CENTRAL BOARD OF EXCISE & CUSTOMS
NEW DELHI

FREQUENTLY ASKED QUESTIONS (FAQs)

ON

GOODS AND SERVICES TAX (GST)

2nd Edition: 31st March, 2017

(Updated as on 1st January, 2018)

FOREWORD

The compilation of Frequently Asked Questions (FAQs) on GST brought out by the National Academy of Customs, Indirect Taxes, & Narcotics (NACIN), the apex training institution under the Central Board of Excise & Customs (CBEC), has been extremely well received. The first edition of GST FAQs was released on 21st September, 2016 by the Hon'ble Finance Minister and was based on the Model GST Law as in June, 2016. Since then, the GST FAQs have been translated in many regional languages to ensure dissemination across the country.

The second edition of these FAQs was released on 31st March, 2017 and was further updated as on 1st July, 2017. A number of significant developments have taken place since the last update, especially in view of some major decisions taken in the last few meetings of the GST Council. The second edition has now been updated as on 1st January, 2018. It contains 24 chapters and 558 questions. I am sure that these FAQs will continue to disseminate knowledge and spread awareness on GST amongst the Tax officials, Trade and Public. I congratulate DG NACIN and her team and I am sure that more such publications will be brought out for the benefit of all the stakeholders.

Vanaja N. Sarna
Chairman, CBEC

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Disclaimer*:*
This FAQ on GST compiled by NACIN and vetted by the Source Trainers and GST Policy Wing is based on the CGST/SGST/UTGST/IGST Act(s). This FAQ is for training and academic purposes only.
The information in this booklet is intended only to provide a general overview and is not intended to be treated as legal advice or opinion. For greater details, you are requested to refer to the respective CGST/SGST/UTGST/IGST Acts.
The FAQs refer to CGST and SGST Acts as CGST/SGST as CGST Act and SGST Act are identical in most of the provisions. A few provisions may be specific to state and may not be in CGST Act.

1. Overview of Goods and Services Tax (GST)

Q 1. What is Goods and Services Tax (GST)?

Ans. It is a destination based tax on consumption of goods and services. It is proposed to be levied at all stages right from manufacture up to final consumption with credit of taxes paid at previous stages available as setoff. In a nutshell, only value addition will be taxed and burden of tax is to be borne by the final consumer.

Q 2. What exactly is the concept of destination based tax on consumption?

Ans. The tax would accrue to the taxing authority which has jurisdiction over the place of consumption which is also termed as place of supply.

Q 3. Which of the existing taxes are proposed to be subsumed under GST?

Ans. The GST would replace the following taxes:

(i) taxes currently levied and collected by the Centre:

a. Central Excise duty

b. Duties of Excise (Medicinal and Toilet Preparations)

c. Additional Duties of Excise (Goods of Special Importance)

d. Additional Duties of Excise (Textiles and Textile Products)

e. Additional Duties of Customs (commonly known as CVD)

f. Special Additional Duty of Customs (SAD)

g. Service Tax

h. Central Surcharges and Cesses so far as they relate to supply of goods and services

(ii) State taxes that would be subsumed under the GST are:

a. State VAT

b. Central Sales Tax

c. Luxury Tax

d. Entry Tax (all forms)

e. Entertainment and Amusement Tax (except when levied by the local bodies)

f. Taxes on advertisements

g. Purchase Tax

h. Taxes on lotteries, betting and gambling

i. State Surcharges and Cesses so far as they relate to supply of goods and services

The GST Council shall make recommendations to the Union and States on the taxes, cesses and surcharges levied by the Centre, the States and the local bodies which may be subsumed in the GST.

Q 4. What principles were adopted for subsuming the above taxes under GST?

Ans. The various Central, State and Local levies were examined to identify their possibility of being subsumed under GST. While identifying, the following principles were kept in mind:

(i) Taxes or levies to be subsumed should be primarily in the nature of indirect taxes, either on the supply of goods or on the supply of services.

(ii) Taxes or levies to be subsumed should be part of the transaction chain which commences with import/ manufacture/ production of goods or provision of services at one end and the consumption of goods and services at the other.

(iii) The subsumation should result in free flow of tax credit in intra and inter-State levels. The taxes, levies and fees that are not specifically related to supply of goods & services should not be subsumed under GST.

(v) Revenue fairness for both the Union and the States individually would need to be attempted.

Q 5. Which are the commodities proposed to be kept outside the purview of GST?

Ans. Article 366(12A) of the Constitution as amended by 101st Constitutional Amendment Act, 2016 defines the Goods and Services tax (GST) as a tax on supply of goods or services or both, except supply of alcoholic liquor for human consumption. So alcohol for human consumption is kept out of GST by way of definition of GST in constitution. Five petroleum products viz. petroleum crude, motor spirit (petrol), high speed diesel, natural gas and aviation turbine fuel have temporarily been kept out and GST Council shall decide the date from which they shall be included in GST. Furthermore, distribution and transmission of electricity and sale and purchase of real estate will also be kept out by way of exemptions.

Q 6. What will be the status in respect of taxation of above commodities after introduction of GST?

Ans. The existing taxation system (VAT & Central Excise) will continue in respect of the above commodities.

Q 7. What will be status of Tobacco and Tobacco products under the GST regime?

Ans. Tobacco and tobacco products would be subject to GST. In addition, the Centre would have the power to levy Central Excise duty on these products.

Q 8. What type of GST is proposed to be implemented?

Ans. It would be a dual GST with the Centre and States simultaneously levying it on a common tax base. The GST to be levied by the Centre on intra-State supply of goods and / or services would be called the Central GST (CGST) and that to be levied by the States/ Union territory would be called the State GST (SGST)/ UTGST. Similarly, Integrated GST (IGST) will be levied and administered by Centre on every inter-state supply of goods and services.

Q 9. Why is Dual GST required?

Ans. India is a federal country where both the Centre and the States have been assigned the powers to levy and collect taxes through appropriate legislation. Both the levels of Government have distinct responsibilities to perform according to the division of powers prescribed in the Constitution for which they need to raise resources. A dual GST will, therefore, be in keeping with the Constitutional requirement of fiscal federalism.

Q 10. Which authority will levy and administer GST?

Ans. Centre will levy and administer CGST & IGST while respective states /UTs will levy and administer SGST/ UTGST.

Q 11. Why was the Constitution of India amended

recently in the context of GST?

Currently, the fiscal powers between the Centre and the States are clearly demarcated in the Constitution with almost no overlap between the respective domains. The Centre has the powers to levy tax on the manufacture of goods (except alcoholic liquor for human consumption, opium, narcotics etc.) while the States have the powers to levy tax on the sale of goods. In the case of inter-State sales, the Centre has the power to levy a tax (the Central Sales Tax) but, the tax is collected and retained entirely by the States. As for services, it is the Centre alone that is empowered to levy service tax.

Introduction of the GST required amendments in the Constitution so as to simultaneously empower the Centre and the States to levy and collect this tax. The Constitution of India has been amended by the Constitution (one hundred and first amendment) Act, 2016 for this purpose. Article 246A of the Constitution empowers the Centre and the States to levy and collect the GST.

Q 12. How a particular transaction of goods and services would be taxed simultaneously under Central GST (CGST) and State GST (SGST)?

Ans. The Central GST and the State GST would be levied simultaneously on every transaction of supply of goods and services made by registered persons except the exempted goods and services, goods and services which are outside the purview of GST. Further, both would be levied on the same price or value unlike State VAT which is levied on the value of the goods inclusive of CENVAT. While the location of the supplier and the recipient within the country is immaterial for the purpose of CGST, SGST would be chargeable only when the supplier and the recipient

are both located within the State.

Illustration I: Suppose hypothetically that the rate of CGST is 10% and that of SGST is 10%. When a wholesale dealer of steel in Uttar Pradesh supplies steel bars and rods to a construction company which is also located within the same State for, say Rs. 100, the dealer would charge CGST of Rs. 10 and SGST of Rs. 10 in addition to the basic price of the goods. He would be required to deposit the CGST component into a Central Government account while the SGST portion into the account of the concerned State Government. Of course, he need not actually pay Rs. 20 (Rs. 10 + Rs. 10) in cash as he would be entitled to set-off this liability against the CGST or SGST paid on his purchases (say, inputs). But for paying CGST he would be allowed to use only the credit of CGST paid on his purchases while for SGST he can utilize the credit of SGST alone. In other words, CGST credit cannot, in general, be used for payment of SGST. Nor can SGST credit be used for payment of CGST.

Illustration II: Suppose, again hypothetically, that the rate of CGST is 10% and that of SGST is 10%. When an advertising company located in Mumbai supplies advertising services to a company manufacturing soap also located within the State of Maharashtra for, let us say Rs. 100, the ad company would charge CGST of Rs. 10 as well as SGST of Rs. 10 to the basic value of the service. He would be required to deposit the CGST component into a Central Government account while the SGST portion into the account of the concerned State Government. Of course, he need not again actually pay Rs. 20 (Rs. 10+Rs. 10) in cash as it would be entitled to set-off this liability against the CGST or SGST paid on his purchase (say, of inputs such as stationery, office

equipment, services of an artist etc.). But for paying CGST he would be allowed to use only the credit of CGST paid on its purchase while for SGST he can utilise the credit of SGST alone. In other words, CGST credit cannot, in general, be used for payment of SGST. Nor can SGST credit be used for payment of CGST.

Q 13. What are the benefits which the Country will accrue from GST?

Ans. Introduction of GST would be a very significant step in the field of indirect tax reforms in India. By amalgamating a large number of Central and State taxes into a single tax and allowing set-off of prior-stage taxes, it would mitigate the ill effects of cascading and pave the way for a common national market. For the consumers, the biggest gain would be in terms of a reduction in the overall tax burden on goods, which is currently estimated at 25%-30%. Introduction of GST would also make our products competitive in the domestic and international markets. Studies show that this would instantly spur economic growth. There may also be revenue gain for the Centre and the States due to widening of the tax base, increase in trade volumes and improved tax compliance. Last but not the least, this tax, because of its transparent character, would be easier to administer.

Q 14. What is IGST?

Ans. Under the GST regime, an Integrated GST (IGST) would be levied and collected by the Centre on inter-State supply of goods and services. Under Article 269A of the Constitution, the GST on supplies in the course of inter-State trade or commerce shall be levied and collected by the Government of India and such tax shall be apportioned between the Union and the States in the manner as may be provided by Parliament by law on the recommendations of the Goods and Services Tax Council.

Q 15. Who will decide rates for levy of GST?

Ans. The CGST and SGST would be levied at rates to be jointly decided by the Centre and States. The rates would be notified on the recommendations of the GST Council.

Q 16. What would be the role of GST Council?

Ans. A GST Council would be constituted comprising the Union Finance Minister (who will be the Chairman of the Council), the Minister of State (Revenue) and the State Finance/Taxation Ministers to make recommendations to the Union and the States on

(i) the taxes, cesses and surcharges levied by the Centre, the States and the local bodies which may be subsumed under GST;

(ii) the goods and services that may be subjected to or exempted from the GST;

(iii) the date on which the GST shall be levied on petroleum crude, high speed diesel, motor sprit (commonly known as petrol), natural gas and aviation turbine fuel;

(iv) model GST laws, principles of levy, apportionment of IGST and the principles that govern the place of supply;

(v) the threshold limit of turnover below which the goods and services may be exempted from GST;

(vi) the rates including floor rates with bands of GST;

(vii) any special rate or rates for a specified period to raise additional resources during any natural calamity or disaster;

(viii) special provision with respect to the North-

East States, J&K, Himachal Pradesh and Uttarakhand; and

(ix) any other matter relating to the GST, as the Council may decide.

Q 17. What is the guiding principle of GST Council?

Ans. The mechanism of GST Council would ensure harmonization on different aspects of GST between the Centre and the States as well as among States. It has been provided in the Constitution (one hundred and first amendment) Act, 2016 that the GST Council, in its discharge of various functions, shall be guided by the need for a harmonized structure of GST and for the development of a harmonized national market for goods and services.

Q 18. How will decisions be taken by GST Council?

Ans. The Constitution (one hundred and first amendment) Act, 2016 provides that every decision of the GST Council shall be taken at a meeting by a majority of not less than 3/4th of the weighted votes of the Members present and voting. The vote of the Central Government shall have a weightage of 1/3rd of the votes cast and the votes of all the State Governments taken together shall have a weightage of 2/3rd of the total votes cast in that meeting. One half of the total number of members of the GST Council shall constitute the quorum at its meetings.

Q 19. Who is liable to pay GST under the proposed GST regime?

Ans. Under the GST regime, tax is payable by the registered taxable person on the supply of goods and/or services. Liability to pay tax arises when the taxable person

crosses the turnover threshold of Rs.20 lakhs (Rs. 10 lakhs for NE & Special Category States) except in certain specified cases where the taxable person is liable to pay GST even though he has not crossed the threshold limit. The CGST / SGST is payable on all intra-State supply of goods and/or services and IGST is payable on all inter- State supply of goods and/or services. The CGST /SGST and IGST are payable at the rates specified in the Schedules to the respective Acts.

Q 20. What are the benefits available to small tax payers under the GST regime?

Ans. Tax payers with an aggregate turnover in a financial year up to [Rs.20 lakhs & Rs.10 Lakhs for NE and special category states] would be exempt from taking registration under GST. Further, a person whose aggregate turnover in the preceding financial year is less than Rs.1 Crore (75 lakhs for 9 special category states viz 1. Arunachal Pradesh, 2. Assam, 3. Manipur, 4. Meghalaya, 5. Mizoram, 6. Nagaland, 7. Sikkim, 8. Tripura, and 9. Himachal Pradesh) can opt for a simplified composition scheme where tax will payable at a concessional rate on the turnover in a state.

[Aggregate turnover shall include the aggregate value of all taxable supplies, exempt supplies and exports of goods and/or services and exclude taxes viz. GST.] Aggregate turnover shall be computed on all India basis. For NE States and special category states, the exemption threshold shall be [Rs. 10 lakhs]. All taxpayers eligible for threshold exemption will have the option of paying tax with input tax credit (ITC) benefits. Tax payers making inter-State supplies of goods or paying tax on reverse charge basis shall not be eligible for threshold exemption.

Q 21. How will the goods and services be classified under GST regime?

Ans. HSN (Harmonised System of Nomenclature) code shall be used for classifying the goods under the GST regime. Taxpayers whose turnover is above Rs. 1.5 crores but below Rs. 5 crores shall use 2-digit code and the taxpayers whose turnover is Rs. 5 crores and above shall use 4-digit code. Taxpayers whose turnover is below Rs. 1.5 crores are not required to mention HSN Code in their invoices.

Services will be classified as per the Services Accounting Code (SAC)

Q 22. How will imports be taxed under GST?

Ans. Imports of Goods and Services will be treated as inter-state supplies and IGST will be levied on import of goods and services into the country. The incidence of tax will follow the destination principle and the tax revenue in case of SGST will accrue to the State where the imported goods and services are consumed. Full and complete set-off will be available on the GST paid on import on goods and services.

Q 23. How will Exports be treated under GST?

Ans. Exports will be treated as zero rated supplies. No tax will be payable on exports of goods or services, however credit of input tax credit will be available and same will be available as refund to the exporters. The Exporter will have an option to either pay tax on the output and claim refund of IGST or export under Bond without payment of IGST and claim refund of Input Tax Credit (ITC).

Q 24. What is the scope of composition scheme under GST?

Ans. Small taxpayers with an aggregate turnover in a preceding financial year up to Rs. One Crore (75 lakhs for special category States – except Jammu & Kashmir and Uttarakhand) shall be eligible for composition levy. This scheme is basically for suppliers of goods and restaurant service providers only. Under the scheme, a taxpayer shall pay tax as a percentage of his turnover in a state during the year without the benefit of ITC. The rate of tax for CGST and SGST/UTGST shall not exceed [2% for manufacturer & 1% in other cases; 5% for specific services as mentioned in para 6(b) of Schedule II viz serving of food or any other article for human consumption i.e. restaurant service providers]. A tax payer opting for composition levy shall not collect any tax from his customers.

Tax payers making inter- state supplies (except persons making inter-state supplies of certain specified handicraft goods) or making supplies through e-commerce operators who are required to collect tax at source shall not be eligible for composition scheme. Also manufacturers of ice-cream, pan masala and tobacco products will not be eligible for composition scheme.

Q 25. Whether the composition scheme will be optional or compulsory?

Ans. Optional.

Q 26. What is GSTN and its role in the GST regime?

Ans. GSTN stands for Goods and Service Tax Network (GSTN). A Special Purpose Vehicle called the GSTN has been set up to cater to the needs of GST. The GSTN shall provide a shared IT infrastructure and services to Central and State Governments, tax payers and other stakeholders for implementation of GST. The functions of the GSTN

would, inter alia, include: (i) facilitating registration; (ii) forwarding the returns to Central and State authorities; (iii) computation and settlement of IGST; (iv) matching of tax payment details with banking network; (v) providing various MIS reports to the Central and the State Governments based on the tax payer return information; (vi) providing analysis of tax payers' profile; and (vii) running the matching engine for matching, reversal and reclaim of input tax credit.

The GSTN is developing a common GST portal and applications for registration, payment, return and MIS/ reports. The GSTN would also be integrating the common GST portal with the existing tax administration IT systems and would be building interfaces for tax payers. Further, the GSTN is developing back-end modules like assessment, audit, refund, appeal etc. for 19 States and UTs (Model II States). The CBEC and Model I States (15 States) are themselves developing their GST back-end systems. Integration of GST front-end system with back-end systems will have to be completed and tested well in advance for making the transition smooth.

Q 27. How are the disputes going to be resolved under the GST regime?

Ans. The Constitution (one hundred and first amendment) Act, 2016 provides that the Goods and Services Tax Council shall establish a mechanism to adjudicate any dispute-

(a) between the Government of India and one or more States; or

(b) between the Government of India and any State or States on one side and one or more other Sates on the other side; or

(c) between two or more States,

arising out of the recommendations of the Council or implementation thereof.

Q 28. What is the purpose of Compliance rating mechanism?

Ans. As per Section 149 of the CGST/SGST Act, every registered person shall be assigned a compliance rating based on the record of compliance in respect of specified parameters. Such ratings shall also be placed in the public domain. A prospective client will be able to see the compliance ratings of suppliers and take a decision as to whether to deal with a particular supplier or not. This will create healthy competition amongst taxable persons.

Q 29. Whether actionable claims liable to GST?

Ans. As per section 2(52) of the CGST/SGST Act actionable claims are to be considered as goods. Schedule III read with Section 7 of the CGST/SGST Act lists the activities or transactions which shall be treated neither as supply of goods nor supply of services. The Schedule lists actionable claims other than lottery, betting and gambling as one of such transactions. Thus only lottery, betting and gambling shall be treated as supplies under the GST regime. All the other actionable claims shall not be supplies.

Q 30. Whether transaction in securities be taxable in GST?

Ans. Securities have been specifically excluded from the definition of goods as well as services. Thus, the transaction

in securities shall not be liable to GST.

Q 31. What is the concept of Information Return?

Ans. Information return is based on the idea of verifying the compliance levels of registered persons through information procured from independent third party sources. As per section 150 of the CGST/SGST Act, many authorities who are responsible for maintaining records 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 both 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, are mandated to furnish an information return of the same in respect of such periods, within such time, in such form and manner and to such authority or agency as may be prescribed. Failure to do so may result in penalty being imposed as per Section 123.

Q 32. Different companies have different types of accounting software packages and no specific format are mandated for keeping records. How will department be able to read into these complex software?

Ans. As per Section 153 of the CGST/SGST Act, having regard to the nature and complexity of a case and in the interest of revenue, department may take assistance from an expert at any state of scrutiny, inquiry, investigation or any other proceedings.

Q 33. Is there any provision in GST for tax treatment of goods returned by the recipient?

Ans. Yes, Section 34 deals with such situations. Where the goods supplied are returned by the recipient, the registered person (supplier of goods) may issue to the recipient a credit note containing the prescribed particulars. The details of the credit note shall be declared by the supplier in the returns for the month during which such credit note was issued but not later than September following the end of the year in which such supply was made or the date of filing of the relevant annual return, whichever is earlier. The details of the credit note shall be matched with the corresponding reduction in claim for input tax credit by the recipient in his valid return for the same tax period or any subsequent tax period and the claim for reduction in output tax liability by the supplier that matches with the corresponding reduction in claim for ITC by the recipient shall be finally accepted and communicated to both parties.

Q 34. What is Anti-Profiteering measure?

Ans. As per section 171 of the CGST/SGST Act, any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices. In pursuance of the powers conferred by this section, the government has constituted the National Anti-Profiteering Authority (NAPA). NAPA is required to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.

NAPA has power to investigate cases against the registered person who has not passed on the benefits by

way of commensurate reduction in prices and order reduction in prices, cancel registration, impose penalty and/or return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest.

Q 35. What tax will be levied on goods manufactured but not cleared from factory before 01.07.2017?

Ans. Goods manufactured, but not cleared from factory before 01.07.2017 have been exempted from Central Excise duty vide Tariff Notification No. 12/2017-CE dated 30.06.2017. Appropriate GST will have to be paid whenever the goods are cleared after 01.07.2017.

Q 36. Is there any provision for cross empowerment of officers of State and Central Government under GST?

Ans. Yes. As per Section 6 (1) of CGST Act, 2017, the officers appointed under the SGST / UTGST Act are authorised to be the proper officers for the purposes of CGST/IGST Act, subject to such conditions as the Government shall, on the recommendations of the Council, by notification, specify. Similar provisions in the SGST/UTGST Act empower the central government officials to be the proper officers under the SGST/UTGST Act. Notification no. 39/2017-Central Tax dated 13/10/2017 and Notification no. 11/2017 –Integrated Tax dated 13/10/2017 have been issued in order to cross-empower State Tax officers for processing and grant of refund.

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2. Levy of and Exemption from Tax

Q 1. Where is the power to levy GST derived from?

Ans. Article 246A of the Constitution, which was introduced by the Constitution (101st Amendment) Act, 2016 confers concurrent powers to both, Parliament and State Legislatures to make laws with respect to GST i.e. central tax (CGST) and state tax (SGST) or union territory tax (UTGST). However, clause 2 of Article 246A read with Article 269A provides exclusive power to the Parliament to legislate with respect to inter-State trade or commerce i.e. integrated tax (IGST).

Q 2. What is the taxable event under GST?

Ans. Taxable event under GST is supply of goods or services or both. CGST and SGST/ UTGST will be levied on intra-State supplies. IGST will be levied on inter-State supplies.

Q 3. Whether supplies made without consideration will also come within the purview of supply under GST?

Ans. Yes, but only those activities which are specified in Schedule I to the CGST Act / SGST Act. The said provision has been adopted in IGST Act as well as in UTGST Act also. In cases where the inputs/ capital goods sent for job work are not returned with in the specified time limit, the supplies made by the principal to job worker will also be deemed to be a supply.

