right to passage is given for future use and the point of embarkation is not known at the time of issue of right to passage, the place of supply of such service shall be determined in the manner specified in sub-sections (2) or (3), as the case may be.

Explanation: For the purposes of this sub-section, the return journey shall be treated as a separate journey even if the right to passage for onward and return journey is issued at the same time.

(9) The place of supply of services on board a conveyance such as vessel, aircraft, train or motor vehicle, shall be the location of the first scheduled point of departure of that conveyance for the journey.

(10) The place of supply of telecommunication services including data transfer, broadcasting, cable and direct to home television services to any person shall—

(a) in case of services by way of fixed telecommunication line, leased circuits, internet leased circuit, cable or dish antenna, be the location where the telecommunication line, leased circuit or cable connection or dish antenna is installed for receipt of services;

(b) in case of mobile connection for telecommunication and internet services provided on post-paid basis, be the location of billing address of the service receiver on record of the service provider;

(c) in cases where mobile connection for telecommunication and internet service are provided on pre-payment through a voucher or any other means, be the location where such pre-payment is received or such vouchers are sold:

Provided that if such pre-paid service is availed or the recharge is made through internet banking or other electronic mode of payment, the location of the service receiver on record of the service provider shall be the place of supply of such service.

(11) The place of supply of banking and other financial services including stock broking services to any person shall be the location of the service receiver on the records of the service provider:

Provided that if the service is not linked to the account of the receiver, the place of supply shall be location of the service provider.

(12) The place of supply of insurance services shall:

(a) to a registered person, be the location of the service receiver; and

(b) to a person other than a registered person, be the location of the service receiver available on the records of the service provider:

Provided that for all general insurance services related to an immovable property, the place of supply of services shall be the location of such immovable property.

(13) The place of supply of advertisement services to the Central Government, a State Government, a statutory body or a local authority meant for identifiable States, shall be taken as located in each of such States and the value of such supplies specific to each State shall be in proportion to amount attributable to service provided by way of dissemination in the respective States as may be determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other reasonable basis as may be prescribed in this behalf.

[Note. It is the view of the Centre that in the context of B2B supplies, the primary factor for determining the place of supply would be the location of the recipient subject to specified exceptions.]

**PART -V****PAYMENT OF TAX****7. Payment of Tax**

(1) Every deposit made towards tax, interest, penalty, fee or any other amount by a taxable person by any of the prescribed modes shall be credited to the electronic cash ledger of such person to be maintained in the manner as may be prescribed.

(2) The input tax credit as self-assessed in the return of a taxable person shall be credited to his electronic credit ledger to be maintained in the manner as may be prescribed.

(3) The tax, interest, penalty, fee or any other amount payable under the provisions of this Act or the rules made there under shall be paid to the IGST account of the Central Government by debiting the electronic cash or credit ledger under this Act in such manner and subject to such conditions and limitations and within such time as may be prescribed:

Provided that after fully utilizing the balance in the electronic [cash or] credit ledger under this Act, the balance available in the credit ledger under the CGST Act may be utilized to pay the tax under this Act:

Provided further that after fully utilizing the balance in the electronic [cash or] credit ledgers under this Act and inthe credit ledger under the CGST Act, the balance available in the credit ledger under the SGST Act may be utilized to pay the tax under this Act.

**PART - VI**  
**INPUT TAX CREDIT**

**8. Manner of taking input tax credit and utilization thereof**

(1) Every taxable person shall, subject to such conditions and restrictions as may be prescribed in this behalf, be entitled to take credit of input tax, as self-assessed, in his return and such amount shall be credited to his electronic credit ledger to be maintained in the manner as may be prescribed.

(2) A taxable person, after fully discharging his tax dues under this Act, may utilize the balance or any part thereof available in his electronic credit ledger for discharging his tax dues under the CGST Act in the manner as may be prescribed.

(3) A taxable person, after fully discharging his tax dues under this Act and the CGST Act, may utilize the balance or any part thereof available in his electronic credit ledger for discharging his tax dues under the SGST Act in the manner as may be prescribed.

Explanation: For the purpose of this section, 'tax dues' shall mean the tax payable under this Act and does not include interest, fee or penalty.

**9. Transfer of input tax credit**

(1) On utilization of input tax credit under this Act for payment of tax dues under the CGST Act as per sub-section (2) of section 8, the Central Government shall transfer an amount equal to the credit so utilized from the IGST account to the CGST account in the manner and time as may be prescribed.

(2) On utilization of input tax credit under this Act for payment of tax dues under the SGST Act as per sub-section (3) of section 8, the Central Government shall transfer an amount equal to the credit so utilized from the IGST account to the SGST account of the appropriate State Government in the manner and time as may be prescribed.

## **PART - VII**

### **APPORTIONMENT OF TAX AND SETTLEMENT OF FUNDS**

#### **10. Apportionment of tax collected under the Act and settlement of funds**

(1) Out of the IGST paid to the Central Government in respect of inter-State supply of goods and/or services to an unregistered person or to a taxable person paying tax under section 8 of the CGST Act, the amount of tax calculated at the rate equivalent to the CGST on such supply shall be apportioned to the Central Government and shall be transferred to the CGST account in the manner and time as may be prescribed.