Q 4. Will activities of charitable institutions be taxable under GST?

Ans. Services of charitable activities by an entity

registered under Section 12AA of the Income Tax Act, 1961 is exempt vide Notification no.12/2017-Central Tax (Rate) dated 28.06.2017.

Q 5. Who can notify a transaction to be supply of goods or services?

Ans. Central Government or State Government, on the recommendations of the GST Council, can notify an activity to be the supply of goods and not supply of services or supply of services and not supply of goods or neither a supply of goods nor a supply of services.

Q 6. What are composite supply and mixed supply? How are these two different from each other?

Ans. Composite supply is a supply consisting of two or more taxable supplies of goods or services or both or any combination thereof, which are bundled in natural course and are supplied in conjunction with each other in the ordinary course of business and where one of which is a principal supply. For example, when a consumer buys a television set and he also gets warranty and a maintenance contract with the TV, this supply is a composite supply. In this example, supply of TV is the principal supply, warranty and maintenance service are ancillary.

Mixed supply is combination of more than one individual supplies of goods or services or any combination thereof made in conjunction with each other for a single price, which can ordinarily be supplied separately. For example, a shopkeeper selling storage water bottles along with refrigerator. Bottles and the refrigerator can easily be priced and sold separately.

Q 7. What is the treatment of composite supply and mixed supply under GST?

Ans. Composite supply shall be treated as supply of the principal supply. Mixed supply would be treated as supply of that particular goods or services which attracts the highest rate of tax.

Q 8. Are all goods and services taxable under GST?

Ans. Supplies of all goods and services are taxable except alcoholic liquor for human consumption. Supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be taxable with effect from a future date. This date would be notified by the Government on the recommendations of the GST Council.

Q 9. What is meant by Reverse Charge?

Ans. It means the liability to pay tax is on the recipient of supply of goods and services instead of the supplier of such goods or services in respect of notified categories of supply.

Q 10. Is the reverse charge mechanism applicable only to services?

Ans. No, reverse charge applies to supplies of both goods and services, as notified by the Government on the recommendations of the GST Council. Notification no. 4/2017-Central Tax (Rate) and 13/2017- Central Tax (Rate) both dated 28/06/2017 have been issued. Similar

notifications have been issued under IGST Act also. Reverse charge also applies to supplies received by a registered person from unregistered persons. However, the provision of reverse charge liability on supplies received from unregistered persons, as provided in sections 9 (4) and 5 (4) of the CGST Act and the IGST Act respectively, have been kept in abeyance till 31.03.2018.

Q 11. What will be the implications in case of receipt of supply from unregistered persons?

Ans. In case of receipt of supply from an unregistered person, the registered person who is receiving goods or services shall be liable to pay tax under reverse charge mechanism. However, this provision (of reverse charge on supplies received from unregistered persons) have been kept in abeyance till 31.03.2018

Q 12. Can any person other than the supplier or recipient be liable to pay tax under GST?

Ans. Yes, the Government can specify categories of services the tax on which shall be paid by the electronic commerce operator, if such services are supplied through it and all the provisions of the Act shall apply to such electronic commerce operator as if he is the person liable to pay tax in relation to supply of such services. Notification No. 17/2017-Central Tax (rate) dated 28.06.2017 and Notification No. 14/2017-Integrated Tax (Rate) dated 28.06.2017 have been issued under the CGST Act and the IGST Act respectively in this regard. The following categories of services have been notified for the purpose:

a. services by way of transportation of passengers by a radio-taxi, motorcab, maxicab and motor cycle;

b. services by way of providing accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes, except where the person supplying such service through electronic commerce operator is liable for registration under sub-section (1) of section 22 of the CGST Act;

c. services by way of house-keeping, such as plumbing, carpentering etc., except where the person supplying such service through electronic commerce operator is liable for registration under sub-section (1) of section 22 of the CGST Act.

Q 13. What is the threshold for opting to pay tax under the composition scheme?

Ans. The threshold for composition scheme is Rs. 1 Crore of aggregate turnover in the preceding financial year. The benefit of composition scheme can be availed up to the turnover of Rs. 1 Crore in current financial year. (75 lakhs for 9 special category states viz 1. Arunachal Pradesh, 2. Assam, 3. Manipur, 4. Meghalaya, 5. Mizoram, 6. Nagaland, 7. Sikkim, 8. Tripura, and 9. Himachal Pradesh)

Q 14. What are the rates of tax for composition scheme?

Ans. There are different rates for different sectors. In normal cases of supplier of goods (i.e. traders), the composition rate is 0.5 % of the turnover in a State or Union territory. If the person opting for composition scheme is manufacturer, then the rate is 1% of the turnover in a State or Union territory. In case of restaurant services, it is 2.5% of the turnover in a State or Union territory. These rates are under one Act, and same rate would be applicable in the other Act also. So,

effectively, the composition rates (combined rate under CGST and SGST/UTGST) are 1%, 2% and 5% for normal supplier (trader), manufacturer and restaurant service respectively.

Q 15. A person availing composition scheme during a financial year crosses the turnover of Rs.1 Crore during the course of the year i.e. say he crosses the turnover of Rs.1 Crore in December? Will he be allowed to pay tax under composition scheme for the remainder of the year i.e. till 31st March?

Ans. No. The option availed shall lapse from the day on which his aggregate turnover during the financial year exceeds Rs.1 Crore.

Q 16. Will a taxable person, having multiple registrations, be eligible to opt for composition scheme only for a few of registrations?

Ans. All registered persons having the same Permanent Account Number (PAN) have to opt for composition scheme. If one registered person opts for normal scheme, others become ineligible for composition scheme.

Q 17. Can composition scheme be availed of by a manufacturer and a service supplier?

Ans. Yes, a manufacturer can opt for composition scheme generally. However, a manufacturer of goods, which would be notified on the recommendations of the GST Council, cannot opt for this scheme. The goods so notified are ice cream and other edible ice, whether or not containing cocoa (Tariff Heading-21050000), pan masala (Tariff Heading – 21069020) & tobacco and manufactured tobacco substitutes (Tariff Heading – 24). This scheme is

not available for services sector, except restaurants.

Q 18. Who are not eligible to opt for composition scheme?

Ans. Broadly, following categories of registered person are not eligible to opt for the composition scheme:

(i) *supplier of services other than supplier of restaurant service;*

(ii) *supplier of goods which are not taxable under the CGST Act/SGST Act/UTGST Act;*

(iii) *an inter-State supplier of goods;*

(iv) *person supplying goods through an electronic commerce operator who is required to collect tax at source under section 52;*

(v) *manufacturer of certain notified goods such as Ice Cream, Pan Masala and Tobacco products;*

(vi) a casual taxable person and a non-resident taxable person.

Q 19. Can the registered person under composition scheme claim input tax credit?

Ans. No, registered person under composition scheme is not eligible to claim input tax credit.

Q 20. Can the customer who buys from a registered person who is under the composition scheme claim composition tax as input tax credit?

Ans. No, customer who buys goods from registered person who is under composition scheme is not eligible for composition input tax credit because a composition scheme supplier cannot issue a tax invoice.

Q 21. Can composition tax be collected from customers?

Ans. No, the registered person under composition scheme is not permitted to collect tax. It means that a composition scheme supplier cannot issue a tax invoice.

Q 22. How to compute 'aggregate turnover' to determine eligibility for composition scheme?

Ans. The methodology to compute aggregate turnover is given in Section 2(6). Accordingly, 'aggregate turnover' means value of all outward supplies (taxable supplies +exempt supplies +exports + inter-state supplies) of a person having the same PAN and it excludes taxes levied under central tax (CGST), State tax (SGST), Union territory tax (UTGST), integrated tax(IGST) and compensation cess. Also, the value of inward supplies on which tax is payable under reverse charge is not taken into account for calculation of 'aggregate turnover'.

Q 23. What are the penal consequences if a person opts for the composition scheme in violation of the conditions?

Ans. If a taxable person has paid tax under the composition scheme though he was not eligible for the scheme then the person would be liable to penalty and the provisions of section 73 or 74 shall be applicable for determination of tax and penalty.

Q 24. Does the GST Law empower the Government to exempt supplies from the levy of GST?

Ans. Yes. In the public interest, the Central or the State Government can exempt either wholly or partly, on the recommendations of the GST council, the supplies of goods or services or both from the levy of GST either absolutely or subject to conditions. Further the Government can exempt, under circumstances of an exceptional nature, by special order any goods or services or both. It has also been

provided in the SGST Act and UTGST Act that any exemption granted under CGST Act shall be deemed to be exemption under the said Act.

Q 25. When exemption from whole of tax on goods or services or both has been granted absolutely, can a person pay tax?

Ans. No. Furthermore, if the goods are partly exempted, the person supplying exempted goods or services or both shall not collect the tax in excess of the effective rate.

3. Registration

Q 1. What is advantage of taking registration in GST?

Ans. Registration under Goods and Service Tax (GST) regime will confer following advantages to the business:

- *Legally recognized as supplier of goods or services.*

- *Proper accounting of taxes paid on the input goods or services which can be utilized for payment of GST due on supply of goods or services or both by the business.*

- *Legally authorized to collect tax from his purchasers and pass on the credit of the taxes paid on the goods or services supplied to purchasers or recipients.*

- *Getting eligible to avail various other benefits and privileges rendered under the GST laws.*

Q 2. Can a person without GST registration claim ITC and collect tax?

Ans. No, a person without GST registration can neither collect GST from his customers nor can claim any input tax credit of GST paid by him.

Q 3. What will be the effective date of registration?

Ans. Where the application for registration has been submitted within thirty days from the date on which the person becomes liable to registration, the effective date of registration shall be the date on which he became liable for registration.

Where an application for registration has been submitted

by the applicant after thirty days from the date of his becoming liable to registration, the effective date of registration shall be the date of grant of registration.

In case of a person taking registration voluntarily while being within the threshold exemption limit for paying tax, the effective date of registration shall be the date of order of registration.

Q 4. Who are the persons liable to take a Registration under the GST Law?

Ans. As per Section 22 of the CGST/SGST Act 2017, every supplier (including his agent) who makes a taxable supply i.e. supply of goods and / or services which are leviable to tax under GST law, and his aggregate turn over in a financial year exceeds the threshold limit of twenty lakh rupees shall be liable to register himself in the State or the Union territory of Delhi or Puducherry from where he makes the taxable supply.

In case of eleven special category states (as mentioned in Art.279A(4)(g) of the Constitution of India), this threshold limit for registration liability is ten lakh rupees.

Besides, Section 24 of the Act mentions certain categories of suppliers, who shall be liable to take registration even if their aggregate turnover is below the said threshold limit of 20 lakh rupees.

On the other hand, as per Section 23 of the Act, an agriculturist in respect of supply of his agricultural produce; as also any person exclusively making supply of non-taxable or wholly exempted goods and/or services under GST law will not be liable for registration.

Q 5. What is aggregate turnover?

Ans. As per section 2(6) of the CGST/SGST Act "aggregate turnover" includes the aggregate value of:

(i) all taxable supplies,
(ii) all exempt supplies,
(iii) exports of goods and/or service, and,
(iv) all inter-state supplies
of a person having the same PAN.

The above shall be computed on all India basis and excludes taxes charged under the CGST Act, SGST Act, UTGST Act, and the IGST Act. Aggregate turnover shall include all supplies made by the Taxable person, whether on his own account or made on behalf of all his principals.

Aggregate turnover does not include value of supplies on which tax is levied on reverse charge basis, and value of inward supplies.

The value of goods after completion of job work is not includible in the turnover of the job-worker. It will be treated as supply of goods by the principal and will accordingly be includible in the turnover of the Principal.

Q 6. Which are the cases in which registration is compulsory?

Ans. The following categories of persons are required to be registered compulsorily irrespective of the threshold limit:

i) persons making any inter-State taxable supply, except persons making inter-state supply of certain handicraft goods, and services;
ii) casual taxable persons except persons making supply of certain handicraft goods;
iii) persons who are required to pay tax under reverse

charge;

iv) persons who are required to pay tax under sub-section (5) of section 9;

v) non-resident taxable persons making taxable supply;

vi) persons who are required to deduct tax under section 51;

vii) persons who make taxable supply of goods or services on behalf of other registered taxable persons whether as an agent or otherwise;

viii) Input service distributor (whether or not separately registered under the Act);

ix) persons who supply goods, other than supplies specified under Section 9(5), through such e-commerce operator who is required to collect tax at source under section 52;

x) every electronic commerce operator;

xi) every person supplying online information and data base retrieval services from a place outside India to a person in India, other than a registered person; and,

In addition, the Government may notify other person or class of persons who shall be required to be registered mandatorily.

The Government, however, has granted exemption from compulsory registration vide Notification no. 32/2017-Central Tax dated 15/09/2017 (casual taxable person making taxable supplies of handicraft goods) and Notification no. 65/2017-Central Tax (Rate) dated 15/11/2017 (supplier of services through an e-commerce platform).

Q 7. What is the time limit for taking a Registration under GST?

Ans. A person should take a Registration, within thirty days from the date on which he becomes liable to registration, in such manner and subject to such conditions as is prescribed under the Registration Rules. A Casual Taxable person and a non-resident taxable person should however apply for registration at least 5 days prior to commencement of business.

Q 8. If a person is operating in different states, with the same PAN number, whether he can operate with a single Registration?

Ans. No. Every person who is liable to take a Registration will have to get registered separately for each of the States where he has a business operation and is liable to pay GST in terms of Sub-section (1) of Section 22 of the CGST/SGST Act.

Q 9. Whether a person having multiple business verticals in a state can obtain different registrations?

Ans. Yes. In terms of the proviso to Sub-Section (2) of Section 25, a person having multiple business verticals in a State may obtain a separate registration for each business vertical, subject to such conditions as prescribed in the registration rules.

Q 10. Is there a provision for a person to get himself voluntarily registered though he may not be liable to pay GST?

Ans. Yes. In terms of Sub-section (3) of Section 25, a person, though not liable to be registered under Section 22 may get himself registered voluntarily, and all provisions of this Act, as are applicable to a registered taxable person, shall apply to such person.

Q 11. Is possession of a Permanent Account Number (PAN) mandatory for obtaining a Registration?

Ans. Yes. As per Section 25(6) of the CGST/SGST Act 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.

However as per the proviso to the aforesaid section 25(6), a person required to deduct tax under Section 51, may have, in lieu of a PAN, a Tax Deduction and Collection Account Number issued under the said Income Tax Act, in order to be eligible for grant of registration.

Also, as per Section 25(7) PAN is not mandatory for a non-resident taxable person who may be granted registration on the basis of self-attested copy of valid passport.

Q 12. Whether the Department through the proper officer, can suo-moto proceed to register of a Person under this Act?

Ans. Yes. In terms of sub-section (8) of Section 25, where a person who is liable to be registered under this Act fails to obtain registration, the proper officer may, without prejudice to any action which may be taken under this Act, or under any other law for the time being in force, proceed to register such person in the manner as is prescribed in the

Registration rules.

Q 13. Whether the proper officer can reject an Application for Registration?

Ans. Yes. In terms of sub-section 10 of section 25 of the CGST/SGST Act, the proper officer can reject an application for registration after due verification.

Q 14. Whether the Registration granted to any person is permanent?

Ans. Yes, the registration Certificate once granted is permanent unless surrendered, cancelled, suspended or revoked.

Q 15. Is it necessary for the UN bodies to get registration under GST?

Ans. Yes. In terms of Section 25(9) of the CGST/SGST Act, all notified UN bodies, Consulate or Embassy of foreign countries and any other class of persons so notified would be required to obtain a unique identification number (UIN) from the GST portal. The structure of the said ID would be uniform across the States in conformity with GSTIN structure and the same will be common for the Centre and the States. This UIN will be needed for claiming refund of taxes paid on notified supplies of goods and services

received by them, and for any other purpose as may be notified.

Q 16. What is the responsibility of the taxable person supplying to UN bodies?

Ans. The taxable supplier supplying to these organizations is expected to mention the UIN on the invoices and treat such supplies as supplies to another registered person (B2B) and the invoices of the same will be uploaded by the supplier.

Q 17. Is it necessary for the Govt. Organization to get registration?

Ans. A unique identification number (ID) would be given by the respective state tax authorities through GST portal to Government authorities / PSUs not making outwards supplies of GST goods (and thus not liable to obtain GST registration) but are making inter-state purchases.

Q 18. Who is a Casual Taxable Person?

Ans. Casual Taxable Person has been defined in Section 2 (20) of the CGST/SGST Act meaning a person who occasionally undertakes transactions involving supply of goods and/or services in the course or furtherance of business, whether as principal, or agent or in any other capacity, in a State or a Union territory where he has no fixed place of business.

Q 19. Who is a Non-resident Taxable Person?

Ans. In terms of Section 2(77) of the CGST/SGST Act, a non-resident taxable person means any person who occasionally undertakes transactions involving supply of goods and/or services whether as principal or agent or in any other capacity, but who has no fixed place of business or residence in India.

Q 20. What is the validity period of the Registration certificate issued to a Casual Taxable Person and non- Resident Taxable person?

Ans. In terms of Section 27(1) read with proviso thereto, the certificate of registration issued to a "casual taxable person" or a "non-resident taxable person" shall be valid for a period specified in the application for registration or ninety days from the effective date of registration, whichever is earlier. However, the proper officer, at the request of the said taxable person, may extend the validity of the aforesaid period of ninety days by a further period not exceeding ninety days.

Q 21. Is there any Advance tax to be paid by a Casual Taxable Person and Non-resident Taxable Person at the time of obtaining registration under this Special Category?

Ans. Yes. While a normal taxable person does not have to make any advance deposit of tax to obtain registration, a casual taxable person or a non-resident taxable person

shall, at the time of submission of application for registration is required, in terms of Section 27(2) read with proviso thereto, to make an advance deposit of tax in an amount equivalent to the estimated tax liability of such person for the period for which the registration is sought. If registration is to be extended beyond the initial period of ninety days, an advance additional amount of tax equivalent to the estimated tax liability is to be deposited for the period for which the extension beyond ninety days is being sought.

Q 22. Whether Amendments to the Registration Certificate is permissible?

Ans. Yes. In terms of Section 28, the proper officer may, on the basis of such information furnished either by the registrant or as ascertained by him, approve or reject amendments in the registration particulars within a period of 15 common working days from the date of receipt of application for amendment.

It is to be noted that permission of the proper officer for making amendments will be required for only certain core fields of information, whereas for the other fields, the certificate of registration shall stand amended upon submission of application in the GST common portal.

Q 23. Whether Cancellation of Registration Certificate is permissible?

Ans. Yes. Any Registration granted under this Act may be cancelled by the Proper Officer, in circumstances mentioned in Section 29 of the CGST/SGST Act. 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, in such manner and within such period as may be prescribed. As per the Registration Rules, an order for cancellation is to be issued within 30 days from the date of receipt of reply to SCN (in cases where the cancellation is proposed to be carried out suo moto by the proper officer) or from the date of receipt of application for cancellation (in case where the taxable person/legal heir applies for such cancellation)

Q 24. Whether cancellation of Registration under CGST Act means cancellation under SGST Act also?

Ans. Yes, the cancellation of registration under one Act (say CGST Act) shall be deemed to be a cancellation of registration under the other Act (i.e. SGST Act). (Section 29 (4))

Q 25. Can the proper Officer Cancel the Registration on his own?

Ans. Yes, in certain circumstances specified under section 29(2) of the CGST/SGST Act, the proper officer can cancel the registration on his own. Such circumstances include contravention of any of the prescribed provisions of the CGST Act or the rules made there under, not filing return by a composition dealer for three consecutive tax periods or non-furnishing of returns by a regular taxpayer for a continuous period of six months, and not commencing business within six months from the date of voluntary registration. However, before cancelling the registration, the proper officer has to follow the principles of natural justice. (Proviso to Section 29(2) (e))

Q 26. What happens when the registration is obtained by means of willful mis-statement, fraud or suppression of facts?

Ans. In such cases, the registration may be cancelled with retrospective effect by the proper officer. (Section 29(2) (e))

Q 27. Is there an option to take centralized registration for services under GST Law?

Ans. No, the tax paper has to take separate registration in every state from where he makes taxable supplies.

Q 28. If the taxpayer has different business verticals in one state, will he have to obtain separate registration for each such vertical in the state?

Ans. No, however the taxpayer has the option to register such separate business verticals independently in terms of the proviso to Section 25(2) of the CGTST Act, 2017.

Q 29. Who is an ISD?

Ans. ISD stands for Input Service Distributor and has been defined under Section 2(61) of the CGST/SGST Act. It is basically an office meant to receive tax invoices towards receipt of input services and further distribute the credit to supplier units (having the same PAN) proportionately.

Q 30. Will ISD be required to be separately registered other than the existing tax payer registration?

Ans. Yes, the ISD registration is for one office of the taxpayer which will be different from the normal registration.

Q 31. Can a tax payer have multiple ISDs?

Ans. Yes. Different offices of a tax payer can apply for ISD registration.

Q 32. What could be the liabilities (in so far as registration is concerned) on transfer of a business?

Ans. The transferee or the successor shall be liable to be registered with effect from such transfer or succession and he will have to obtain a fresh registration with effect from the date of such transfer or succession. (Section 22(3)).

Q 33. Whether all assesses / dealers who are already registered under existing central excise/service tax/ vat laws will have to obtain fresh registration?

Ans. No, GSTN shall migrate all such assessees/dealers to the GSTN network and shall issue a provisional registration certificate with GSTIN number on the appointed day, which after due verification by the departmental officers within six months, will be converted into final registration certificate. For converting the provisional registration to final registration the registrants will be asked to submit all requisite documents and information required for registration in a prescribed period of time. Failure to do so will result in cancellation of the provisional GSTIN number.

The service tax assesses having centralized registration will

have to apply afresh in the respective states wherever they have their businesses.

Q 34. Whether the job worker will have to be compulsorily registered?

Ans. No, a Job worker is a supplier of services and will be obliged to take registration only when his turnover crosses the prescribed threshold of 20/10 Lakhs.

Q 35. Whether the goods will be permitted to be supplied from the place of business of a job worker?

Ans. Yes. But only in cases where the job worker is registered, or if not, the principal declares the place of business of the job worker as his additional place of business.

Q 36. At the time of registration will the assessee have to declare all his places of business?

Ans. Yes. The principal place of business and place of business have been separately defined under section 2(89) & 2(85) of the CGST/SGST Act respectively. The taxpayer will have to declare the principal place of business as well as the details of additional places of business in the registration form.

Q 37. Is there any system to facilitate smaller dealers or dealers having no IT infrastructure?

Ans. In order to cater to the needs of tax payers who are not IT savvy, following facilities shall be made available: -

GST Practitioners: A taxable person may prepare his registration application /returns himself or can approach the GST Practitioner for assistance. GST Practitioner will prepare the said registration document / return in prescribed format on the basis of the information furnished to him by the taxable person. The legal responsibility of the correctness of information contained in the forms prepared by the GST Practitioner will rest with the registered person only and the GST Practitioner shall not be liable for any errors or incorrect information.

Facilitation Centre (FC): shall be responsible for the digitization and/or uploading of the forms and documents including summary sheet duly signed by the Authorized Signatory and given to it by the taxable person. After uploading the data on common portal using the ID and Password of FC, a print-out of acknowledgement will be taken and signed by the FC and handed over to the taxable person for his records. The FC will scan and upload the summary sheet duly signed by the Authorized Signatory.

Q 38. Is there any facility for digital signature in the GSTN registration?

Ans. Tax payers would have the option to sign the submitted application using valid digital signatures. There will be two options for electronically signing the application or other submissions- by e-signing through Aadhar number, or

through DSC i.e. by registering the tax payer's digital signature certificate with GST portal. However, companies or limited liability partnership entities will have to sign mandatorily through DSC only. Only level 2 and level 3 DSC certificates will be acceptable for signature purpose.

Q 39. What will be the time limit for the decision on the on line registration application?

Ans. If the information and the uploaded documents are found in order, the State and the Central authorities shall have to respond to the application within three common working days. If they communicate any deficiency or discrepancy in the application within such time, then the applicant will have to remove the discrepancy / deficiency within 7 days of such communication. Thereafter, for either approving the application or rejecting it, the State and the Central authorities will have 7 days from the date when the taxable person communicates removal of deficiencies. In case no response is given by the departmental authorities within the said time line, the portal shall automatically generate the registration.

Q 40. What will be the time of response by the applicant if any query is raised in the online application?

Ans. If during the process of verification, one of the tax authorities raises some query or notices some error, the

same shall be communicated to the applicant and to the other tax authority through the GST Common Portal within 3 common working days. The applicant will reply to the query/rectify the error/ answer the query within a period of seven days from the date of receipt of deficiency intimation.

On receipt of additional document or clarification, the relevant tax authority will respond within seven common working days from the date of receipt of clarification.

Q 41. What is the process of refusal of registration?

Ans. In case registration is refused, the applicant will be informed about the reasons for such refusal through a speaking order. The applicant shall have the right to appeal against the decision of the Authority. As per sub-section (2) of section 26 of the CGST Act, any rejection of application for registration by one authority (i.e. under the CGST Act / SGST Act) shall be deemed to be a rejection of application for registration by the other tax authority (i.e. under the SGST Act / UTGST Act/ CGST Act).

Q 42. Will there be any communication related to the application disposal?

Ans. The applicant shall be informed of the fact of grant or rejection of his registration application through an e-mail and SMS by the GST common portal. Jurisdictional details would be intimated to the applicant at this stage.

Q 43. Can the registration certificate be downloaded from the GSTN portal?

Ans. In case registration is granted; applicant can download the Registration Certificate from the GST common portal.

Q 44. Can cancellation of registration order be revoked?

Ans. Yes, but only in cases where the initial cancellation has been done by the proper officer suo moto, and not on the request of the taxable person or his legal heirs. A person whose registration has been cancelled suo moto can apply to the proper officer for revocation of cancellation of registration within 30 days from the date of communication of the cancellation order. The proper officer may within a period of 30 days from the date of receipt of application for revocation of cancellation or receipt of information/clarification, either revoke the cancellation or reject the application for revocation of cancellation of registration.

Q 45. Does cancellation of registration impose any tax obligations on the person whose registration is so cancelled?

Ans. Yes, as per Section 29(5) of the CGST/SGST Act, every registered taxable person whose registration is cancelled shall pay an amount, by way of debit in the electronic cash/credit ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock or capital goods or plant and machinery on the day immediately preceding the date of such cancellation or the output tax payable on such goods, whichever is higher.

Q 46. What is the difference between casual and non-resident taxable persons?

Ans. Casual and Non-resident taxable persons are separately defined in the CGST/SGST Act in Sections 2(20) and 2(77) respectively. Some of the differences are outlined below:

Casual Taxable Person	***Non-resident Taxable Person***
Occasional undertakes transactions involving supply of goods or services in a state or UT where he has no fixed place of business.	*Occasional undertakes transactions involving supply of goods or services but has no fixed place of business residence in India.*
Has a PAN Number	*Do not have a PAN Number; A non-resident person, if having PAN number may take registration as a casual taxable person*
Same application form for registration as for normal taxable persons viz GST REG-01	*Separate application form for registration by non-resident taxable person viz GST REG-9*
Has to undertake transactions in the course or furtherance of business	*Business test absent in the definition*
Has to file normal GSTR-1, GSTR-2 and GSTR-3 returns	*Has to file a separate simplified return in the format GSTR-5*
Can claim ITC of all inward supplies	*Can get ITC only in respect of import of goods and /or services.*

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4. Meaning and Scope of Supply

Q 1. What is the taxable event under GST?

Ans. The taxable event under GST shall be the supply of goods or services or both made for consideration in the course or furtherance of business. The taxable events under the existing indirect tax laws such as manufacture, sale, or provision of services shall stand subsumed in the taxable event known as 'supply'.

Q 2. What is the scope of 'supply' under the GST law?

Ans. The term 'supply' is wide in its import covers all forms of supply of goods or services or both that includes sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business. It also includes import of service. The GST law also provides for including certain transactions made without consideration within the scope of supply.

Q 3. What is a taxable supply?

Ans. A 'taxable supply' means a supply of goods or services or both which is chargeable to goods and services tax under the GST Act.

Q 4. What are the necessary elements that constitute supply under CGST/SGST Act?

Ans. In order to constitute a 'supply', the following elements are required to be satisfied, i.e.-

(i) the activity involves supply of goods or services or both;

(ii) the supply is for a consideration unless otherwise specifically provided for;

(iii) the supply is made in the course or furtherance of business;

(iv) the supply is made in the taxable territory;

(v) the supply is a taxable supply; and

(vi) the supply is made by a taxable person.

Q 5. Can a transaction in which any one or more of the above criteria is not fulfilled, be still considered as supply under GST?

Ans. Yes. Under certain circumstances such as import of services for a consideration whether or not in the course or furtherance of business (Section 7(1) (b)) or supplies made without consideration, specified under Schedule-I of CGST /SGST Act, where one or more ingredients specified in answer to question no.4 are not satisfied, it shall still be treated as supply for levy of GST.

Q 6. Import of Goods is conspicuous by its absence in Section 7. Why?

Ans. Import of goods is dealt separately under the Customs Act, 1962, wherein IGST and compensation cess (wherever applicable) shall be levied under the Customs Tariff Act, 1975 in addition to basic customs duty. Proviso to section 5(1) of IGST Act, 2017 may be referred to.

Q 7. Are self-supplies taxable under GST?

Ans. Inter-state self-supplies such as stock transfers, branch transfers or consignment sales shall be taxable under IGST even though such transactions may not involve payment of consideration. Every supplier is liable to register under the GST law in the State or Union territory

from where he makes a taxable supply of goods or services or both in terms of Section 22 of the CGST Act. However, intra-state self-supplies are not taxable subject to not opting for registration as business vertical.

Q 8. Whether transfer of title and/or possession is necessary for a transaction to constitute supply of goods?

Ans. Title as well as possession both have to be transferred for a transaction to be considered as a supply of goods. In case title is not transferred, the transaction would be treated as supply of service in terms of Schedule II (1) (b). In some cases, possession may be transferred immediately but title may be transferred at a future date like in case of sale on approval basis or hire purchase arrangement. Such transactions will also be termed as supply of goods.

Q 9. What do you mean by "supply made in the course or furtherance of business"?

Ans. "Business" is defined under Section 2(17) include any trade, commerce, manufacture, profession, vocation, adventure or wager etc. whether or not undertaken for a pecuniary benefit. Business also includes any activity or transaction which is incidental or ancillary to the aforementioned listed activities. In addition, any activity undertaken by the Central Govt. or a State Govt. or any local authority in which they are engaged as public authority shall also be construed as business. From the above, it may be noted that any activity undertaken included in the definition for furtherance or promoting of a business could constitute a supply under GST law.

Q 10. An individual buys a car for personal use and after a year sells it to a car dealer. Will the

transaction be a supply in terms of CGST/SGST Act? Give reasons for the answer.

Ans. No, because the sale of old and used car by an individual is not in the course or furtherance of business and hence does not constitute supply.

Q 11. A dealer of air-conditioners permanently transfers an air conditioner from his stock in trade, for personal use at his residence. Will the transaction constitute a supply?

Ans. Yes. As per Sl. No.1 of Schedule-I, permanent transfer or disposal of business assets where input tax credit has been availed on such assets shall constitute a supply under GST even where no consideration is involved.

Q 12. Whether provision of service or goods by a club or association or society to its members will be treated as supply or not?

Ans. Yes. Provision of facilities by a club, association, society or any such body to its members shall be treated as supply. This is included in the definition of 'business' in section 2(17) of CGST/SGST Act.

Q 13. What are the different types of supplies under the GST law?

Ans. (i) Taxable and exempt supplies. (ii) Inter-State and Intra-State supplies, (iii) Composite and mixed supplies and (iv) Zero rated supplies.

Q 14. What are inter-state supplies and intra-state supplies?

Ans. Inter-state and intra-state supplies have specifically

been defined in Section 7(1), 7(2) and 8(1), 8(2) of the IGST Act respectively. Broadly, where the location of the supplier and the place of supply are in same state it will be intra-state and where it is in different states it will be inter-state supplies.

Q 15. Whether transfer of right to use goods will be treated as supply of goods or supply of service? Why?

Ans. Transfer of right to use goods shall be treated as supply of service because there is no transfer of title in such supplies. Such transactions are specifically treated as supply of service in Schedule-II of CGST/SGST Act.

Q 16. Whether Works contracts and Catering services will be treated as supply of goods or supply of services? Why?

Ans. Works contracts and catering services shall be treated as supply of services as both are specified under Sl. No. 6 (a) and (b) in Schedule-II of the GST law.

Q 17. Whether supply of software would be treated as supply of goods or supply of services under GST law?

Ans. Development, design, programming, customization, adaptation, upgradation, enhancement, implementation of information technology software shall be treated as supply of services as listed in Sl. No. 5 (2)(d) of Schedule –II of the GST law.

Q 18. Whether goods supplied on hire purchase basis will be treated as supply of goods or supply of services? Why?

Ans. Supply of goods on hire purchase shall be treated as supply of goods as there is transfer of title, albeit at a

future date.

Q 19. What is a Composite Supply under CGST/ SGST/UTGST Act?

Ans. Composite Supply means a supply made by a taxable person to a recipient comprising two or more supplies of goods or services, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply. For example, where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is the principal supply.

Q 20. How will tax liability on a composite supply be determined under GST?

Ans. A composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply.

Q 21. What is a mixed supply?

Ans. Mixed Supply means two or more individual supplies of goods or services or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply. For example, a supply of package consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drink and fruit juice when supplied for a single price is a mixed supply. Each of these items can be supplied separately and it is not dependent on any other. It shall not be a mixed supply if these items are supplied separately.

Q 22. How will tax liability on a mixed supply be determined under GST?

Ans. A mixed supply comprising two or more supplies shall be treated as supply of that particular supply which attracts the highest rate of tax.

Q 23. Are there any activities which are treated as neither a supply of goods nor a supply of services?

Ans. Yes. Schedule-III of the GST law lists certain activities such as (i) services by an employee to the employer in the course of or in relation to his employment, (ii) services by any Court or Tribunal established under any law, (iii) functions performed by members of Parliament, State Legislatures, members of the local authorities, Constitutional functionaries (iv) services of funeral, burial, crematorium or mortuary and (v) sale of land and (vi), actionable claims other than lottery, betting and gambling shall be treated neither a supply of goods or supply of services.

Q 24. What is meant by zero rated supply under GST?

Ans. Zero rated supply means export of goods and/or services or supply of goods and/or services to a SEZ developer or a SEZ Unit.

Q 25. Will import of services without consideration be taxable under GST?

Ans. As a general principle, import of services without consideration will not be considered as supply under GST in terms of Section 7. However, import of services by a

taxable person from a related person or from any of his other establishments outside India, in the course or furtherance of business, even without consideration will be treated as supply in terms of Sl. No.4 of Schedule I.

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5. Time of Supply

Q 1. What is time of supply?

Ans. The time of supply fixes the point when the liability to charge GST arises. It also indicates when a supply is deemed to have been made. The CGST/SGST Act provides separate time of supply for goods and services.

Q 2. When does the liability to pay GST arise in respect of supply of goods?

Ans. Section12 of the CGST/SGST Act provides for time of supply of goods. The time of supply of goods shall be the earlier of the following namely,

(i) the date of issue of invoice by the supplier or the last date on which he is required under Section 31, to issue the invoice with respect to the supply; or

(ii) the date on which the supplier receives the payment with respect to the supply.
However, vide Notification No. 66/2017-Central Tax dated 15.11.2017, liability to pay tax at the time of receipt of advance has been relaxed in case of goods.

Q 3. When does the liability to pay GST arise in respect of supply of services?

Ans. Section 13 of the CGST/SGST Act provides for time of supply of services. The time of supply of services shall be the earlier of the following namely,
(a) the date of issue of invoice by the supplier if the invoice is issued within the period prescribed under section 31(2) or the date of receipt of payment whichever is earlier; or
(b) the date of provision of service, if the invoice is not issued within the period prescribed under section 31(2) or the date of receipt of payment whichever is earlier.
(c) the date on which the recipient shows the receipt of services in his books of account, in case where the

provisions of clause (a) and (b) do not apply.

Q 4. What is time of supply in case of supply of vouchers in respect of goods and services?

Ans. The time of supply of voucher in respect of goods and services shall be;

a) *the date of issue of voucher, if the supply is identifiable at that point; or*
b) *the date of redemption of voucher in all other cases.*

Q 5. Where it is not possible to determine the time of supply in terms of sub-section 2, 3, 4 of Section 12 or that of Section 13 of CGST/SGST Act, how will time of supply be determined?

Ans. There is a residual entry in Section 12(5) as well as 13 (5) which says that if periodical return has to be filed, then the due date of filing of such periodical return shall be the time of supply. In other cases, it will be the date on which the CGST/SGST/IGST is actually paid.

Q 6. What does "date of receipt of payment" mean?

Ans. It is the earliest of the date on which the payment is entered in the books of accounts of the supplier or the date on which the payment is credited to his bank account.

Q 7. Suppose, part advance payment is made or invoice issued is for part payment, whether the time of supply will cover the full supply?

Ans. No. The supply of services shall be deemed to have been made to the extent it is covered by the invoice or the part payment. However, for goods payment of tax will need to be made upon date of issue of invoice, irrespective of the fact whether or not advance or part payment is received.

Q 8. What is the time of supply of goods in case of tax payable under reverse charge?

Ans. The time of supply will be the earliest of the following dates:

a) date of receipt of goods; or

b) date on which payment is made; or

c) the date immediately following 30 days from the date of issue of invoice by the supplier.

Q 9. What is the time of supply of service in case of tax payable under reverse charge?

Ans. The time of supply will be the earlier of the following dates:

a) date on which payment is made; or

b) the date immediately following sixty days from the date of issue of invoice by the supplier.

Q 10. What is the time of supply applicable with regard to addition in the value by way of interest, late fee or penalty or any delayed payment of consideration?

Ans. The time of supply with regard to an addition in value on account of interest, late fee or penalty or delayed consideration shall be the date on which the supplier received such additional consideration.

Q 11. Is there any change in time of supply, where supply is completed prior to or after change in rate of tax?

Ans. Yes. In such cases provisions of Section 14 will apply.

Q 12. What is the time of supply, where supply is completed prior to change in rate of tax?

Ans. In such cases time of supply will be

(i) where the invoice for the same has been issued and the payment is also received after the change in 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; (However, for supply of goods payment of tax need to be made only at the time of issue of invoice in terms of notification 66/2017-Central Tax dated 15.11.2017) or

(ii) where the invoice has been issued prior to change in rate of tax but the payment is received after the change in 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 rate of tax, but the invoice for the same has been issued after the change in rate of tax, the time of supply shall be the date of receipt of payment; (However for supply of goods payment of tax need to be made only at the time of issue of invoice in terms of notification 66/2017-Central Tax dated 15.11.2017)

Q 13. What is the time of supply, where supply is completed after to change in rate of tax?

Ans. In such cases time of supply will be

(i) where the payment is received after the change in rate of tax but the invoice has been issued prior to the change in rate of tax, the time of supply shall be the date of receipt of payment; (However for supply of goods payment of tax need to be made only at the time of issue of invoice in terms of notification 66/2017-Central Tax dated 15.11.2017) or

(ii) where the invoice has been issued and the payment is received before the change in 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; (However for supply of goods payment of tax need to be made only at the time of issue of invoice in terms of notification 66/2017-Central Tax dated 15.11.2017)

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

Q 14. Let's say there was increase in tax rate from 18% to 20% w.e.f.1.9.2017. What is the tax rate applicable when services provided and invoice issued before change in rate in July, 2017, but payment received after change in rate in September, 2017?

Ans. The old rate of 18% shall be applicable as services are provided prior to 1.9.2017.

Q 15. Let's say there was increase in tax rate from 18% to 20% w.e.f. 1.9.2017. What is the tax rate applicable when goods are supplied and invoice issued after change in rate in September, 2017, but full advance payment was already received in July, 2017?

Ans. The new rate of 20% shall be applicable as goods are supplied and invoice issued after 1.9.2017

Q 16. What is the time period within which invoice has to be issued for supply of Goods?

Ans. As per Section 31 of CGST/SGST Act a registered taxable person shall issue a tax invoice showing description, quantity and value of goods, tax charged thereon and other prescribed particulars, before or at the time of

(a) removal of goods for supply to the recipient, where supply involves movement of goods or

(b) delivery of goods or making available thereof to the recipient in other cases.

Q 17. What is the time period within which invoice has to be issued for supply of Services?

Ans. As per Section 31 of CGST/SGST Act a registered person shall, before or after the provision of service, but within a period of 30 days from the date of supply of service, issue a tax invoice showing description, value of goods, tax payable thereon and other prescribed particulars. For Banking and Insurance companies, this period is 45 days. For inter-state self-supplies made by bang, insurance and telecom companies, invoices can be issued before or at the time such supplier records the same in his books of account or before the expiry of the quarter during which the supply was made. Further a registered person liable to pay tax on reverse charge basis is also required to issue invoice on the date of receipt of goods or services or both.

Q 18. What is the time period within which invoice has to be issued in a case involving continuous supply of goods?

Ans. In case of continuous supply of goods, where successive statements of accounts or successive payments are involved, the invoice shall be issued before or at the time each such statement is issued or, as the case may be, each such payment is received.

Q 19. What is the time period within which invoice has to be issued in a case involving continuous supply of services?

Ans. In case of continuous supply of services,

(a) where the due date of payment is ascertainable from the contract, the invoice shall be issued on or before due date of payment.;
(b) where the due date of payment is not ascertainable from the contract, the invoice shall be issued before or at the time when the supplier of service receives the payment.;
(c) where the payment is linked to the completion of an event, the invoice shall be issued on or before the date of completion of that event.

Q 20. What is the time period within which invoice has to be issued where the goods being sent or taken on approval for sale?

Ans. The invoice in respect of goods sent or taken on approval for sale or return shall be issued before or at the time of supply or six months from the date of removal, whichever is earlier.

6. Valuation in GST

Q 1. What is the value of taxable supply to be adopted for the levy of GST?

Ans. The value of taxable supply of goods and services shall ordinarily be 'the transaction value' which is the price paid or payable, when the parties are not related and price is the sole consideration. Section 15 of the CGST/SGST Act further elaborates various inclusions and exclusions from the ambit of transaction value. For example, the transaction value shall not include refundable deposit, discount allowed subject to certain conditions before or at the time of supply.

Q 2. What is transaction value?

Ans. Transaction value refers to the price actually paid or payable for the supply of goods and or services where the supplier and the recipient are not related and price is the sole consideration for the supply. It includes any amount which the supplier is liable to pay but which has been incurred by the recipient of the supply.

Q 3. Are there separate valuation provisions for CGST, SGST and IGST and for Goods and Services?

Ans. No, section 15 is common for all three taxes and also common for goods and services.

Q 4. Is contract price not sufficient to determine valuation of supply?

Ans. Contract price is more specifically referred to as 'transaction value' and that is the basis for computing tax. However, when the price is influenced by factors like relationship of parties or where certain transactions are deemed to be supply, which do not have a price, the value has to be determined in accordance with the GST Valuation Rules.

Q 5. Is reference to GST Valuation Rules required in all cases?

Ans. No. Reference to GST Valuation Rules is required only in cases where value cannot be determined under sub-section (1) of Section 15.

Q 6. Can the transaction value declared under section 15(1) be accepted?

Ans. Yes, if all the conditions specified therein have been fulfilled.

Q 7. Whether post-supply discounts or incentives are to be included in the transaction value?

Ans. Yes. where the post-supply discount is established as per the agreement which is known at or before the time of supply and where such discount specifically linked to the relevant invoice and the recipient has reversed input tax credit attributable to such discount, the discount is allowed as admissible deduction under Section 15 of the CGST Act.

Q 8. Whether pre-supply discounts allowed before or at the time of supply are includible in the transaction value?

Ans. No, provided it is allowed in the course of normal trade practice and has been duly recorded in the invoice.

Q 9. When are the provisions of the Valuation Rules applicable?

Ans. Valuation Rules are applicable when (i) consideration either wholly or in part not in money terms; (ii) parties are related or supply by any specified category of supplier; and (iii) transaction value declared is not reliable.

Q 10. What are the inclusions specified in Section 15(2) which could be added to Transaction Value?

Ans. The inclusions specified in Section15 (2) which could be added to transaction value are as follows:

a) Any taxes, duties, cesses, fees and charges levied under any statute, other than the SGST/CGST Act and the Goods and Services Tax (Compensation to the States for Loss of Revenue) Act, 2016, if charged separately by the supplier to the recipient;

b) Any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods and/or services;

c) Incidental expenses, such as commission and 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 supply of the services;

d) Interest or late fee or penalty for delayed payment of any consideration for any supply; and

e) Subsidies directly linked to the price excluding subsidies provided by the Central and State Government.

Q 11. How will value be determined where supply is made by a dealer dealing in second hand goods?

Ans. As per Rule 32(5) of the CGST Rules, 2017, where a taxable supply is provided by a person dealing in buying and selling of second hand goods i.e., used goods as such or after such minor processing which does not change the nature of the goods and where no input tax credit has been availed on the purchase of such goods, the value of supply shall be the difference between the selling price and the purchase price and where the value of such supply is

negative, it shall be ignored

Q 12. How will goods re-possessed from defaulting borrowers be valued?