(2) Out of the IGST paid to the Central Government in respect of inter-State supply of goods and/or services made in a year to a registered taxable person, where the supply is either not eligible for input tax credit or where the recipient does not avail of the said credit within the specified period and thus remains in the IGST account after expiry of the due date for filing of annual return for such year in which the supply was made, the amount of tax calculated at the rate equivalent to the CGST on such supply shall be apportioned to the Central Government and shall be transferred to the CGST account in the manner and time as may be prescribed.

(3) Out of the IGST paid to the Central Government in respect of import of goods by an unregistered person, the amount of tax calculated at the rate equivalent to the CGST on such supply shall be apportioned to the Central Government and shall be transferred to the CGST account in the manner and time as may be prescribed.

(4) The balance tax remaining in the IGST account in respect of the supply for which an apportionment to the Central Government has been done under sub-section (1), (2) or (3) shall be apportioned, in the manner and time as may be prescribed, to the State where such supply takes place as per section 5 or 6.

**PART - VIII**  
**MISCELLANEOUS**

**11. Application of certain provisions of the CGST Act, 2016**

The provisions relating to registration, valuation, time of supply of goods, time of supply of services, change in rate of tax in respect of supply of services, exemption from payment of tax, input tax credit and utilization thereof, accounts and records, payment, return, audit, assessment, adjudication, demands, refunds, interest, recovery of tax, offences and penalties, inspection, search and seizure, prosecution and power to arrest, appeals, review, advance ruling and compounding shall apply, so far as may be, in relation to the levy of tax under this Act as they apply in relation to levy of tax under the CGST Act, 2016.

**12. Power to make rules**

- (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.
- (2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the matters which under any provision of this Act are required to be prescribed or to be provided for by rules.

**13. Levy of interest**

Every person, liable to pay the tax in accordance with the provisions of section . . . or rules made there under, who fails to credit the tax or any part thereof to the account of the Central Government within the period prescribed, shall pay simple interest at such rate as may be specified, by Notification, for the period by which such crediting of the tax or any part thereof is delayed.

**PART - IX**  
**ADMINISTRATION**

**14. Classes of officers under the Integrated Goods and Services Tax Act, 2016**

- (1) There shall be the following classes of officers under the Integrated Goods and Services Tax Act, 2016 namely;
- (a) Principal Chief Commissioners of IGST or  
Principal Directors General of IGST,
- (b) Chief Commissioners of IGST or  
Directors General of IGST,
- (c) Principal Commissioners of IGST or  
Principal Additional Directors General of IGST,
- (d) Commissioners of IGST or  
Additional Directors General of IGST,
- (e) Commissioner of IGST (Appeals)
- (f) Additional Commissioners of IGST or  
Additional Directors of IGST,
- (g) Joint Commissioners of IGST or  
Joint Directors of IGST,
- (h) Deputy Commissioners of IGST or  
Deputy Directors of IGST,
- (i) Assistant Commissioners of IGST or  
Assistant Directors of IGST, and

such other class of officers as may be appointed for the purposes of this Act.

**15. Appointment of officers under the Integrated Goods and Services Tax Act, 2016**

- (1) The Board may appoint such persons as it may think fit to be officers under the Integrated Goods and Services Tax Act, 2016.
- (2) Without prejudice to the provisions of sub-section (1), the Board may authorize a Principal Chief Commissioner/Chief Commissioner of Central Goods and Services Tax or a Principal Commissioner/Commissioner of Central Goods and Services Tax or an Additional/Joint or Deputy/Assistant Commissioner of Central Goods and Service Tax to appoint officers of Integrated Goods and Services Tax below the rank of Assistant Commissioner of Integrated Goods and Services Tax Act, 2016.

[Note. It is the view of the States that certain powers under the IGST Act such as i) audit, ii) enforcement and iii) inspection should also be exercised by the officials of the State Government. Likewise, the powers under the SGST Act relating to the above subjects should be exercised by the officials of the Central Government.]

## **ADDITIONAL TAX ON CERTAIN INTER-STATE SUPPLIES**

### **Levy of Additional Tax**

(1) Notwithstanding anything contained in this Act, there shall be levied a tax called '**additional tax**' on any supply of taxable goods made in the course of inter-State trade or commerce by a taxable person at a rate not exceeding one per cent and for a period of two years or such other period, as may be notified by the Central Government on the recommendation of the Council, and collected in such manner as may be prescribed.

Explanation: For the purposes of this sub-section, '**supply**' shall mean all forms of supply made for a consideration.

(2) Every taxable person liable to pay tax under sub-section (1), shall furnish a return declaring the taxable value of the supplies made during a tax period and shall pay tax due thereon in the manner and time as may be prescribed.

(3) The Additional Tax paid under this section shall not be claimed as input tax credit under this Act or under any law for the time being in force.

(4) The amount of Additional Tax paid under this section, except such amount attributable to the Union Territories, shall not form part of the Consolidated Fund of India and shall be assigned to the State from where the supply of goods originates.

(5) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification, exempt generally either absolutely or subject to such conditions as may be specified in the notification, goods of any specified description from the whole or any part of the additional tax leviable thereof.