Ans. The proviso to Rule 32(5) of the CGST Rules provides that in case of the purchase value of goods repossessed from an unregistered defaulting borrower, for the purpose of recovery of a loan or debt shall be deemed to be the purchase price of such goods by the defaulting borrower reduced by five percentage points for every quarter or part thereof, between the date of purchase and the date of disposal by the person making such repossession.

Q 13. How will works contract service provided by a builder/developer to a prospective flat buyer be valued under GST?

Ans. In case of supply of construction service (works contract), involving transfer of property in land or undivided share of land, as the case may be, the value of supply of service and goods portion in such supply shall be equivalent to the total amount charged for such supply less the value of land or undivided share of land, as the case may be, and the value of land or undivided share of land, as the case may be, in such supply shall be deemed to be one third of the total amount charged for such supply.

"Total amount" means the sum total of, -

(a) consideration charged for aforesaid service; and

(b) amount charged for transfer of land or undivided share of land, as the case may be

Q 14. How will supply of lottery tickets be valued under GST?

Ans. Value of supply of lottery shall be 100/112 of the

face value or the price notified in the Official Gazette by the organising State, whichever is higher, in case of lottery run by State Government and 100/128 of the face value or the price notified in the Official Gazette by the organising State, whichever is higher, in case of lottery authorised by State Government.

7. GST Payment of Tax

Q 1. What are the Payments to be made in GST regime?

Ans. In the GST regime, for any intra-state supply, taxes to be paid are the Central GST (CGST), going into the account of the Central Government) and the State/UT GST (SGST, going into the account of the concerned State Government). For any inter-state supply, tax to be paid is Integrated GST (IGST) which will have components of both CGST and SGST. In addition, certain categories of registered persons will be required to pay to the government account Tax Deducted at Source (TDS) and Tax Collected at Source (TCS). In addition, wherever applicable, Interest, Penalty, Fees and any other payment will also be required to be made.

Q 2. Who is liable to pay GST?

Ans. In general, the supplier of goods or services is liable to pay GST. However, in specified cases like imports and other notified supplies, the liability may be cast on the recipient under the reverse charge mechanism. Further, in some notified cases of intra-state supply of services, the liability to pay GST may be cast on e-commerce operators through which such services are supplied. Also Government Departments making payments to vendors above a specified limit [2.5 lakh under one contract as per S.51(1)(d)] are required to deduct tax (TDS) and E-commerce operators are required to collect tax (TCS) on the net value [i.e. aggregate value of taxable supplies of goods and/or services but excluding such value of services on which the operator is made liable to pay GST under Section 9(5) of the CGST Act, 2017] of supplies made through them and deposit it with the Government.

Q 3. When does liability to pay GST arises?

Ans. Liability to pay arises at the time of supply of Goods as explained in Section 12 and at the time of supply of services as explained in Section13.

The time is generally the earliest of one of the three events, namely receiving payment, issuance of invoice or completion of supply. Different situations envisaged and different tax points have been explained in the aforesaid sections.

Q 4. What are the main features of GST payment process?

Ans. The payment processes under GST Act(s) have the following features:

- *Electronically generated challan from GSTN Common Portal in all modes of payment and no use of manually prepared challan;*
- *Facilitation for the tax payer by providing hassle free, anytime, anywhere mode of payment of tax;*
- *Convenience of making payment online;*
- *Logical tax collection data in electronic format;*
- *Faster remittance of tax revenue to the Government Account;*
- *Paperless transactions;*
- *Speedy Accounting and reporting;*
- *Electronic reconciliation of all receipts;*
- *Simplified procedure for banks*
- *Warehousing of Digital Challan.*

Q 5. How can payment be done?

Ans. Payment can be done by the following methods:

(i) Through debit of Credit Ledger of the tax payer maintained on the Common Portal – ONLY Tax can be paid. Interest, Penalty and Fees cannot be paid by debit in the credit ledger. Tax payers shall be allowed to take credit of taxes paid on inputs (input tax credit) and utilize the same for payment of output tax. However, no input tax credit on account of CGST shall be utilized towards payment of SGST and vice versa. The credit of IGST would be permitted to be utilized for payment of IGST, CGST and SGST in that order.

(ii) In cash by debit in the Cash Ledger of the tax payer maintained on the Common Portal. Money can be deposited in the Cash Ledger by different modes, namely, E-Payment (Internet Banking, Credit Card, Debit Card); Real Time Gross Settlement (RTGS)/ National Electronic Fund Transfer (NEFT); Over the Counter Payment in branches of Banks Authorized to accept deposit of GST.

Q 6. When is payment of taxes to be made by the Supplier?

Ans. Payment of taxes by the normal tax payer is to be done on monthly basis by the 20th of the succeeding month. Cash payments will be first deposited in the Cash Ledger and the tax payer shall debit the ledger while making payment in the monthly returns and shall reflect the relevant debit entry number in his return. As mentioned earlier, payment can also be debited from the Credit Ledger. Payment of taxes for the month of March shall be paid by the 20th of April. Composition tax payers will need to pay tax on

quarterly basis.

Q 7. Whether time limit for payment of tax can be extended or paid in monthly installments?

Ans. No, this is not permitted in case of self-assessed liability. In other cases, competent authority has been empowered to extend the time period or allow payment in instalments. (Section 80 of the CGST/SGST Act).

Q 8. What happens if the taxable person files the return but does not make payment of tax?

Ans. In such cases, the return is not considered as a valid return. Section 2(117) defines a valid return to mean a return furnished under sub-section (1) of section 39 on which self-assessed tax has been paid in full. It is only the valid return that would be used for allowing input tax credit (ITC) to the recipient. In other words, unless the supplier has paid the entire self-assessed tax and filed his return and the recipient has filed his return, the ITC of the recipient would not be confirmed.

Q 9. Which date is considered as date of deposit of the tax dues – Date of presentation of cheque or Date of payment or Date of credit of amount in the account of government?

Ans. It is the date of credit to the Government account.

Q 10. What are E-Ledgers?

Ans. Electronic Ledgers or E-Ledgers are statements of cash and input tax credit in respect of each registered taxpayer. In addition, each taxpayer shall also have an electronic tax liability register. Once a taxpayer is registered on Common Portal (GSTN), two e-ledgers (Cash &Input Tax Credit ledger) and an electronic tax liability register will be automatically opened and displayed on his dash board at all times.

Q 11. What is a tax liability register?

Ans. Tax Liability Register will reflect the total tax liability of a taxpayer (after netting) for the particular month.

Q 12. What is a Cash Ledger?

Ans. The cash ledger will reflect all deposits made in cash, and TDS/TCS made on account of the taxpayer. The information will be reflected on real time basis. This ledger can be used for making any payment on account of GST.

Q 13. What is an ITC Ledger?

Ans. Input Tax Credit as self-assessed in monthly returns will be reflected in the ITC Ledger. The credit in this ledger can be used to make payment of TAX ONLY and no other amounts such as interest, penalty, fees etc.

Q 14. What is the linkage between GSTN and the authorized Banks?

Ans. There will be real time two-way linkage between the GSTN and the Core Banking Solution (CBS) of the Bank. CPIN is automatically routed to the Bank via electronic string for verification and receiving payment and a challan identification number (CIN) is automatically sent by the Bank to the Common Portal confirming payment receipt. No manual intervention will be involved in the process by any one including bank cashier or teller or the tax payer.

Q 15. Can a tax payer generate challan in multiple sittings?

Ans. Yes, a taxpayer can partially fill in the challan form and temporarily "save" the challan for completion at a later stage. A saved challan can be "edited" before finalization. After the tax payer has finalized the challan, he will generate the challan, for use of payment of taxes. *The remitter will have option of printing the challan for his record.*

Q 16. Can a challan generated online be modified?

Ans. No. After logging into GSTN portal for generation of challan, payment particulars have to be fed in by the tax payer or his authorized person. He can save the challan midway for future updation. However once the challan is finalized and CPIN generated, no further changes can be made to it by the taxpayer.

Q 17. Is there a validity period of challan?

Ans. Yes, a challan will be valid for fifteen days after its generation and thereafter it will be purged from the System. However, the tax payer can generate another challan at his convenience.

Q 18. What is a CPIN?

Ans. CPIN stands for Common Portal Identification Number (CPIN) given at the time of generation of challan. It is a 14-digit unique number to identify the challan. As stated above, the CPIN remains valid for a period of 15 days.

Q 19. What is a CIN and what is its relevance?

Ans. CIN stands for Challan Identification Number. It is a 17-digit number that is 14-digit CPIN plus 3-digit Bank Code. CIN is generated by the authorized banks/ Reserve Bank of India (RBI) when payment is actually received by such authorized banks or RBI and credited in the relevant government account held with them. It is an indication that the payment has been realized and credited to the appropriate government account. CIN is communicated by the authorized bank to taxpayer as well as to GSTN.

Q 20. What is the sequence of payment of tax where that taxpayer has liabilities for previous months also?

Ans. Section 49(8) prescribes an order of payment where the taxpayer has tax liability beyond the current return period. In such a situation, the order of payment to be followed is: First self-assessed tax and other dues for the previous period; thereafter self-assessed tax and other

dues for the current period; and thereafter any other amounts payable including any confirmed demands under section 73 or 74. This sequence has to be mandatorily followed.

Q 21. What does the expression "Other dues" referred to above mean?

Ans. The expression "other dues" means interest, penalty, fee or any other amount payable under the Act or the rules made thereunder.

Q 22. What is an E-FPB?

Ans. E-FPB stands for Electronic Focal Point Branch. These are branches of authorized banks which are authorized to collect payment of GST. Each authorized bank will nominate only one branch as its E-FPB for pan India Transactions. The E-FPB will have to open accounts under each major head for all governments. Total 38 accounts (one each for CGST, IGST and one each for SGST for each State/UT Govt.) will have to be opened. Any amount received by such E-FPB towards GST will be credited to the appropriate account held by such E-FPB.

For NEFT/RTGS Transactions, RBI will act as E-FPB.

Q 23. What is TDS?

Ans. TDS stands for Tax Deducted at Source (TDS). As per section 51, this provision is meant for Government and Government undertakings and other notified entities making contractual payments where total value of such supply under a contract exceeds Rs. 2.5 Lakhs to suppliers. While making any

payments under such contracts, the concerned Government/authority shall deduct 2% of the total payment made (1% under each Act and 2% in case of IGST) and remit it into the appropriate GST account.

Q 24. How will the Supplier account for this TDS? while filing his return?

Ans. Any amount shown as TDS will be reflected in the electronic cash ledger of the concerned supplier. He can utilize this amount towards discharging his liability towards tax, interest fees and any other amount.

Q 25. How will the TDS Deductor account for such TDS?

Ans. TDS Deductor will account for such TDS in the following ways:

1. *Such deductors needs to get compulsorily registered under section 24 of the CGST/SGST Act.*
2. *They need to remit such TDS collected by the 10th day of the month succeeding the month in which TDS was collected and reported in GSTR 7.*
3. *The amount deposited as TDS will be reflected in the electronic cash ledger of the supplier.*
4. *They need to issue certificate of such TDS to the deductee within 5 days of crediting the TDS to the govt a/c, failing which fees of Rs. 100 per day subject to maximum of Rs. 5000/- will be payable by such deductor.*

Q 26. What is Tax Collected at Source (TCS)?

Ans. This provision is applicable only for E-Commerce Operator under section 52 of CGST/SGST Act. Every E-

*Commerce Operator, not being an agent, needs to withhold an amount calculated at the rate not exceeding one percent of the "**net value of taxable supplies**" made through it where the consideration with respect to such supplies is to be collected by the operator. Such withheld amount is to be deposited by such E-Commerce Operator to the appropriate GST account by the 10th of the next month. The amount deposited as TCS will be reflected in the electronic cash ledger of the supplier.*

Q 27. What does the expression "Net value of taxable supplies" mean?

Ans. The expression "net value of taxable supplies" means the aggregate value of taxable supplies of goods or services, other than services notified under Section 9(5), made during any month by all registered taxable persons through the operator reduced by the aggregate value of taxable supplies returned to the suppliers during the said month.

Q 28. Is the pre-registration of credit card necessary in the GSTN portal for the GST payment?

Ans. Yes. The taxpayer would be required to pre-register his credit card, from which the tax payment is intended, with the Common Portal maintained on GSTN. GSTN may also attempt to put in a system with banks in getting the credit card verified by taking a confirmation from the credit card service provider. The payments using credit cards can therefore be allowed without any monetary limit to facilitate ease of doing business.

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8. Electronic Commerce

Q 1. What is Electronic Commerce?

Ans. Electronic Commerce has been defined to mean the supply of goods or services or both, including digital products over digital or electronic network.

Q 2. Who is an e-commerce operator?

Ans. Electronic Commerce Operator has been defined to mean any person who owns, operates or manages digital or electronic facility or platform for electronic commerce.

Q 3. Is it mandatory for e-commerce operator to obtain registration?

Ans. Yes. The benefit of threshold exemption is not available to e-commerce operators and they would be liable to be registered irrespective of the value of supply made by them.

Q 4. Whether a supplier of goods or services supplying through e-commerce operator would be entitled to threshold exemption?

Ans. The threshold exemption shall be available for supplier of services, other than supplies under section 9 (5) of the CGST Act. A person supplying goods through an e-commerce operator shall be mandatorily required to register.

Q 5. Will an e-commerce operator be liable to pay

tax in respect of supply of goods or services made through it, instead of actual supplier?

Ans. Yes, but only in case of certain notified services. In such cases tax shall be paid by the electronic commerce operator if such services are supplied through it and all the provisions of the Act shall apply to such electronic commerce operator as if he is the person liable to pay tax in relation to supply of such services.

Q 6. Will threshold exemption be available to electronic commerce operators liable to pay tax on notified services?

Ans. No. Threshold exemption is not available to e-commerce operator who are require to pay tax on notified services provided through them.

Q 7. What is Tax Collection at Source (TCS)?

Ans. The e-commerce operator is required to collect an amount calculated at the rate not exceeding one percent of the net value of taxable supplies made through it, where the consideration with respect to such supplies is to be collected by such operator. The amount so collected is called as Tax Collection at Source (TCS). However, Section 52 of the CGST Act, 2017 which deals with TCS has not come into force as of yet and GST Council has recommended to keep this provision in abeyance till 31.03.2018.

Q 8. It is very common that customers of e-commerce companies return goods. How these

returns are going to be adjusted?

Ans. An e-commerce company is required to collect tax only on the net value of taxable supplies. In other words, value of the supplies which are returned are adjusted in the aggregate value of taxable supplies.

Q 9. What is meant by "net value of taxable supplies"?

Ans. The "net value of taxable supplies" means the aggregate value of taxable supplies of goods or services or both, other than the services on which entire tax is payable by the e-commerce operator, made during any month by all registered persons through such operator reduced by the aggregate value of taxable supplies returned to the suppliers during the said month.

Q 10. Is every e-commerce operator required to collect tax on behalf of actual supplier?

Ans. Yes, every e-commerce operator is required to collect tax where consideration with respect to the supply is being collected by the e-commerce operator.

Q 11. At what time should the e-commerce operator make such collection?

Ans. The e-commerce operator should make the collection during the month in which supply was made.

Q 12. What is the time within which such TCS is to be remitted by the e-commerce operator to

Government account?

Ans. The amount collected by the operator is to be paid to appropriate government within 10 days after the end of the month in which amount was so collected.

Q 13. How can actual suppliers claim credit of this TCS?

Ans. The amount of TCS deposited by the operator with the appropriate government will be reflected in the cash ledger of the actual registered supplier (on whose account such collection has been made) on the basis of the statement filed by the operator. The same can be used at the time of discharge of tax liability in respect of the supplies by the actual supplier.

Q 14. Is the e-commerce operator required to submit any statement? What are the details that are required to be submitted in the statement?

Ans. Yes, every operator is required to furnish a statement, electronically, containing the details of outward supplies of goods or services effected through it, including the supplies of goods or services returned through it, and the amount collected by it as TCS during a month within ten days after the end of such month. The operator is also required to file an annual statement by 31st day of December following the end of the financial year in which the tax was collected.

Q 15. What is the concept of matching in e-commerce provisions and how it is going to work?

Ans. The details of supplies and the amount collected during a calendar month, and furnished by every operator in his statement will be matched with the corresponding details of outward supplies furnished by the concerned supplier in his valid return for the same calendar month or any preceding calendar month. Where the details of outward supply, on which the tax has been collected, as declared by the operator in his statement do not match with the corresponding details declared by the supplier the discrepancy shall be communicated to both persons.

Q 16. What will happen if the details remain mismatched?

Ans. The value of a supply relating to any payment in respect of which any discrepancy is communicated and which is not rectified by the supplier in his valid return for the month in which discrepancy is communicated shall be added to the output liability of the said supplier, for the calendar month succeeding the calendar month in which the discrepancy is communicated. The concerned supplier shall, in whose output tax liability any amount has been added shall be liable to pay the tax payable in respect of such supply along with interest on the amount so added from the date such tax was due till the date of its payment.

Q 17. Are there any additional powers to tax officers available?

Ans. Any authority not below the rank of Deputy Commissioner may issue a notice to the electronic operator to furnish specified details within a period of 15

working days from the date of service of such notice.

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9. Job Work

Q 1. What is job work?

Ans. Job work means undertaking any treatment or process by a person on goods belonging to another registered taxable person. The person who is treating or processing the goods belonging to other person is called 'job worker' and the person to whom the goods belongs is called 'principal'.

This definition is much wider than the one given in Notification No. 214/86 – CE dated 23rd March, 1986. In the said notification, job work has been defined in such a manner so as to ensure that the activity of job work must amount to manufacture. Thus the definition of job work itself reflects the change in basic scheme of taxation relating to job work in the proposed GST regime.

Q 2. Whether goods sent by a taxable person to a job worker will be treated as supply and liable to GST? Why?

Ans. It will be treated as a supply as supply includes all forms of supply such as sale, transfer, etc. However, the registered taxable person (the principal), under intimation and subject to such conditions as may be prescribed send any inputs and/or capital goods, without payment of tax, to a job worker for job work and from there subsequently to another job worker(s) and shall either bring back such inputs/capital goods after completion of job work or otherwise within 1 year/3 years of their being sent out or supply such inputs/capital goods after completion of job work or otherwise within 1 year / 3 years of their being sent out, from the place of business of a job worker on payment of tax within India or with or without payment of

tax for export.

Q 3. Is a job worker required to take registration?

Ans. Yes, as job work is a service, the job worker would be required to obtain registration if his aggregate turnover exceeds the prescribed threshold.

Q 4. Whether the goods of principal directly supplied from the job worker's premises will be included in the aggregate turnover of the job worker?

Ans. No. It will be included in the aggregate turnover of the principal. However, the value of goods or services used by the job worker for carrying out the job work will be included in the value of services supplied by the job worker.

Q 5. Can a principal send inputs and capital goods directly to the premises of job worker without bringing it to his premises?

Ans. Yes, the principal is allowed to do so. The input tax credit of tax paid on inputs or capital goods can also be availed by the principal in such a scenario. The inputs or capital goods must be received back within one year or three years respectively failing which the original transaction would be treated as supply and the principal would be liable to pay tax accordingly.

Q 6. Can the principal supply the goods directly from the premises of the job worker without bringing it back to his own premises?

Ans. Yes. But the principal should have declared the premises of an unregistered job worker as his additional place of business. If the job worker is a registered person then goods can be supplied directly from the premises of

the job worker. The Commissioner may also notify goods in which case goods sent for job work can be directly supplied from the premises of the job worker.

Q 7. Under what circumstances can the principal directly supply goods from the premises of job worker without declaring the premises of job worker as his additional place of business?

Ans. The goods can be supplied directly from the place of business of job worker without declaring it as additional place of business in two circumstances namely where the job worker is a registered taxable person or where the principal is engaged in supply of such goods as may be notified by the Commissioner.

Q 8. What are the provisions concerning taking of ITC in respect of inputs/capital goods sent to a job worker?

Ans. Principal shall be entitled to take credit of taxes paid on inputs or capital goods sent to a job worker whether sent after receiving them at his place of business or even when such the inputs or capital goods are directly sent to a job worker without their being first brought to his place of business. However, the inputs or capital goods, after completion of job work, are required to be received back or supplied from job worker's premises, as the case may be, within a period of one year or three years of their being sent out.

Q 9. What happens when the inputs or capital goods are not received back or supplied from the place of business of job worker within prescribed time period?

Ans. If the inputs or capital goods are not received back by the principal or are not supplied from the place of

business of job worker within the prescribed time limit, it would be deemed that such inputs or capital goods had been supplied by the principal to the job worker on the day when the said inputs or capital goods were sent out by the principal (or on the date of receipt by the job worker where the inputs or capital goods were sent directly to the place of business of job worker). Thus the principal would be liable to pay tax accordingly.

Q 10. Some capital goods like jigs and fixtures are non-usable after their use and normally sold as scrap. What is the treatment of such items in job work provisions?

Ans. The condition of bringing back capital goods within three years is not applicable to molds, dies, jigs and fixtures or tools.

Q 11. What would be treatment of the waste and scrap generated during the job work?

Ans. The waste and scrap generated during the job work can be supplied by the job worker directly from his place of business, on payment of tax, if he is registered. If he is not registered, the same would be supplied by the principal on payment of tax.

Q 12. Whether intermediate goods can also be sent for job work?

Ans. Yes. The term inputs, for the purpose of job work, includes intermediate goods arising from any treatment or process carried out on the inputs by the principal or job worker.

Q 13. Who is responsible for the maintenance of proper accounts related to job work?

Ans. It is completely the responsibility of the principal to maintain proper accounts of job work related inputs and capital goods.

Q 14. Are the provisions of job work applicable to all categories of goods?

Ans. No. The provisions relating to job work are applicable only when registered taxable person intends to send taxable goods. In other words, these provisions are not applicable to exempted or non-taxable goods or when the sender is a person other than registered taxable person.

Q 15. Is it compulsory that job work provisions should be followed by the principal?

Ans. No. The principal can send the inputs or capital goods after payment of GST without following the special procedure. In such a case, the job-worker would take the input tax credit and supply back the processed goods (after completion of job-work) on payment of GST.

Q 16. Should job worker and principal be located in same State or Union territory?

Ans. No this is not necessary as provisions relating to job work have been adopted in the IGST Act as well as in UTGST Act and therefore job-worker and principal can be located either is same State or in same Union Territory or in different States or Union Territories.

10. Input Tax Credit

Q 1. What is input tax?

Ans. Input tax means the central tax (CGST), State tax (SGST), integrated tax (IGST) or Union territory tax (UTGST) charged on supply of goods or services or both made to a registered person. It also includes tax paid on reverse charge basis and integrated tax goods and services tax charged on import of goods. It does not include tax paid under composition levy.

Q 2. Can GST paid on reverse charge basis be considered as input tax?

Ans. Yes. The definition of input tax includes the tax payable under the reverse charge.

Q 3. Does input tax includes tax (CGST/IGST/SGST) paid on input goods, input services and capital goods?

Ans. Yes, it includes taxes paid on input goods, input services and capital goods. Credit of tax paid on capital goods is permitted to be availed in one instalment.

Q 4. Is credit of all input tax charged on supply of goods or services allowed under GST?

Ans. A registered person is entitled to take credit of input tax charged on supply of goods or services or both to him which are used or intended to be used in the course or furtherance of business, subject to other conditions and restrictions.

Q 5. What are the conditions necessary for

obtaining ITC?

Ans. Following four conditions are to be satisfied by the registered taxable person for obtaining ITC:

(a) he is in possession of tax invoice or debit note or such other tax paying documents (such as bill of entry or any other document prescribed under the Customs Act, ISD invoice as prescribed in Rule 36(1) of the CGST Rules).

(b) he has received the goods or services or both;

(c) the supplier has actually paid the tax charged in respect of the supply to the government; and

(d) he has furnished the return under section 39.

Q 6. Where the goods against an invoice are received in lots or instalments, how will a registered person be entitled to ITC?

Ans. The registered person shall be entitled to the credit only upon receipt of the last lot or installment.

Q 7. Can a person take input tax credit without payment of consideration for the supply along with tax to the supplier?

Ans. Yes, the recipient can take ITC. But he is required to pay the consideration along with tax within 180 days from the date of issue of invoice. This condition is not applicable where tax is payable on reverse charge basis.

Q 8. What would happen of the ITC taken by the registered person if he has not paid the consideration along with tax within 180 days from the date of issue of invoice?

Ans. The amount of ITC would be added to output tax liability of the person. He would also be required to pay interest. However, he can take ITC again on payment of consideration and tax.

Q 9. Who will get the ITC where goods have been delivered to a person other than taxable person ('bill to'- 'ship to 'scenarios)?

Ans. It would be deemed that the registered person has received the goods when the goods have been delivered to a third party on the direction of such taxable person. So ITC will be available to the person on whose order the goods are delivered to third person.

Q 10. What is the time limit for taking ITC and reasons therefor?

Ans. A registered person cannot take ITC in respect of any invoice or debit note for supply of goods or services after the due date for furnishing the return under section 39 for the month of September following the end of financial year to which such invoice/invoice relating to debit note pertains or furnishing of the relevant annual return, whichever is earlier. So, the upper time limit for taking ITC is 20th October of the next FY or the date of filing of annual return whichever is earlier.

The underlying reasoning for this restriction is that no change in return is permitted after September of next FY. If annual return is filed before the month of September, then no change can be made after filing of annual return.

Q 11. Where the registered taxable person has claimed depreciation on the tax component of the cost of capital goods under the provisions of the Income Tax Act,1961, will ITC be allowed in such cases?

Ans. The input tax credit shall not be allowed on the said tax component in respect of which depreciation has been claimed.

Q 12. Is credit of tax paid on every input used for supply of taxable goods or services or both is allowed under GST?

Ans. Yes, except a small list of items provided in the law, the credit is admissible on all items. The list covers mainly items of personal consumption, inputs use of which results into formation of an immovable property (except plant and machinery), telecommunication towers, pipelines laid outside the factory premises, etc. and taxes paid as a result of detection of evasion of taxes.

Q 13. A taxable person is in the business of information technology. He buys a motor vehicle for use of his Executive Directors. Can he avail the ITC in respect of GST paid on purchase of such motor vehicle?

Ans. No. ITC on motor vehicles can be availed only if the taxable person is in the business of transport of passengers or goods or is providing the services of imparting training on motor vehicles.

Q 14. Sometimes goods are destroyed or lost due to various reasons? Can a person take ITC to the extent of such goods?

Ans. No, a person cannot take ITC with respect to goods lost, stolen, destroyed or written off. In addition, ITC with respect of goods given as gifts or free samples are also not allowed.

Q 15. Can a registered person get ITC with respect of goods or services used for construction of a building for business purposes?

Ans. No. ITC on goods or services by a person for construction of immovable property, other than plant and machinery, is not allowed. Plant and machinery cover only apparatus, equipment, and machinery fixed to earth by foundation or structural support, and excludes land and building, among other things.

Q 16. What is the ITC entitlement of a newly registered person?

Ans. A person applying for registration can take input tax credit of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date of grant of registration. If the person was liable to take registration and he has applied for registration within thirty days from the date on which he became liable to registration, then input tax credit of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date on which he became liable to pay tax can be taken.

Q 17. A person becomes liable to pay tax on 1st August, 2017and has obtained registration on 15th August, 2017. Such person is eligible for input tax credit on inputs held in stock as on:

(a) 1st August, 2017
(b) 31st July, 2017
(c) 15th August, 2017
(d) He cannot take credit for the past period

Ans. 31st July, 2017.

Q 18. What is the eligibility of input tax credit on inputs in stock for a person who obtains voluntary registration?

Ans. The person who obtains voluntary registration is entitled to take the input tax credit of input tax on inputs in stock, inputs in semi- finished goods and finished goods in stock, held on the day immediately preceding the date of registration.

Q 19. What would be input tax eligibility in cases where there is a change in the constitution of a registered person?

Ans. The registered person shall be allowed to transfer the input tax credit that remains unutilized in its electronic credit ledger to the new entity, provided that there is a specific provision for transfer of liabilities.

Q 20. Where goods or services or both received by a taxable person are used for effecting both taxable and non-taxable supplies, whether the input tax credit is available to the registered taxable person?

Ans. The input tax credit of goods or services or both attributable only to taxable supplies can be taken by registered person. The manner of calculation of eligible credit is provided in the CGST Rules.

Q 21. If input tax credit is allowed only in respect of goods or services or both for effecting taxable supplies, would it not lead to loss of input tax credit on exempt supplies when exported?

Ans. No. Zero-rated supplies have been covered within taxable supplies for the purpose of allowing input tax credit. Moreover, IGST Act specifically allows availment of input tax

credit for making zero rated supplies, notwithstanding that such supply may be exempt.

Q 22. Which of the following is included for computation of taxable supplies for the purpose of availing credit?

(a) Zero-rated supplies

(b) Exempt supplies

(c) Both

Ans. Zero rated supplies.

Q 23. Where goods or services received by a registered person are used partly for the purpose of business and partly for other purposes, whether the input tax credit is available to the person?

Ans. The input tax credit of goods or services or both attributable only to the purpose of business can be taken by registered person. The manner of calculation of eligible credit is provided in rules.

Q 24. A person paying tax under compounding scheme crosses the compounding threshold and becomes a regular taxable person. Can he avail ITC and if so from what date?

Ans. He can avail ITC in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock and on capital goods (reduced by prescribed percentage points) on the day immediately preceding the date from which he ceases to be eligible for composition scheme. The manner of calculation of eligible credit is

provided in CGST Rules.

Q 25. Are there any special provisions in respect of banking companies?

Ans. A banking company or a financial institution including a non-banking financial company engaged in supply of specified services would either avail proportionate credit or avail 50% of the eligible input tax credit.

Q 26. Mr. A, a registered person was paying tax under composition scheme up to 30th July, 2017. However, w.e.f 31st July, 2017, Mr. A becomes liable to pay tax under regular scheme. Is he eligible for ITC?

Ans. Mr. A is eligible for input tax credit on inputs held in stock and inputs contained in semi-finished or finished goods held in stock and capital goods (reduced by such percentage points as has been prescribed by the ITC Rules) as on 30th July, 2017. The Input Tax Credit on capital goods shall be claimed after reducing the tax paid on such capital goods by five percentage points per quarter of a year or part thereof from the date of invoice or such other documents on which the capital goods were received by the him.

Q 27. Mr. B applies for voluntary registration on 5th July, 2017 and obtained registration on 22nd July, 2017. Mr. B is eligible for input tax credit on inputs in stock as on……..

Ans. Mr. B is eligible for input tax credit on inputs held in stock and inputs contained in semi-finished or finished

goods held in stock as on 21st July, 2017. This is subject to the further condition that the invoices pertaining to such inputs should not be more than a year old. Mr. B cannot take input tax credit in respect of capital goods.

Q 28. What would happen to the input tax credit availed by a registered person who opts for composition scheme or where the goods or services or both supplied by him become wholly exempt?

Ans. The registered person has to pay an amount equal to the input tax credit in respect of stocks held and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date of exercise of option or date of exemption. The ITC on inputs shall be calculated proportionately on the basis of corresponding invoices on which credit had been availed by the registered person on such input. In respect of capital goods held in stock the input tax credit involved in the remaining useful life in months shall be computed on pro-rata basis, taking the useful life as 5 years. Assume capital goods have been in use for 4 years, 6 months and 15 days. The useful remaining life in months will be 5 months ignoring the part of the month. If ITC on such capital goods is taken as C, ITC attributable to the remaining useful life will be C multiplied by 5/60. This would be the amount payable on capital goods. The ITC amount shall be determined separately for integrated tax, central tax and state tax. The payment can be made by debiting electronic credit ledger, if there is sufficient balance in the said ledger, or by debiting electronic cash ledger. If any balance remains in the electronic credit ledger, it would lapse.

Q 29. Is there any restriction on period for availment of ITC?

Ans. In cases of new registration, change from composition to normal scheme, from exempt to taxable supplies, the concerned person cannot avail ITC after the expiry of one year from the date of issue of tax invoice relating to such supply.

Q 30. What happens where the details of inward supplies furnished by the recipient do not match with the outward supply details furnished by the supplier in his valid return?

Ans. In case of mismatch, the communication would be made to the both parties. If the mismatch is not rectified, then the amount will be added to the output liability of recipient in the return for the month succeeding the month in which discrepancy is communicated.

Q 31. Is input tax credit allowed only after matching?

Ans. No, input tax credit is allowed provisionally for two months. The supply details are matched by the system and discrepancies are communicated to concerned supplier and recipient. In case mismatch continues, the ITC taken would be reversed automatically.

***Q 32.* Can provisionally allowed ITC be used for payment of all liabilities?**

Ans. No, provisionally allowed ITC can be used only for the payment of self-assessed output tax in the return.

Q 33. What will be the tax impact when capital goods on which ITC has been taken are supplied by taxable person?

Ans. In case of supply of capital goods or plant and machinery on which input tax credit has been taken, the registered person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and machinery, as reduced in the manner prescribed under sub-rule 6 of rule 44 of the CGST Rules, 2017, or the tax on the transaction value of such capital goods or plant and machinery, whichever is higher. But in case of refractory bricks, molds and dies, jigs and fixtures when these are supplied as scrap, the person can pay tax on the transaction value.

11. Concept of Input Service Distributor in GST

Q 1. What is Input Service Distributor (ISD)?

Ans. ISD means an office of the supplier of goods or services or both which receives tax invoices towards receipt of input services and issues a prescribed document for the purposes of distributing the credit of central tax (CGST), State tax (SGST)/ Union territory tax (UTGST) or integrated tax (IGST) paid on the said services to a supplier of taxable goods or services or both having same PAN as that of the ISD.

Q 2. What are the requirements for registration as ISD?

Ans. An ISD is required to obtain a separate registration even though it may be separately registered. The threshold limit of registration is not applicable to ISD. The registration of ISD under the existing regime (i.e. under Service Tax) would not be migrated in GST regime. All the existing ISDs will be required to obtain fresh registration under new regime in case they want to operate as an ISD.

Q 3. What are the documents for distribution of credit by ISD?

Ans. The distribution of credit would be done through a document especially designed for this purpose. The said document would contain the amount of input tax credit being distributed.

Q 4. Can an ISD distribute the input tax credit to all suppliers?

Ans. No. The input tax credit of input services shall be

distributed only amongst those registered persons who have used the input services in the course or furtherance of business.

Q 5. It is not possible many a times to establish a one-to-one link between quantum of input services used in the course or furtherance of business by a supplier. In such situations, how distribution of ITC by the ISD is to be done?

Ans. In such situations, distribution would be based on a formula. Firstly, distribution would be done only amongst those recipients of input tax credit to whom the input service being distributed are attributable. Secondly, distribution would be done amongst the operational units only. Thirdly, distribution would be done in the ratio of turnover in a State or Union territory of the recipient during the period to the aggregate of all recipients to whom input service being distributed is attributable. Lastly, the credit distributed should not exceed the credit available for distribution.

Q 6. What does the turnover used for ISD cover?

Ans. The turnover for the purpose of ISD does not include any duty or tax levied under entry 84 of List I and entry 51 and 54 of List II of the Seventh Schedule to the Constitution.

Q 7. Is the ISD required to file return?

Ans. Yes, ISD is required to file monthly return by 13th of the following month in form GSTR-6.

Q 8. Can a company have multiple ISD?

Ans. Yes, different offices like marketing division, security division etc. may apply for separate ISD.

Q 9. What are the provisions for recovery of excess/wrongly distributed credit by ISD?

Ans. The excess/wrongly distributed credit can be recovered from the recipients of credit along with interest by initiating action under section 73 or 74.

Q 10. Whether CGST and IGST credit can be distributed by ISD as IGST credit to recipients located in different States?

Ans. Yes, CGST credit can be distributed as IGST and IGST credit can be distributed as CGST by an ISD for the recipients located in different States.

Q 11. Whether SGST / UTGST credit can be distributed as IGST credit by an ISD to recipients located in different States?

Ans. Yes, an ISD can distribute SGST /UTGST credit as IGST for the recipients located in different States.

Q 12. Whether the ISD can distribute the CGST and IGST Credit as CGST credit?

Ans. Yes, CGST and IGST credit can be distributed as CGST credit by an ISD for the recipients located in same State.

Q 13. Whether the SGST/ UTGST and IGST Credit can be distributed as SGST/UTGST credit?

Ans. Yes, ISD can distribute SGST and IGST credit as SGST / UTGST credit for the recipients located in same State.

Q 14. How to distribute common credit among all the recipients of an ISD?

Ans. The common credit used by all the recipients can be distributed by ISD on pro rata basis i.e. based on the turnover of each recipient to the aggregate turnover of all the recipients to which credit is distributed.

Q 15. The ISD may distribute the CGST and IGST credit to recipient outside the State as_____ (a) IGST

(b) CGST

(c) SGST

Ans. (a) IGST.

Q 16. The ISD may distribute the CGST credit within the State as___

(a) IGST

(b) CGST

(c) SGST

(d) Any of the above.

Ans. (b) CGST.

Q 17. The credit of tax paid on input service used by more than one supplier is _____

(a) Distributed among the suppliers who used such input service on pro rata basis of turnover in such State.

(b) Distributed equally among all the suppliers.

(c) Distributed only to one supplier.

(d) Cannot be distributed.

Ans. (a) Distributed among the suppliers who used such

input service on pro rata basis of turnover in such State.

Q 18. Whether the excess credit distributed could be recovered from ISD by the department?

Ans. No. Excess credit distributed can be recovered along with interest only from the recipient and not ISD. The provisions of section 73 or 74 would be applicable for the recovery of credit.

Q 19. What are the consequences of credit distributed in contravention of the provisions of the Act?

Ans. The credit distributed in contravention of provisions of Act could be recovered from the recipient to which it is distributed along with interest.

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12. Returns Process and matching of Input Tax Credit

Q 1. What is the purpose of returns?

Ans.

a) *Mode for transfer of information to tax administration;*

b) *Compliance verification program of tax administration;*

c) *Finalization of the tax liabilities of the taxpayer within stipulated period of limitation; to declare tax liability for a given period;*

d) *Providing necessary inputs for taking policy decision;*

e) *Management of audit and anti-evasion programs of tax administration.*

Q 2. Who needs to file Return in GST regime?

Ans. Every person registered under GST will have to file returns in some form or other. A registered person will have to file returns either monthly (normal supplier) or quarterly basis (Supplier opting for composition scheme). An ISD will have to file monthly returns showing details of credit distributed during the particular month. A person required to deduct tax (TDS) and persons required to collect tax (TCS) will also have to file monthly returns showing the amount deducted/collected ***and other specified details.*** *A non-resident taxable person will also have to file returns for the period of activity undertaken.*

Q 3. What type of outward supply details are to be

filed in the return?

Ans. A normal registered taxpayer having aggregate turnover in the preceding or current financial year more than Rs.1.5 Crore has to file the outward supply details in GSTR-1 in relation to various types of supplies made in a month, namely outward supplies to registered persons, outward supplies to unregistered persons (consumers), details of Credit/Debit Notes, zero rated, exempted and non-GST supplies, exports, and advances received in relation to future supply.

Q 4. Do taxpayers with an aggregate turnover less than Rs.1.5 Crores also need to file GSTR-1 on a monthly basis?

Ans. No. A special procedure has been prescribed for such taxpayers vide notification no. 57/2017-Central Tax dated 15.11.2017. Such taxpayers need to file GSTR-1 on a quarterly basis. The last date for filing GSTR-1 for such taxpayers for the period July-Sep 17 is 31.12.2017, Oct-Dec 17 is 15.02.2018 & Jan-March 2018 is 30.04.2018. It is also clarified that the registered person may opt to file FORM GSTR-1 on monthly basis if he so wishes even though his aggregate turnover is up to Rs. 1.5 Crore.

Q 5. Is the scanned copy of invoices to be uploaded along with GSTR-1?

Ans. No scanned copy of invoices is to be uploaded. Only certain prescribed fields of information from invoices need to be uploaded.

Q 6. Whether all invoices will have to be uploaded?

Ans. No. It depends on whether B2B or B2C plus whether Intra-state or Inter-state supplies.

For B2B supplies, all invoices, whether Intra-state or Inter-state supplies, will have to be uploaded. Why So? Because ITC will be taken by the recipients, invoice matching is required to be done.

In B2C supplies, uploading in general may not be required as the buyer will not be taking ITC. However still in order to implement the destination based principle, invoices of value more than Rs.2.5 lacs in inter-state B2C supplies will have to be uploaded. For inter-state invoices below Rs. 2.5 lacs and all intra-state invoices, state wise summary will be sufficient.

Q 7. Whether description of each item in the invoice will have to be uploaded?

Ans. No. In fact, description will not have to be uploaded. Only HSN code in respect of supply of goods and Accounting code in respect of supply of services will have to be fed. The minimum number of digits that the filer will have to upload would depend on his turnover in the last year.

Q 8. Whether value for each transaction will have to be fed? What if no consideration?

Ans. Yes. Not only value but taxable value will also have to be fed. In some cases, both may be different.

In case there is no consideration, but it is supply by virtue of schedule 1, the taxable value will have to be worked out as prescribed and uploaded.

Q 9. Can a recipient feed information in his GSTR-2 which has been missed by the supplier?

Ans. Yes, the recipient can himself feed the invoices not

uploaded by his supplier. The credit on such invoices will also be given provisionally but will be subject to matching. On matching, if the invoice is not uploaded by the supplier, both of them will be intimated. If the mismatch is rectified, provisional credit will be confirmed. But if the mismatch continues, the amount will be added to the output tax liability of the recipient in the returns for the month subsequent to the month in which such discrepancy was communicated.

Q 10. Does the taxable person have to feed anything in the GSTR-2 or everything is auto-populated from GSTR-1?

Ans. While a large part of GSTR-2 will be auto-populated, there are some details that only recipient can fill like details of imports, details of purchases from non-registered or composition suppliers and exempt/non-GST/nil GST supplies etc.

Q 11. What if the invoices do not match? Whether ITC is to be given or denied? If denied, what action is taken against supplier?

Ans. If invoices in GSTR-2 do not match with invoices in counter-party GSTR-1, then such mismatch shall be intimated to the supplier. Mismatch can be because of two reasons. First, it could be due to mistake at the side of the recipient, and in such a case, no further action is required. Secondly, it could be possible that the said invoice was issued by supplier but he did not upload it and pay tax on it. In such a case, the ITC availed by the recipient would be added to his output tax liability, in short, all mismatches will lead to proceedings if the supplier has made a supply but not paid tax on it.

Q 12. What will be the legal position in regard to the reversed input tax credit if the supplier later realizes the mistake and feeds the information?

Ans. At any stage, but before September of the next financial year, supplier can upload the invoice and pay duty and interest on such missing invoices in his GSTR-3 of the month in which he had earlier failed to upload the invoice. The recipient shall be eligible to reduce his output tax liability to the extent of the amount in respect of which the supplier has rectified the mis-match. The interest paid by the recipient at the time of reversal will also be ***refunded*** *to the recipient by crediting the amount in corresponding head of his electronic cash ledger.*

Q 13. What is the special feature of GSTR-2?

Ans. The special feature of GSTR-2 is that the details of supplies received by a recipient can be auto populated on the basis of the details furnished by the counterparty supplier in his GSTR-1.

Q 14. Do tax payers under the composition scheme also need to file GSTR-1 and GSTR-2?

Ans. No. Composition tax payers do not need to file any statement of outward or inward supplies. They have to file a quarterly return in Form GSTR-4 by the 18th of the month after the end of the quarter. Since they are not eligible for any input tax credit, there is no relevance of GSTR-2 for them and since the credit of tax paid under Composition Levy is not eligible, there is no relevance of GSTR-1 for them. In their return, they have to declare summary details of their outward supplies along with the details of tax payment. They also have to give details of their purchases in their quarterly return itself,

most of which will be auto populated.

Q 15. Do Input Service Distributors (ISDs) need to file separate statement of outward and inward supplies with their return?

Ans. No, the ISDs need to file only a return in Form GSTR-6 and the return has the details of credit received by them from the service provider and the credit distributed by them to the recipient units. Since their return itself covers these aspects, there is no requirement to file separate statement of inward and outward supplies.

Q 16. How does a taxpayer get the credit of the tax deducted at source on his behalf? Does he need to produce TDS certificate from the deductee to get the credit?

Ans. Under GST, the deductor will be submitting the deductee wise details of all the deductions made by him in his return in Form GSTR-7 to be filed by 10th of the month next to the month in which deductions were made. The details of the deductions as uploaded by the deductor shall be auto populated in the GSTR-2 of the deductee. The taxpayer shall be required to confirm these details in his GSTR-2 to avail the credit for deductions made on his behalf. To avail this credit, he does not require to produce any certificate in physical or electronic form. The certificate will only be for record keeping of the tax payer and can be downloaded from the Common Portal.

Q 17. Which type of taxpayers need to file Annual Return?

Ans. All taxpayers filing return in GSTR-1 to GSTR-3,

other than ISD's, casual/non-resident taxpayers, taxpayers under composition scheme, TDS/TCS deductors, are required to file an annual return. Casual taxpayers, non-resident taxpayers, ISDs and persons authorized to deduct/collect tax at source are not required to file annual return.

Q 18. Is an Annual Return and a Final Return one and the same?

Ans. No. Annual Return has to be filed by every registered person paying tax as a normal taxpayer. Final Return has to be filed only by those registered persons who have applied for cancellation of registration. The Final return has to be filed within three months of the date of cancellation or the date of cancellation order.

Q 18. If a return has been filed, how can it be revised if some changes are required to be made?

Ans. In GST since the returns are built from details of individual transactions, there is no requirement for having a revised return. Any need to revise a return may arise due to the need to change a set of invoices or debit/ credit notes. Instead of revising the return already submitted, the system will allow changing the details of those transactions (invoices or debit/credit notes) that are required to be amended. They can be amended in any of the future GSTR-1/2 in the tables specifically provided for the purposes of amending previously declared details.

Q 19. How can taxpayers file their returns?

Ans. Taxpayers will have various modes to file the statements and returns. Firstly, they can file their statement and returns directly on the Common Portal online. However,

this may be tedious and time consuming for taxpayers with large number of invoices. For such taxpayers, an offline utility will be provided that can be used for preparing the statements offline after downloading the auto populated details and uploading them on the Common Portal. GSTN has also developed an ecosystem of GST Suvidha Providers (GSP) that will integrate with the Common Portal.

Q 20. What precautions, a taxpayer is required to take for a hassle free compliance under GST?

Ans. One of the most important things under GST will be timely uploading of the details of outward supplies in Form GSTR-1 by 10th of next month. How best this can be ensured will depend on the number of B2B invoices that the taxpayer issues. If the number is small, the taxpayer can upload all the information in one go. However, if the number of invoices is large, the invoices (or debit/ credit notes) should be uploaded on a regular basis. GSTN will allow regular uploading of invoices even on a real time basis. Till the statement is actually submitted, the system will also allow the taxpayer to modify the uploaded invoices. Therefore, it would always be beneficial for the taxpayers to regularly upload the invoices. Last minute rush will make uploading difficult and will come with higher risk of possible failure and default. The second thing would be to ensure that taxpayers follow up on uploading the invoices of their inward supplies by their suppliers. This would be helpful in ensuring that the input tax credit is available without any hassle and delay. Recipients can also encourage their suppliers to upload their invoices on a regular basis instead of doing it on or close to the due date. The system would allow recipients to see if their suppliers have uploaded invoices pertaining to them. The GSTN system will also provide the track record about the compliance level of a

tax payer, especially about his track record in respect of timely uploading of his supply invoices giving details about the auto reversals that have happened for invoices issued by a supplier. The Common Portal of GST would have pan India data at one place which will enable valuable services to the taxpayers. Efforts are being made to make regular uploading of invoices as easy as possible and it is expected that an enabling eco-system will be developed to achieve this objective. Taxpayers should make efficient use of this ecosystem for easy and hassle free compliance under GST.

Q 21. Is it compulsory for a taxpayer to file return by himself?

Ans. No. A registered taxpayer can also get his return filed through a Tax Return Preparer, duly approved by the Central or the State tax administration.

Q 22. What is the consequence of not filing the return within the prescribed date?

Ans. A registered person who files return beyond the prescribed date will have to pay late fees of rupees one hundred for every day of delay subject to a maximum of rupees five thousand. For failure to furnish Annual returns by due date, late fee of Rs. One hundred for every day during which such failure continues subject to a maximum of an amount calculated at a quarter percent [0.25%] of his turnover in a state, will be levied.

Q 23. What happens if ITC is taken on the basis of a document more than once?

Ans. In case the system detects ITC being taken on the same document more than once (duplication of claim), the amount of such credit would be added to the output tax liability of the recipient in the return for the month in which duplication is communicated. [Section 42(6)]. In other

words, the same would be recovered along with interest.

Q 24. Whether the amount of credit detected by the system on account of mis-match between GSTR-1 and GSTR-2 and recovered as output tax can be reclaimed?

Ans. *Yes, once the mismatch is rectified by the supplier by declaring the details of the invoices or debit notes, as the case may be, in his valid return for the month/quarter in which the error had been detected. The said amount can be reclaimed by way of reducing the output tax liability during the subsequent tax period. [Section 42(7)]. Similar provisions have also been made in Section 43 of the Act in respect of the credit notes issued by the supplier.*

Q 25. What is GSTR-3B?

Ans. GSTR-3B is a simplified monthly return that all taxpayers need to file from July 2017 to March 2018. It is a summarized return form which every taxpayer will be required to file on self-declaration basis till 31st March 2018. The same needs to be filed by 20th day of next month. i.e. for the month of December,2017 GSTR-3B needs to be filed by 20th January, 2018 after paying appropriate taxes, and for the month of February, 2017 the same needs to filed by 20th March, 2018.

Q 26. Is there any late fees for late filing of GSTR-3B?

Ans. The late fees for filing GSTR-3B for the months of July to September 2017 has been waived by the Government. Where such late fee was paid, it will be re-credited to taxpayer's Electronic Cash Ledger under "Tax" head instead of "Fee" head so as to enable them to use that amount for discharge of their future tax liabilities. For subsequent months, i.e. October 2017 onwards, the amount of late fee payable by a taxpayer whose tax liability for that month

was 'NIL' will be Rs. 20/- per day (Rs. 10/- per day each under CGST & SGST Acts) and will be Rs. 50/- per day (Rs. 25/- per day each under CGST & SGST Acts) for all other taxpayers.

Q 27. How does the taxpayer need to account for Advances in his GSTR-1?

Ans. Where against an advance the invoice is issued in the same tax period, the advance need not be shown separately in Form GSTR-1 but the specified details of invoice itself can be directly uploaded on the system. Details of all advances against which the invoices have not been issued till the end of the tax period shall have to be reported on a consolidated basis in Table 11 of Form GSTR-1. As and when the invoices against these advances are issued, they have to be declared in Form GSTR-1 and the adjustment of the tax paid on advances against the tax payable on the invoices uploaded in Form GSTR-1 shall have to be done in Table 11 of Form GSTR-1. It may be noted that in terms of notification 66/2017-Central Tax dated 15.11.2017, there is no liability to pay tax at the time of receipt of advance in case of supply of goods.

13. Assessment and Audit

Q 1. Who is the person responsible to make assessment of taxes payable under the Act?

Ans. Every person registered under the Act shall himself assess the tax payable by him for a tax period and after such assessment he shall file the return required under section 39.

Q 2. When can a taxable person pay tax on a provisional basis?

Ans. As a taxpayer has to pay tax on self-assessment basis, a request for paying tax on provisional basis has to come from the taxpayer which will then have to be permitted by the proper officer. In other words, no tax officer can suo-moto order payment of tax on provisional basis. This is governed by section 60 of CGST/SGST Act. Tax can be paid on a provisional basis only after the proper officer has permitted it through an order passed by him. For this purpose, the taxable person has to make a written request to the proper officer, giving reasons for payment of tax on a provisional basis. Such a request can be made by the taxable person only in such cases where he is unable to determine:

a) the value of goods or services to be supplied by him, or

b) determine the tax rate applicable to the goods or services to be supplied by him.

In such cases the taxable person has to execute a bond in the prescribed form, and with such surety or security as the proper officer may deem fit.

Q 3. What is the latest time by which final assessment is required to be made?

Ans. The final assessment order has to be passed by the proper officer within six months from the date of the communication of the order of provisional assessment. However, on sufficient cause being shown and for reasons to be recorded in writing, the above period of six months may be extended:

a) by the Joint / Additional Commissioner for a further period not exceeding six months, and

b) by the Commissioner for such further period as he may deem fit not exceeding fours.

Thus, a provisional assessment can remain provisional for a maximum of five years.

Q 4. Where the tax liability as per the final assessment is higher than in provisional assessment, will the taxable person be liable to pay interest?

Ans. Yes. He will be liable to pay interest from the date the tax was due to be paid originally till the date of actual payment.

Q 5. What recourse may be taken by the officer in case proper explanation is not furnished for the discrepancy detected in the return filed, while conducting scrutiny under section 61 of CGST ACT?

Ans. If the taxable person does not provide a satisfactory explanation within 30 days of being informed (extendable by the officer concerned) or after accepting discrepancies, fails to take corrective action in the return for the month in which the discrepancy is accepted, the Proper Officer may take recourse to any of the following provisions:

(a) *Proceed to conduct audit under Section 65 of the Act;*

(b) *Direct the conduct of a special audit under Section 66 which is to be conducted by a Chartered Accountant or a Cost Accountant nominated for this purpose by the Commissioner; or*

(c) *Undertake procedures of inspection, search and seizure under Section 67 of the Act; or*

(d) *Initiate proceeding for determination of tax and other dues under Section 73 or 74 of the Act.*

Q 6. If a taxable person fails to file the return required under law (under section 39 (monthly/quarterly), or 45 (final return), what legal recourse is available to the tax officer?

Ans. The proper officer has to first issue a notice to the defaulting taxable person under section 46 of CGST/SGST Act requiring him to furnish the return within a period of fifteen days. If the taxable person fails to file return within the given time, the proper officer shall proceed to assess the tax liability of the return defaulter to the best of his judgement taking into account all the relevant material available with him. (Section 62).

Q 7. Under what circumstances can a best judgment assessment order issued under section 60 be withdrawn?

Ans. The best judgment order passed by the Proper Officer under section 62 of CGST/SGST Act shall automatically stand withdrawn if the taxable person

furnishes a valid return for the default period (i.e. files the return and pays the tax as assessed by him), within thirty days of the receipt of the best judgment assessment order.

Q 8. What is the time limit for passing assessment order u/s 62 (Best Judgment) and 63 (Non-filers)?

Ans. The time limit for passing an assessment order under section 62 or 63 is five years from the due date for furnishing the annual return.

Q 9. What is the legal recourse available in respect of a person who is liable to pay tax but has failed to obtain registration?

Ans. Section 63 of CGST/SGST Act provides that in such a case, the proper officer can assess the tax liability and pass an order to his best judgment for the relevant tax periods. However, such an order must be passed within a period of five years from the due date for furnishing the annual return for the financial year to which non-payment of tax relates.

Q 10. Under what circumstances can a tax officer initiate Summary Assessment?

Ans. As per section 64 of CGST/SGST Act, Summary Assessments can be initiated to protect the interest of revenue when:

a) the proper officer has evidence that a taxable person has incurred a liability to pay tax under the Act, and

b) the proper officer believes that delay in passing an assessment order will adversely affect the interest of revenue.

Such order can be passed after seeking permission from the Additional Commissioner / Joint Commissioner.

Q 11. Other than appellate remedy, is there any other recourse available to the taxpayer against a summary assessment order?

Ans. A taxable person against whom a summary assessment order has been passed can apply for its withdrawal to the jurisdictional Additional/Joint Commissioner within thirty days of the date of receipt of the order. If the said officer finds the order erroneous, he can withdraw it and direct the proper officer to carry out determination of tax liability in terms of section 73 or 74 of CGST/SGST Act. The Additional/Joint Commissioner can follow a similar course of action on his own motion if he finds the summary assessment order to be erroneous (section 64 of CGST/SGST Act).

Q 12. Is summary assessment order to be necessarily passed against the taxable person?

Ans. No. In certain cases, like when goods are under transportation or are stored in a warehouse, and the taxable person in respect of such goods cannot be ascertained, the person in charge of such goods shall be deemed to be the taxable person and will be assessed to tax (proviso to Section 64 of CGST/SGST Act).

Q 13. Who can conduct audit of taxpayers?

Ans. There are three types of audit prescribed in the GST Act(s) as explained below:

(a) Audit by Chartered Accountant or a Cost Accountant: Every registered person whose turnover exceeds Rs. Two crore, shall get his accounts audited by a

chartered accountant or a cost accountant. (Section 35(5) of the CGST/SGST Act)

(b) Audit by Department: The Commissioner or any officer of CGST or SGST or UTGST authorized by him by a general or specific order, may conduct audit of any registered person. The frequency and manner of audit will be prescribed in due course. (Section 65 of the CGST/SGST Act)

(c) Special Audit: If at any stage of scrutiny, inquiry, investigations or any other proceedings, if department is of the opinion that the value has not been correctly declared or credit availed is not with in the normal limits, department may order special audit by chartered accountant or cost accountant, nominated by department. (Section 66 of the CGST/SGST Act)

Q 14. Whether any prior intimation is required before conducting the audit?

Ans. Yes, prior intimation is required and the taxable person should be informed at least 15 working days prior to conduct of audit.

Q 15. What is the period within which the audit is to be completed?

Ans. The audit is required to be completed within 3 months from the date of commencement of audit. The period is extendable for a further period of a maximum of 6 months by the Commissioner.

Q 16. What is meant by commencement of audit?

Ans. The term 'commencement of audit' is important because audit has to be completed within a given time frame in reference to this date of commencement. Commencement of audit means the later of the following:

a) the date on which the records/accounts called

for by the audit authorities are made available to them, or

b) the actual institution of audit at the place of business of the taxpayer.

Q 17. What are the obligations of the taxable person when he receives the notice of audit?

Ans. The taxable person is required to:

a) facilitate the verification of accounts/records available or requisitioned by the authorities,

b) provide such information as the authorities may require for the conduct of the audit, and

c) render assistance for timely completion of the audit.

Q 18. What would be the action by the proper officer upon conclusion of the audit?

Ans. The proper officer shall, on conclusion of audit, within 30 days inform the taxable person about his findings, reasons for findings and the taxable person's rights and obligations in respect of such findings.

Q 19. Under what circumstances can a special audit be instituted?

Ans. A special audit can be instituted in limited circumstances where during scrutiny, investigation, etc. it comes to the notice that a case is complex or the revenue stake is high. This power is given in section 66 of CGST /SGST Act.

Q 20. Who can serve the notice of communication for special audit?

Ans. The Assistant / Deputy Commissioner is to serve the communication for special audit only after prior

approval of the Commissioner.

Q 21. Who will do the special audit?

Ans. A Chartered Accountant or a Cost Accountant so nominated by the Commissioner may undertake the audit.

Q 22. What is the time limit to submit the audit report?

Ans. The auditor will have to submit the report within 90 days or within the further extended period of 90 days.

Q 23. Who will bear the cost of special audit?

Ans. The expenses for examination and audit including the remuneration payable to the auditor will be determined and borne by the Commissioner.

Q 24. What action the tax authorities may take after the special audit?

Ans. Based on the findings / observations of the special audit, action can be initiated under Section 73 or Section 74 of the CGST/SGST Act.

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14. Refunds

Q 1. What is refund?

Ans. Refund has been discussed in section 54 of the CGST/SGST Act.
"Refund" includes
(a) any balance amount in the electronic cash ledger so claimed in the returns,
(b) any unutilized input tax credit in respect of (i) zero rated supplies made without payment of tax or, (ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies),
(c) tax paid by specialized agency of United Nations or any Multilateral Financial Institution and Organization notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries on any inward supply

Q 2. Can unutilized Input tax credit be allowed as refund?

Ans. Unutilized input tax credit can be allowed as refund in accordance with the provisions of sub-section (3) of section 54 in the following situations: -
(i) Zero rated supplies made without payment of tax;
(ii) Where credit has accumulated on account of rate of tax on inputs being higher than the rate of taxes on output supplies (other than nil rated or fully exempt supplies)

However, no refund of unutilized input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty, and also in the case where the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies.

Q 3. Can unutilized ITC be given refund, in case goods Exported outside India are subjected to export duty?

Ans. Refund of unutilized input tax credit is not allowed in cases where the goods exported out of India are subjected to export duty - as per the second proviso to Section 54(3) of CGST/SGST Act.

Q 4. Will unutilized ITC at the end of the financial year (after introduction of GST) be refunded?

Ans. There is no such provision to allow refund of such unutilized ITC at the end of the financial year in the GST Law. It shall be carried forward to the next financial year.

Q 5. Suppose a taxable person has paid IGST/ CGST/SGST mistakenly as an Interstate/intrastate supply, but the nature of which is subsequently clarified. Can the CGST/SGST be adjusted against wrongly paid IGST or vice versa?

Ans. The taxable person cannot adjust CGST/SGST or IGST with the wrongly paid IGST or CGST/SGST but he is entitled to refund of the tax so paid wrongly - Sec.77 of the CGST/SGST Act.

Q 6. Whether purchases made by Embassies or UN are taxed or exempted?

Ans. Supplies to the Embassies or UN bodies will be taxed, which later on can be claimed as refund by them in terms of Section 54(2) of the CGST/SGST Act. The claim has to be filed in the manner prescribed under CGST/SGST Refund rules, before expiry of six months from the last day of the month in which such supply was received.

[The United Nations Organization and Consulates or Embassies are required to take a Unique Identity Number [section 26(1) of the CGST/SGST Act] and purchases made by them will be reflected against their Unique Identity Number in the return of outward supplies of the supplier(s)]

Q 7. What is the time limit for taking refund?

Ans. A person claiming refund is required to file an application before the expiry of two years from the "relevant date" as given in the Explanation to section 54 of the CGST/SGST Act.

Q 8. Whether principle of unjust enrichment will be applicable in refund?

Ans. The principle of unjust enrichment would be applicable in all cases of refund except in the following cases: -

i. *Refund of tax paid on zero-rated supplies of goods or services or both or on inputs or input services used in making such zero-rated supplies*
ii. *Unutilized input tax credit in respect of (i) zero rated supplies made without payment of tax or, (ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies*
iii. *refund of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued;*
iv. *refund of tax in pursuance of Section 77 of CGST/SGST Act i.e. tax wrongfully collected and paid to Central Government or State Government*
v. *if the incidence of tax or interest paid has not been passed on to any other person;*
vi. *such other class of persons who has borne the incidence of tax as the Government may notify.*

Q 9. In case the tax has been passed on to the

consumer, whether refund will be sanctioned?

Ans. Yes, the amount so refunded shall be credited to the Consumer Welfare Fund - Section 57 of the CGST/SGST Act

Q 10. Is there any time limit for sanctioning of refund?

Ans. Yes, refund has to be sanctioned within 60 days from the date of receipt of application complete in all respects. If refund is not sanctioned within the said period of 60 days, interest at the rate notified not exceeding 6% will have to be paid in accordance with section 56 of the CGST/SGST Act.

However, in case where provisional refund to the extent of 90% of the amount claimed is refundable in respect of zero-rated supplies made by certain categories of registered persons in terms of sub-section (6) of section 54 of the CGST/SGST Act, the provisional refund has to be given within 7 days from the date of acknowledgement of the claim of refund.

Q 11. Can refund be withheld by the department?

Ans. Yes, the proper officer can withhold refund of accumulated ITC under Section 54(3) in the following circumstances:

i. *If the person has failed to furnish any return till he files such return;*
ii. *If the registered taxable person is required to pay any tax, interest or penalty which has not been*

stayed by the appellate authority/Tribunal/ court, till he pays such tax interest or penalty;

The proper officer can also deduct unpaid taxes, interest, penalty, late fee, if any, from the refundable amount – Section 54(10) (d) of the CGST/SGST Act

The Commissioner can withhold any refund, if, the order of refund is under appeal and he is of the opinion that grant of such refund will adversely affect revenue in the said appeal on account of malfeasance or fraud committed - Sec.54 (11) of the CGST/SGST Act.

Q 12. Where the refund is withheld under Section 54(11) *of the CGST/SGST Act*, will the taxable person be given interest?

Ans. If as a result of appeal or further proceeding the taxable person becomes entitled to refund, then he shall also be entitled to interest at the rate notified not exceeding 6% [section 54(12) of the CGST/SGST Act].

Q 13. Is there any minimum threshold for refund?

Ans. No refund shall be granted if the amount is less than Rs.1000/-. [Sec.54 (14) of the CGST/SGST Act]

Q 14. How will the refunds arising out of existing law be paid?

Ans. The refund arising out of existing law will be paid as per the provisions of the existing law and will be made in cash and will not be available as ITC.

Q 15. Whether refund can be made before verification of documents?

Ans. In case of any claim of refund to a registered person on account of zero rated supplies of goods or services or both (other than registered persons as may be notified), 90% refund may be granted on provisional basis before verification subject to such conditions and restrictions as prescribed in Refund rules in accordance with sub-section 6 of section 54 of the CGST/SGST Act.

Q 16. In case of refund under exports, whether BRC is necessary for granting refund?

Ans. In case of refund on account of export of goods, the refund rules do not prescribe BRC as a necessary document for filing of refund claim. However, for export of services details of BRC is required to be submitted along with the application for refund.

Q 17. Will the principle of unjust enrichment apply to exports and supplies to SEZ Units?

Ans. The principle of unjust enrichment would not be applicable to zero-rated supplies [i.e. exports and supplies to SEZ units]

Q 18. How will the applicant prove that the principle of unjust enrichment does not apply in his case?

Ans. Where the claim of refund is less than Rs.2 Lakh, a self-declaration by the applicant based on the documentary or other evidences available with him, certifying that the incidence of tax has not been passed on to any other person would make him eligible to get refund. However, if the claim of refund is more than Rs.2 Lakh, the applicant is required to submit a certificate from a Chartered Accountant or a Cost Accountant to the effect that the incidence of tax has not been passed on to any other person.

Q 19. Today under VAT/CST merchant exporters can purchase goods without payment of tax on furnishing of a declaration form. Will this system be there in GST?

Ans. There is no such provision in the GST law. They will have to procure goods upon payment of tax and claim refund of the tax paid or the unutilized input tax credit in accordance with section 54(1)/54(3) of the CGST/SGST Act.

Q 20. Presently under Central law, exporters are allowed to obtain duty paid inputs, avail ITC on it and export goods upon payment of duty (after utilizing the ITC) and thereafter claim refund of the duty paid on exports. Will this system continue in GST?

Ans. Yes. In terms of Section 16 of the IGST Act, a registered taxable person shall have the option either to

export goods/services without payment of IGST under bond or letter of undertaking and claim refund of ITC or he can export goods/services on payment of IGST and claim refund of IGST paid.

Q 21. What is the time period within which an acknowledgement of a refund claim has to be given?

Ans. Where an application relates to a claim for refund from the electronic cash ledger as per sub-section (6) of section 49 of the CGST/SGST Act made through the return furnished for the relevant tax period the acknowledgement will be communicated as soon as the return is furnished and in all other cases of claim of refund the acknowledgement will be communicated to the applicant within 15 days from the date of receipt of application complete in all respect.

Q 22. What is the time period within which provisional refund has to be given?

Ans. Provisional refund to the extent of 90% of the amount claimed on account of zero-rated supplies in terms of sub-section (6) of section 54 of the CGST/SGST Act has to be given within 7 days from the date of acknowledgement of complete application for refund claim.

Q 23. Is there any specified format for filing refund claim?

Ans. Every claim of refund has to be filed in Form GST RFD 1. However, claim of refund of balance in electronic cash ledger can be claimed through furnishing of monthly/quarterly returns in Form GSTR 3, GSTR 4 or GSTR 7, as the case may be, of the relevant period.

Q 24. Is there any specified format for sanction of refund claim?

Ans. The claim of refund will be sanctioned by the proper officer in Form GST RFD-06 if the claim is found to be in order and payment advice will be issued in Form GST RFD-05. The refund amount will then be electronically credited to the applicants given bank account.

Q 25. What happens if there are deficiencies in the refund claim?

Ans. Deficiencies, if any, in the refund claim has to be pointed out within 15 days. A form GST RFD-03 will be issued by the proper officer to the applicant pointing out the deficiencies through the common portal electronically requiring him to file a refund application after rectification of such deficiencies.

Q 26. Can the refund claim be rejected without assigning any reasons?

Ans. No. When the proper officer is satisfied that the

claim is not admissible he shall issue a notice in Form GST RFD-08 to the applicant requiring him to furnish a reply in GST RFD -09 within fifteen days and after consideration of the applicant's reply, he can accept or reject the refund claim and pass an order in Form GST RFD-06 only.

Q 27. Refund of accumulated ITC is allowed when such accumulation is on account of inverted tax structure. Are there any exceptions?

Ans. Yes. Refund of accumulated ITC will not be admissible for construction services. Refund will also not be admissible where credit accumulation due to inverted tax structure is in respect of the following goods:

Sr. No.	*Tariff item, heading, sub-heading or Chapter*	*Description of Goods*
1	*5007*	*Woven fabrics of silk or of silk waste*
2	*5111 to 5113*	*Woven fabrics of wool or of animal hair*
3	*5208 to 5212*	*Woven fabrics of cotton*
4	*5309 to 5311*	*Woven fabrics of other vegetable textile fibres, paper yarn*
5	*5407, 5408*	*Woven fabrics of manmade textile materials*
6	*5512 to 5516*	*Woven fabrics of manmade staple fibres*
6A	*5608*	*Knotted netting of twine, cordage or rope; made up fishing nets and other made up nets, of textile materials*
6B	*5801*	*Corduroy fabrics*
6C	*5806*	*Narrow woven fabrics, other than goods of heading 5807; narrow fabrics consisting of warp without weft assembled by means of an adhesive (bolducs)"*

7	*60*	*Knitted or crocheted fabrics [All goods]*
8	*8601*	*Rail locomotives powered from an external source of electricity or by electric accumulators*
9	*8602*	*Other rail locomotives; locomotive tenders; such as Diesel-electric locomotives, Steam locomotives and tenders thereof*
10	*8603*	*Self-propelled railway or tramway coaches, vans and trucks, other than those of heading 8604*
11	*8604*	*Railway or tramway maintenance or service vehicles, whether or not self-propelled (for example, workshops, cranes, ballast tampers, trackliners, testing coaches and track inspection vehicles)*
12	*8605*	*Railway or tramway passenger coaches, not self-propelled; luggage vans, post office coaches and other special purpose railway or tramway coaches, not self-propelled (excluding those of heading 8604)*
13	*8606*	*Railway or tramway goods vans and wagons, not self-propelled*
14	*8607*	*Parts of railway or tramway locomotives or rolling-stock; such as Bogies, bissel-bogies, axles and wheels, and parts thereof*
15	*8608*	*Railway or tramway track fixtures and fittings; mechanical (including electro-mechanical) signalling, safety or traffic control equipment for railways, tramways, roads, inland waterways, parking facilities, port installations or airfields; parts of the foregoing*

Q 28. Whether the above restriction will also be applicable for zero rated supplies?

Ans. No. It has been clarified vide Circular No. 18/18/2017-GST dated 16.11.2017 that the restriction on refund of unutilized input tax credit in inverted tax structure is not applicable in zero rated supplies because the relevant Notification No. 05/2017-Central Tax (Rate) dated 28.06.2017 restricting refund of unutilized input tax credit has been issued under clause (ii) of the proviso to sub-section (3) of Section 54 of the CGST Act, 2017.

Q 29. In respect of export of goods on payment of IGST, will the exporter need to file a separate refund claim?

Ans. No. The shipping bill filed by an exporter shall be deemed to be an application for refund of integrated tax paid on the goods exported out of India and such application shall be deemed to have been filed only when:-
(a) the person in charge of the conveyance carrying the export goods duly files an export manifest or an export report covering the number and the date of shipping bills or bills of export; and
(b) the applicant has furnished a valid return in FORM GSTR-3 or FORM GSTR-3B and GSTR-1 or Table 6A of the said GSTR-1.

Q 30. Is it necessary to execute a bond for effecting zero rated supplies?

Ans. No. The facility to export under Letter of Undertaking (LUT) has been extended to all zero rated suppliers (barring a few exceptions such as those who have been prosecuted for an offence involving tax of Rs. 2.5 crore) vide Notification No. 37/2017 – Central Tax dated 4.10.2017. Circular No. 8/8/2017-GST dated 4.10.2017 may also be referred to.

Q 31. Is there any provision for filing manual refund claims under GST?

Ans. Yes. Circular No.17/17/2017-GST dated 15.11.2017 has been issued clarifying the procedure for filing of manual refund claims. The circular mandates that due to the non-availability of the refund module on the common portal, it has been decided by the competent authority, on the recommendations of the Council, that the applications/documents/forms pertaining to refund claims on account of zero-rated supplies shall be filed and processed manually till further orders.

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15. Demands and Recovery

Q 1. Which are the applicable sections for the purpose of recovery of tax short paid or not paid or amount erroneously refunded or input tax credit wrongly availed or utilized?

Ans. Section **73** *deals with the cases where there is no invocation of fraud/suppression/mis-statement etc. Section* **74** *deals with cases where the provisions related to fraud/suppression/mis-statement etc. are invoked.*

Q 2. What if person chargeable with tax, pays the amount along with interest before issue of show cause notice under section 73?

Ans. In such cases notice shall not be issued by the proper officer. ***{sec.73 (6)}***

Q 3. If show cause notice is issued under Section 73 and thereafter the noticee makes payment along with applicable interest, is there any need to adjudicate the case?

Ans. If the person pays the tax along with interest within 30 days of issue of notice, no penalty shall be payable and all proceedings in respect of such notice shall be deemed to be concluded. ***{sec.73 (8)}***

Q 4. What is the relevant date for issue of Show Cause Notice?

Ans.

(i) *In case of section 73(cases other than fraud/ suppression of facts/willful misstatement), the relevant date shall be counted from the*

due date for filing of annual return for the financial year to which demand relates to. The SCN has to be adjudicated within at period of three years from the due date of filing of annual return. The SCN is required to be issued at least three months prior to the time limit set for adjudication. ***{sec.73(2&10)}***

(ii) *In case of section 74(cases involving fraud/ suppression of facts/willful misstatement), the relevant date shall be counted from the due date for filing of annual return for the financial year to which demand relates to. The SCN has to be adjudicated within at period of five years from the due date of filing of annual return. The SCN is required to be issued at least six months prior to the time limit set for adjudication.* ***{sec.74(2&10)}***

Q 5. Is there any time limit for adjudication the cases?

Ans:

(i) *In case of section 73(cases other than fraud/ suppression of facts/willful misstatement), the time limit for adjudication of cases is 3 years from the due date for filing of annual return for the financial year to which demand relates to or the date of erroneous refund/ITC wrongly availed.* ***{sec.73(10)}***

(ii) *In case of section 74(cases of fraud/suppression of facts/willful*

misstatement), the time limit for adjudication is 5 years from the due date for filing of annual return for the financial year to which demand relates to or the date of erroneous refund/ITC wrongly availed. ***{sec.74(10)}***

Q 6. Is there any immunity to a person chargeable with tax in cases of fraud/suppression of facts/ willful misstatement, who pays the amount of demand along-with interest before issue of notice?

Ans. Yes. Person chargeable with tax, shall have an option to pay the amount of tax along with interest and penalty equal to 15% percent of the tax involved, as ascertained either on his own or ascertained by the proper officer, and on such payment, no notice shall be issued with respect to the tax so paid. ***{sec. 74(6)}***

Q 7. If notice is issued under Section 74 and thereafter the noticee makes payment, is there any need to adjudicate the case?

Ans. Where the person to whom a notice has been issued under sub-section (1) of section 74, pays the tax along with interest with penalty equal to 25% of such tax within 30 days of issue of notice, all proceedings in respect of such notice shall be deemed to be concluded. ***{sec.74 (8)}***

Q 8. In case a notice is adjudicated under Section 74 and order issued confirming tax demand and penalty, does the noticee have any option to pay reduced penalty?

Ans. Yes. if any person pays the tax determined by the order along with interest and a penalty equivalent to 50% 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. ***{sec.74 (11)}***

Q 9. What will happen in cases where notice is issued but order has not been passed under section 73 & 74 within time specified for adjudication under these sections?

Ans. ***Section 75 (10)*** *provides for deemed conclusion of the adjudication proceedings if the order is not issued within time limit prescribed under these sections.*

Q 10. What happens if a person collects tax from another person but does not deposit the same with Government?

Ans. It is mandatory to pay amount, collected from other person representing tax under this act, to the government. For any such amount not so paid, proper officer may issue SCN for recovery of such amount and penalty equivalent to such amount. ***{Sec.76 (1&2)}***

Q 11. In case the person does not deposit tax collected in contravention of Section 76(1), what is the proper course of action to be taken?

Ans. SCN may be issued and if so, an order shall be passed following Principles of natural justice within one year of date of issue of such notice. ***{sec.76 (2 to 6)}***

Q 12. What is the time limit to issue notice in cases under Section 76 i.e. taxes collected but not paid to Government?

Ans. There is no time limit. Notice can be issued on detection of such cases without any time limit.

Q 13. What are the modes of recovery of tax available to the proper officer?

Ans. The proper officer may recover the dues in following manner:

a) Deduction of dues from the amount owned by the tax authorities payable to such person.

b) Recovery by way of detaining and selling any goods belonging to such person;

c) Recovery from 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;

d) Distrain any movable or immovable property belonging to such person, until the amount payable is paid. If the dues not paid within 30days, the said property is to be sold and with the proceeds of such sale the amount payable and cost of sale shall be recovered.

e) Through the Collector of the district in which such person owns any property or resides or carries on his business, as if it was an arrear of land revenue.

(f) By way of an application to the appropriate Magistrate who in turn shall proceed to recover the amount as if it were a fine imposed by him.

(g) Through enforcing the bond /instrument executed under this Act or any rules or regulations made thereunder.

(h) CGST arrears can be recovered as an arrear of SGST and vice-versa.

{sec.79 (1,2,3,4)}

Q 14. Whether the payment of tax dues can be made in installments?

Ans. On receipt of any such request, Commissioner/Chief Commissioner may 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 twenty-four, subject to payment of interest under section **50** *with such limitations and conditions* ***as may be prescribed****. However, where there is default in payment of any one installment on its due date, the whole outstanding balance payable on such date shall become payable and recovered without any further notice****. {sec.80}***

Q 15. What is the course of recovery in cases where the tax demand confirmed is enhanced in appeal/ revision proceedings?

Ans. The notice of demand is required to be served only in respect of the enhanced dues. In so far as the amount already confirmed prior to disposal of appeal/revision, the recovery proceedings may be continued from the stage at which such proceedings stood immediately before such disposal of appeal/revision. ***(Sec.84(a))***

Q 16. If a taxable person with pending tax dues, transfers his business to another person, what would happen to the tax dues?

Ans. The person, to whom the business is transferred, shall jointly and severally be liable to pay the tax, interest or penalty due from the taxable person up to the time of such transfer, whether such dues has been determined before such transfer, but has remained unpaid or is determined thereafter. ***{Sec. 85(1)}***

Q 17. What happens to tax dues where the Company (taxable person) goes into liquidation?

Ans. When any company is wound up, every appointed receiver of assets ("Liquidator") shall give intimation of his appointment to Commissioner within 30 days. On receipt of such intimation Commissioner may notify amount sufficient to recover tax liabilities/dues to the liquidator within 3 months. ***{Sec. 88(1,2)}***

Q 18. What is the liability of directors of the Company (taxable person) under liquidation?

*Ans. When any private company is wound up and any tax or other dues determined whether before or after liquidation that remains unrecovered, every person who was a director of the company during the period for which the tax was due, shall jointly and severally be liable for payment of dues unless he proves to the satisfaction of the Commissioner that such non-recovery is not attributed to any gross neglect, misfeasance or breach of duties on his part in relation to the affairs of the company. {S****ec.88(3),89}***

Q 19. What is the liability of partners of a partnership firm (Taxable person) to pay outstanding tax?

Ans. Partners of any firm shall jointly and severally be liable for payment of any tax, interest or penalty.

Firm/ partner shall intimate the retirement of any partner to the Commissioner by a notice in writing.

Liability to pay tax, interest or penalty up to the date of such retirement, whether determined on that date or subsequently, shall be on such partner.

If no intimation is given within one month from the date of retirement, the liability of such partner shall continue until the date on which such intimation is received by the Commissioner. ***{Sec.90}***

Q 20. What happens to the tax liability of a taxable person, whose business is carried on by any guardian/ trustee or agent of a minor?

Ans. Where the business in respect of which any tax is payable is carried on by any guardian / trustee / agent of a minor or other incapacitated person on behalf of and for the benefit of such minor/incapacitated person, the tax, interest or penalty shall be levied upon and recoverable from such guardian / trustee / agent. ***{Sec.91}***

Q 21. What happens when the estate of a taxable person is under the control of Court of Wards?

Ans. Where the estate of a taxable person owning a business in respect of which any tax, interest or penalty is payable is

under the control of the Court of Wards/ Administrator General / Official Trustee / Receiver or Manager appointed under any order of a Court, the tax, interest or penalty shall be levied and recoverable from such Court of Wards/Administrator General / Official Trustee / Receiver or Manager to the same extent as it would be determined and recoverable from a taxable person. ***{Sec.92}***

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16. Appeals, Review and Revision in GST

Q 1. Whether any person aggrieved by any order or decision passed against him has the right to appeal?

Ans. Yes. Any person aggrieved by any order or decision passed under the GST Act(s) has the right to appeal to the Appellate Authority under Section 107. It must be an order or decision passed by an "adjudicating authority".

However, some decisions or orders (as provided for in Section 121) are not appealable.

Q 2. What is the time limit to file appeal to Appellate Authority (AA)?

Ans. For the aggrieved person, the time limit is fixed as 3 months from the date of communication of order or decision. For the department (Revenue), the time limit is 6 months within which review proceedings have to be completed and appeal filed before the AA

Q 3. Whether the appellate authority has any powers to condone the delay in filing appeal?

Ans. Yes. He can condone a delay of up to one month from the end of the prescribed period of 3/6 months for filing the appeal (3+1/6+1), provided there is "sufficient cause" as laid down in the section 107(4).

Q 4. Whether the appellate authority has any powers to allow additional grounds not specified in the appeal memo?

Ans. Yes. He has the powers to allow additional grounds if he is satisfied that the omission was not willful or unreasonable.

Q 5. The order passed by Appellate Authority has to be communicated to whom?

Ans. Appellate Authority has to communicate the copy of order to the appellant, respondent and the adjudicating authority with a copy to jurisdictional Commissioner of CGST and SGST/UTGST.

Q 6. What is the amount of mandatory pre-deposit which should be made along with every appeal before Appellate Authority?

Ans. Full amount of tax, interest, fine, fee and penalty arising from the impugned order as is admitted by the appellant and a sum equal to 10% of remaining amount of tax in dispute arising from the order in relation to which appeal has been filed.

Q 7. Can the Department apply to AA for ordering a higher amount of pre-deposit?

Ans. No

Q 8. What about the recovery of the balance amount?

Ans. On making the payment of pre-deposit as above, the recovery of the balance amount shall be deemed to be stayed, in terms of section 107(7)

Q 9. Whether in an appeal the AA can pass an order enhancing the quantum of duty/ fine/ penalty/

reduce the amount of refund/ITC from the one passed by the original authority?

Ans. The AA is empowered to pass an order enhancing the ***fees or penalty or fine in lieu of confiscation or reducing the amount of refund or input tax credit provided*** *the appellant has been given reasonable opportunity of showing cause against the proposed detrimental order. (First Proviso to Section 107(11)).*

In so far as the question of enhancing the duty or deciding wrong availment of ITC is concerned, the AA can do so only after giving specific SCN to the appellant against the proposed order and the order itself should be passed within the time limit specified under Section 73 or Section 74. (Second Proviso to Section 107(11)).

Q 10. Does the AA have the power to remand the case back to the adjudicating authority for whatever reasons?

Ans. No. Section 107(11) specifically states that the AA shall, after making such inquiry as may be necessary, pass such order, as he thinks just and proper, confirming, modifying or annulling the decision or order appealed against, ***but shall not refer the case back to the authority that passed the decision or order****.*

Q 11. Can any CGST/SGST authority revise any order passed under the Act by his subordinates?

Ans. Section 2(99) of the Act defines "Revisional Authority" as an authority appointed or authorised under this Act for revision of decision or orders referred to in

section 108. Section 108 of the Act authorizes such "revisional authority" to call for and examine any order passed by his subordinates and in case he considers the order of the lower authority to be erroneous in so far as it is prejudicial to revenue and is illegal or improper or has not taken into account certain material facts, whether available at the time of issuance of the said order or not or in consequence of an observation by the Comptroller and Auditor General of India, he may, if necessary, he can revise the order after giving opportunity of being heard to the noticee.

Q 12. Can the "revisional authority" order for staying of operation of any order passed by his subordinates pending such revision?

Ans. Yes.

Q 13. Are there any fetters to the powers of "revisional authority" under GST to revise orders of subordinates?

Ans. Yes. The "revisional authority" shall not revise any order if
(a) the order has been subject to an appeal under section 107 or under section 112 or under section 117 or under section 118 of the CGST Act, 2017; or

(b) the period specified under section 107(2) of the CGST Act, 2017 has not yet expired or more than three years have expired after the passing of the decision or order sought to be revised.

(c) the order has already been taken up for revision

under Section 108 at any earlier stage.

(d) The order is an order in revision passed under Section 108(1) of the CGST Act, 2017.

Q 14. When the Tribunal is having powers to refuse to admit the appeal?

Ans. In cases where the appeal involves –

- *tax amount or input tax credit or*
- *the difference in tax or the difference in input tax credit involved or*
- *amount of fine, fees or amount of penalty determined by such order,*

does not exceed Rs 50,000/-, the Tribunal has discretion to refuse to admit such appeal. (Section 112(2) of the Act)

Q 15. What is the time limit within which appeal has to be filed before the Tribunal?

Ans. The aggrieved person has to file appeal before Tribunal within 3 months from the date of receipt of the order appealed against. Department has to complete review proceedings and file appeal within a period of six months from the date of passing the order under revision.

Q 16. Can the Tribunal condone delay in filing appeal before it beyond the period of 3/6 months? If so, till what time?

Ans. Yes, the Tribunal has powers to condone delay of a further three months, beyond the period of 3/6 months provided sufficient cause is shown by the appellant for such delay.

Q 17. What is the time limit for filing memorandum of cross objections before Tribunal?

Ans. 45 days from the date of receipt of appeal.

Q 18. Whether interest becomes payable on refund of pre-deposit amount?

Ans. Yes. As per Section 115 of the Act, where an amount deposited by the appellant under sub-section (6) of section 107 or under sub-section (8) of section 112 is required to be refunded consequent to any order of the Appellate Authority or of the Appellate Tribunal, as the case may be, interest at the rate specified under section 56 not exceeding 6% shall be payable in respect of such refund from the date of payment of the amount till the date of refund of such amount.

Q 19. An appeal from the order of Tribunal lies to which forum?

Ans. Appeal against orders passed by the State Bench or Area Benches of the Tribunal lies to the High Court if the High Court is satisfied that such an appeal involves a substantial question of law. (Section 117(1)). However, appeal against orders passed by the National Bench or Regional Benches of the Tribunal lies to the Supreme Court and not High Court. (Under section 109(5) of the Act, only the National Bench or Regional Benches of the Tribunal can decide appeals where one of the issues involved relates to the place of supply.)

Q 20. What is the time limit for filing an appeal before the High Court?

Ans. 180 days from the date of receipt of the order appealed against. However, the High Court has the power to condone further delay on sufficient cause being shown.

Q 21. To whom shall an appeal against the order passed by an officer of CGST lie?

Ans. The appeal shall lie only to an officer appointed under the CGST Act. Section 6 (3) of the CGST Act specifically mandates that any proceedings for rectification, appeal and revision, wherever applicable, of any order passed by an officer appointed under CGST Act shall not lie before an officer appointed under the SGST or UTGST Act. Similar provisions exist in SGST/UTGST Act also.

Q 22. If the proper officer of CGST passes an order under the Act, can such proper officer issue an order under the corresponding state/UT GST Act?

Ans. Yes. Where any proper officer issues an order under the CGST Act, he shall also issue an order under the SGST/UTGST Act, as authorised by the SGST/UTGST Act, under intimation to the jurisdictional officer of State tax or Union territory tax. Similar provisions exist under the SGST/UTGST Act also.

17. Advance Ruling

Q 1. What is the meaning of Advance Ruling?

Ans. As per section 95 of CGST/SGST Law and section 12 of UTGST law, 'advance ruling' means a decision provided by the authority or the Appellate Authority to an applicant on matters or on questions specified in section 97(2) or 100(1) of CGST/SGST Act as the case may be, in relation to the supply of goods and/or services proposed to be undertaken or being undertaken by the applicant.

Q 2. Which are the questions for which advance ruling can be sought?

Ans. Advance Ruling can be sought for the following questions:

(a) classification of any goods or services or both;

(b) applicability of a notification issued under provisions of the GST Act(s);

(c) determination of time and value of supply of goods or services or both;

(d) admissibility of input tax credit of tax paid or deemed to have been paid;

(e) determination of the liability to pay tax on any goods or services under the Act;

(f) *whether applicant is required to be registered under the Act;*

(g) whether any particular thing done by the applicant with respect to any goods or services amounts to or results in a supply of goods or services, within the meaning of that term.

Q 3. What is the objective of having a mechanism of Advance Ruling?

Ans. The broad objective for setting up such an authority is to:

i. *provide certainty in tax liability in advance in relation to an activity proposed to be undertaken by the applicant;*

ii. *attract Foreign Direct Investment (FDI);*

iii. *reduce litigation;*

iv. *pronounce ruling expeditiously in transparent and inexpensive manner.*

Q 4. What will be the composition of Authority for advance rulings (AAR) under GST?

Ans. 'Authority for advance ruling' (AAR) shall comprise one member CGST and one member SGST/ UTGST. They will be appointed by the Central and State government respectively.

Q 5. Is it necessary for a person seeking advance ruling to be registered?

Ans. No, any person registered under the GST Act(s) or desirous of obtaining registration can be an applicant. (Section 95(b))

Q 6. At what time an application for advance ruling be made?

Ans. An applicant can apply for advance ruling even before taking up a transaction (proposed supply of goods or

services) or in respect of a supply which is being undertaken. The only restriction is that the question being raised is already not pending or decided in any proceedings in the case of applicant.

Q 7. In how much time will the Authority for Advance Rulings have to pronounce its ruling?

Ans. As per Section 98(6) of CGST/SGST Act, the Authority shall pronounce its ruling in writing within ninety days from the date of receipt of application.

Q 8. What is the Appellate authority for advance ruling (AAAR)?

Ans. Appellate authority for advance ruling (AAAR), shall be constituted under the SGST Act or UTGST Act and such AAAR shall be deemed to be the Appellate Authority under the CGST Act in respect of the respective state or Union Territory. An applicant, or the jurisdictional officer, if aggrieved by any advance ruling, may appeal to the Appellate Authority.

Q 9. How many AAR and AAAR will be constituted under GST?

- *Ans. There will be one AAR and AAAR for each State. Details of addresses, contact details along with emails of AAR are available at http://www.gstcouncil.gov.in/sites/default/files/Details-of-AAR-as-on_22-11-2017.pdf*
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Q 10. To whom will the Advance Ruling be applicable?

Ans. Section 103 provides that an advance ruling pronounced by AAR or AAAR shall be binding only on the applicant who sought it in respect of any matter referred to in 97 (2) and on the jurisdictional tax authority of the applicant. This clearly means that an advance ruling is not applicable to similarly placed taxable persons in the State. It is only limited to the person who has applied for an advance ruling.

***Q 11.* Whether the advance ruling have precedent value of a judgment of the High Court or the Supreme Court?**

Ans. No, the advance ruling is binding only in respect of the matter referred. It has no precedent value. However, even for persons other than applicant, it does have persuasive value.

Q 12. What is the time period for applicability of Advance Ruling?

Ans. The law does not provide for a fixed time period for which the ruling shall apply. Instead, in section 103(2), it is provided that advance ruling shall be binding till the period when the law, facts or circumstances supporting the original advance ruling have changed. Thus, a ruling shall continue to be in force so long as the transaction continues and so long as there is

no change in law, facts or circumstances.

Q 13. Can an advance ruling given be nullified?

Ans. Section 104(1) provides that an advance ruling shall be held to be ab initio void if the AAR or AAAR finds that the advance ruling was obtained by the applicant by fraud or suppression of material facts or misrepresentation of facts. In such a situation, all the provisions of the GST Act(s) shall apply to the applicant as if such advance ruling had never been made (but excluding the period when advance ruling was given and up to the period when the order declaring it to be void is issued). An order declaring advance ruling to be void can be passed only after hearing the applicant.

Q 14. What is the procedure for obtaining Advance Ruling?

Ans. Section 97 and 98 deals with procedure for obtaining advance ruling. Section 97 provides that the applicant desirous of obtaining advance ruling should make application to AAR in the prescribed form. The format of the form and the detailed procedure for making application is prescribed in the CGST Rules.

Section 98 provides the procedure for dealing with the application for advance ruling. The AAR shall send a copy of application to the officer in whose jurisdiction the applicant falls and call for all relevant records. The AAR may then examine the application along with the records and may also hear the applicant. Thereafter AAR will pass an order either admitting or rejecting the application.

Q 15. Under what circumstances will the application for Advance Ruling be compulsorily rejected?

Ans. Application has to be rejected if the question raised in the application is already pending or decided in any proceedings in the case of applicant under any of the provisions of GST Act(s)

If the application is rejected, it should be by way of a speaking order giving the reasons for rejection.

Q 16. What is the procedure to be followed by AAR once the application is admitted?

Ans. If the application is admitted, the AAR shall pronounce its ruling within ninety days of receipt of application. Before giving its ruling, it shall examine the application and any further material furnished by the applicant or by the concerned departmental officer.

Before giving the ruling, AAR must hear the applicant or his authorized representative as well as the jurisdictional officers of CGST/SGST/UTGST.

Q 17. What happens if there is a difference of opinion amongst members of AAR?

Ans. If there is difference of opinion between the two members of AAR, they shall refer the point or points on which they differ to the AAAR for hearing the issue. If the members of AAAR are also unable to come to a common conclusion in regard to the point(s) referred to them by AAR, then it shall be deemed that no advance ruling can be given in respect of the question on which difference persists at the level of AAAR.

Q 18. What are the provisions for appeals against order of AAR?

Ans. The provisions of appeal before AAAR are dealt in section 100 and 101 of CGST/SGST Act or section 14 of the UTGST Act.

If the applicant is aggrieved with the finding of the AAR, he can file an appeal with AAAR. Similarly, if the concerned or jurisdictional officer of CGST/SGST/UTGST does not agree with the finding of AAR, he can also file an appeal with AAAR. The word concerned officer of CGST/SGST means an officer who has been designated by the CGST/SGST administration in regard to an application for advance ruling. In normal circumstances, the concerned officer will be the officer in whose jurisdiction the applicant is located. In such cases the concerned officer will be the jurisdictional CGST/SGST officer.

Any appeal must be filed within thirty days from the receipt of the advance ruling. The appeal has to be in prescribed form and has to be verified in manner as prescribed in the CGST Rules, 2017

The Appellate Authority must pass an order after hearing the parties to the appeal within a period of ninety days of the filing of an appeal. If members of AAAR differ on any point referred to in appeal, it shall be deemed that no advance ruling is issued in respect of the question under appeal.

Q 19. Whether Appeal can be filed before High Court or Supreme Court against the ruling of Appellate Authority for Advance Rulings?

Ans. The CGST /SGST Act do not provide for any appeal

against the ruling of Appellate Authority for Advance Rulings. Thus no further appeals lie and the ruling shall be binding on the applicant as well as the jurisdictional officer in respect of applicant.
However, Writ Jurisdiction may lie before Hon'ble High Court or the Supreme Court.

Q 20. Can the AAR & AAAR order for rectification of mistakes in the ruling?

Ans. Yes, AAR and AAAR have power to amend their order to rectify any mistake apparent from the record within a period of six months from the date of the order. Such mistake may be noticed by the authority on its own accord or may be brought to its notice by the applicant or the concerned or the jurisdictional CGST/SGST officer. If a rectification has the effect of enhancing the tax liability or reducing the quantum of input tax credit, the applicant or the appellant must be heard before the order is passed. (Section 102)

18. Settlement Commission [Omitted]

Omitted as the chapter is no longer there in the Final GST Act(s)

19. Inspection, Search, Seizure and Arrest

Q 1. What is the meaning of the term "Search"?

Ans. As per law dictionary and as noted in different judicial pronouncements, the term 'search', in simple language, denotes an action of a government machinery to go, look through or examine carefully a place, area, person, object etc. in order to find something concealed or for the purpose of discovering evidence of a crime. The search of a person or vehicle or premises etc. can only be done under proper and valid authority of law.

Q 2. What is the meaning of the term "Inspection"?

Ans. 'Inspection' is a new provision under the CGST/SGST Act. It is a softer provision than search to enable officers to access any place of business of a taxable person and also any place of business of a person engaged in transporting goods or who is an owner or an operator of a warehouse or godown.

Q 3. Who can order for carrying out "Inspection" and under what circumstances?

Ans. As per Section 67 of CGST/SGST Act, Inspection can be carried out by an officer of CGST/SGST only upon a written authorization given by an officer of the rank of Joint Commissioner or above. A Joint Commissioner or an officer higher in rank can give such authorization only if he has reasons to believe that the person concerned has done one of the following:

i. suppressed any transaction of supply;

ii. suppressed stock of goods in hand;

iii. claimed excess input tax credit;

iv. contravened any provision of the CGST/SGST Act to evade tax;

v. a transporter or warehouse owner has kept goods which have escaped payment of tax or has kept his accounts or goods in a manner that is likely to cause evasion of tax.

Q 4. Can the proper officer authorize Inspection of any assets/premises of any person under this Section?

Ans. No. Authorization can be given to an officer of CGST/ SGST to carry out inspection of any of the following:

i. any place of business of a taxable person;

ii. any place of business of a person engaged in the business of transporting goods whether or not he is a registered taxable person;

iii. any place of business of an owner or an operator of a warehouse or godown.

Q 5. Who can order for Search and Seizure under the provisions of CGST Act?

Ans. An officer of the rank of Joint Commissioner or above can authorize an officer in writing to carry out search and seize goods, documents, books or things. Such authorization can be given only where the Joint Commissioner has reasons to believe that any goods liable to confiscation or any documents or books or things relevant for any proceedings are hidden in any place.

Q 6. What is meant by 'reasons to believe'?

Ans. Reason to believe is to have knowledge of facts

which, although not amounting to direct knowledge, would cause a reasonable person, knowing the same facts, to reasonably conclude the same thing. As per Section 26 of the IPC, 1860, "A person is said to have 'reason to believe' a thing, if he has sufficient cause to believe that thing but not otherwise." 'Reason to believe' contemplates an objective determination based on intelligent care and evaluation as distinguished from a purely subjective consideration. It has to be and must be that of an honest and reasonable person based on relevant material and circumstances.

Q 7. Is it mandatory that such 'reasons to believe' has to be recorded in writing by the proper officer, before issuing authorization for Inspection or Search and Seizure?

Ans. Although the officer is not required to state the reasons for such belief before issuing an authorization for search, he has to disclose the material on which his belief was formed. 'Reason to believe' need not be recorded invariably in each case. However, it would be better if the materials / information etc. are recorded before issue of search warrant or before conducting search.

Q 8. What is a Search Warrant and what are its contents?

Ans. The written authority to conduct search is generally called search warrant. The competent authority to issue search warrant is an officer of the rank of Joint Commissioner or above. A search warrant must indicate the existence of a reasonable belief leading to the search. Search Warrant should contain the following details:

i. the violation under the Act,

ii. the premise to be searched,

iii. the name and designation of the person authorized for search,

iv. the name of the issuing officer with full designation along with his round seal,

v. date and place of issue,

vi. serial number of the search warrant,

vii. period of validity i.e. a day or two days etc.

Q 9. When do goods become liable to confiscation under the provisions of CGST/SGST Act?

Ans. As per section 130 of SGST/SGST Act, goods become liable to confiscation when any person does the following:

(i) supplies or receives any goods in contravention of any of the provisions of this Act or rules made thereunder leading to evasion of tax;

(ii) does not account for any goods on which he is liable to pay tax under this Act;

(iii) supplies any goods liable to tax under this Act without having applied for the registration;

(iv) contravenes any of the provisions of the CGST/ SGST Act or rules made thereunder with intent to evade payment of tax.

Q 10. What powers can be exercised by an officer during valid search?

Ans. An officer carrying out a search has the power to search for and seize goods (which are liable to confiscation) and documents, books or things (relevant for any proceedings

under CGST/SGST Act) from the premises searched. During search, the officer has the power to break open the door of the premises authorized to be searched if access to the same is denied. Similarly, while carrying out search within the premises, he can break open any almirah or box if access to such almirah or box is denied and in which any goods, account, registers or documents are suspected to be concealed. He can also seal the premises if access to it denied.

Q 11. What is the procedure for conducting search?

Ans. Section 67(10) of CGST/SGST Act prescribes that searches must be carried out in accordance with the provisions of Code of Criminal Procedure, 1973. Section 100 of the Code of Criminal Procedure describes the procedure for search.

Q 12. What are the basic requirements to be observed during Search operations?

Ans. The following principles should be observed during Search:

- *No search of premises should be carried out without a valid search warrant issued by the proper officer.*
- *There should invariably be a lady officer accompanying the search team to residence.*
- *The officers before starting the search should disclose their identity by showing their identity cards to the person in-charge of the premises.*
- *The search warrant should be executed before the start of the search by showing the same to the person in-charge of the premises and his signature should be taken on the body of the search warrant in token of having seen the same. The signatures of*

at least two witnesses should also be taken on the body of the search warrant.

- *The search should be made in the presence of at least two independent witnesses of the locality. If no such inhabitants are available /willing, the inhabitants of any other locality should be asked to be witness to the search. The witnesses should be briefed about the purpose of the search.*
- *Before the start of the search proceedings, the team of officers conducting the search and the accompanying witnesses should offer themselves for their personal search to the person in-charge of the premises being searched. Similarly, after the completion of search all the officers and the witnesses should again offer themselves for their personal search.*
- *A Panchnama / Mahazar of the proceedings of the search should necessarily be prepared on the spot. A list of all goods, documents recovered and seized/detained should be prepared and annexed to the Panchnama/Mahazar. The Panchnama / Mahazar and the list of goods/ documents seized/detained should invariably be signed by the witnesses, the in-charge/ owner of the premises before whom the search is conducted and also by the officer(s) duly authorized for conducting the search.*
- *After the search is over, the search warrant duly executed should be returned in original to the issuing officer with a report regarding the outcome of the search. The names of the officers who participated in the search may also be*

written on the reverse of the search warrant.

- *The issuing authority of search warrant should maintain register of records of search warrant issued and returned and used search warrants should be kept in records.*
- *A copy of the Panchnama / Mahazar along with its annexure should be given to the person in-charge/owner of the premises being searched under acknowledgement.*

Q 13. Can a CGST/SGST officer access business premises under any other circumstances?

Ans. Yes. Access can also be obtained in terms of Section 65 of CGST/SGST Act. This provision of law is meant to allow an audit party of CGST/SGST or C&AG or a cost accountant or chartered accountant nominated under section 66 of CGST/SGST Act, access to any business premises without issuance of a search warrant for the purposes of carrying out any audit, scrutiny, verification and checks as may be necessary to safeguard the interest of revenue. However, a written authorization is to be issued by an officer of the rank of Commissioner of CGST or SGST. This provision facilitates access to a business premise which is not registered by a taxable person as a principal or additional place of business but has books of accounts, documents, computers etc. which are required for audit or verification of accounts of a taxable person.

Q 14. What is meant by the term 'Seizure'?

Ans. The term 'seizure' has not been specifically defined in the GST Law. In Law Lexicon Dictionary, 'seizure' is defined as the act of taking possession of property by an officer under legal process. It generally implies taking

possession forcibly contrary to the wishes of the owner of the property or who has the possession and who was unwilling to part with the possession.

Q 15. Does GST Act(s) have any power of detention of goods and conveyances?

Ans. *Yes, under Section 129 of CGST/SGST Act, an officer has power to detain goods along with the conveyance (like a truck or other types of vehicle) transporting the goods. This can be done for such goods which are being transported or are stored in transit in violation of the provisions of CGST/SGST Act. Goods which are stored or are kept in stock but not accounted for can also be detained. Such goods and conveyance shall be released after payment of applicable tax or upon furnishing security of equivalent amount.*

Q 16. What is the distinction in law between 'Seizure' and 'Detention'?

Ans. Denial of access to the owner of the property or the person who possesses the property at a particular point of time by a legal order/notice is called detention. Seizure is taking over of actual possession of the goods by the department. Detention order is issued when it is suspected that the goods are liable to confiscation. Seizure can be made only on the reasonable belief which is arrived at after inquiry/investigation that the goods are liable to confiscation.

Q 17. What are the safeguards provided in GST Act(s) in respect of Search or Seizure?

Ans. Certain safeguards are provided in section 67 of

CGST/SGST Act in respect of the power of search or seizure. These are as follows:

i. *Seized goods or documents should not be retained beyond the period necessary for their examination;*

ii. *Photocopies of the documents can be taken by the person from whose custody documents are seized;*

iii. *For seized goods, if a notice is not issued within six months of its seizure, goods shall be returned to the person from whose possession it was seized. This period of six months can be extended on justified grounds up to a further period of maximum six months;*

iv. *An inventory of seized goods shall be made by the seizing officer;*

v. *Certain categories of goods to be specified under CGST Rules (such as perishable, hazardous etc.) can be disposed of immediately after seizure;*

vi. *Provisions of Code of Criminal Procedure 1973 relating to search and seizure shall apply. However, one important modification is in relation to sub-section (5) of section 165 of Code of Criminal Procedure – instead of sending copies of any record made in course of search to the nearest Magistrate empowered to take cognizance of the offence, it has to be sent to the Principal Commissioner/ Commissioner of CGST/ Commissioner of SGST.*

Q 18. Is there any special document required to be carried during transport of taxable goods?

Ans. Under section 68 of CGST /SGST Act, a person in charge of a conveyance carrying any consignment of goods of value exceeding a specified amount may be required to carry a prescribed document as prescribed in the E way Bill Rules.

Q 19. What is meant by the term "arrest"?

Ans. The term 'arrest' has not been defined in the CGST/SGST Act. However, as per judicial pronouncements, it denotes 'the taking into custody of a person under some lawful command or authority'. In other words, a person is said to be arrested when he is taken and restrained of his liberty by power or colour of lawful warrant.

Q 20. When can the proper officer authorize 'arrest' of any person under CGST / SGST Act?

Ans. The Commissioner of CGST/SGST can authorize a CGST/SGST officer to arrest a person if he has reasons to believe that the person has committed an offence attracting a punishment prescribed under section 132(1) (a), (b), (c), (d) or Sec 132(2) of the CGST/SGST Act. This essentially means that a person can be arrested only where the tax evasion is more than 2 crore rupees or where a he has been convicted earlier under CGST Act.

Q 21. What are the safeguards provided under CGST /SGST Act for a person who is placed under arrest?

Ans. There are certain safeguards provided under section 69 for a person who is placed under arrest. These are:

a. *If a person is arrested for a cognizable*

offence, he must be informed in writing of the grounds of arrest and he must be produced before a magistrate within 24 hours of his arrest;

i. *If a person is arrested for a non-cognizable and bailable offence, the Deputy/ Assistant Commissioner of CGST/SGST can release him on bail and he will be subject to the same provisions as an officer in-charge of a police station under section 436 of the Code of Criminal Procedure, 1973;*
ii. *All arrest must be in accordance with the provisions of the Code of Criminal Procedure, 1973 relating to arrest.*

Q 22. What are the precautions to be taken during arrest?

Ans. The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) relating to arrest and the procedure thereof must be adhered to. It is therefore necessary that all field officers of CGST/SGST be fully familiar with the provisions of the Code of Criminal Procedure, 1973.

One important provision to be taken note of is section 57 of Cr.P.C., 1973 which provides that a person arrested without warrant shall not be detained for a longer period than, under the circumstances of the case, is reasonable but this shall not exceed twenty-four hours (excluding the journey time from place of arrest to the Magistrate's court). Within this period, as provided under section 56 of Cr.PC. the person making the arrest shall send the person arrested without warrant before a Magistrate having jurisdiction in the case.

In a landmark judgment in the case of D.K. Basu v. State

of West Bengal reported in 1997 (1) SCC 416, the Hon'ble Supreme Court has laid down specific guidelines required to be followed while making arrests. While this is in relation to police, it needs to be followed by all departments having power of arrest. These are as under:

i. *The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.*

ii. *The police officer carrying out the arrest shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be counter signed by the arrestee and shall contain the time and date of arrest.*

iii. *A person who has been arrested or detained and is being held in custody in a police station or interrogation center or other lock up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.*

iv. *The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid*

Organization in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

v. *An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.*

vi. *The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The 'Inspection Memo' must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.*

vii. *The arrestee should be subjected to medical examination by the trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory, Director, Health Services should prepare such a panel for all Tehsils and Districts as well.*

viii. *Copies of all the documents including the memo of arrest, referred to above, should be sent to the Magistrate for his record.*

ix. *The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.*

x. *A police control room should be provided at all district and State headquarters where information regarding the arrest and the place*

of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.

Q 23. What are the broad guidelines for arrest followed in CBEC?

Ans. Decision to arrest needs to be taken on case-to-case basis considering various factors, such as, nature and gravity of offence, quantum of duty evaded or credit wrongfully availed, nature and quality of evidence, possibility of evidences being tampered with or witnesses being influenced, cooperation with the investigation, etc. Power to arrest has to be exercised after careful consideration of the facts of the case which may include:

i. to ensure proper investigation of the offence;

ii. to prevent such person from absconding;

iii. cases involving organized smuggling of goods or evasion of customs duty by way of concealment;

iv. master minds or key operators effecting proxy/ benami imports/exports in the name of dummy or non-existent persons/IECs, etc.;

v. where the intent to evade duty is evident and element of mensrea/guilty mind is palpable;

vi. prevention of the possibility of tampering with evidence;

vii. intimidating or influencing witnesses; and

viii. large amounts of evasion of duty or service tax at least exceeding one crore rupees.

Q 24. What is a cognizable offence?

Ans. Generally, as per Cr. PC, cognizable offence means serious category of offences in respect of which a police officer has the authority to make an arrest without a warrant and to start an investigation with or without the permission of a court. However, GST being a special legislation, only the officers, duly empowered under the Act can act as above.

Q 25. What is a non-cognizable offence?

Ans. Non-cognizable offence means relatively less serious offences in respect of which a police officer does not have the authority to make an arrest without a warrant and an investigation cannot be initiated without a court order, except as may be authorized under special legislation.

Q 26. What are cognizable and non-cognizable offences under CGST Act?

Ans. In section 132 of CGST Act, it is provided that the offences relating to taxable goods and /or services where the amount of tax evaded or the amount of input tax credit wrongly availed or the amount of refund wrongly taken exceeds Rs. 5 crores, shall be cognizable and non-bailable. Other offences under the act are non-cognizable and bailable.

Q 27. When can the proper officer issue summons under CGST Act?

Ans. Section 70 of CGST/SGST Act gives powers to a duly authorized CGST/SGST officer to call upon a person by issuing a summon to present himself before the officer issuing the summon to either give evidence or produce a document or any other thing in any inquiry which an officer is making. 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.

Q 28. What are the responsibilities of the person so summoned?

Ans. A person who is issued summon is legally bound to attend either in person or by an authorized representative and he is bound to state the truth before the officer who has issued the summon upon any subject which is the subject matter of examination and to produce such documents and other things as may be required.

Q 29. What can be the consequences of non-appearance to summons?

Ans. *The proceeding before the official who has issued summons is deemed to be a judicial proceeding. If a person does not appear on the date when summoned without any reasonable justification, he can be prosecuted under section 174 of the Indian Penal Code (IPC). If he absconds to avoid service of summons, he can be prosecuted under section 172 of the IPC and in case he does not produce the documents or electronic records required to be produced, he can be prosecuted under section 175 of the IPC. In case he gives false evidence, he can be prosecuted under section 193 of the IPC. In addition, if a person does not appear before a CGST/ SGST officer who has issued the summons, he is liable to a penalty up to Rs 25,000/- under section 122(3) (d) of CGST/SGST Act.*

Q 30. What are the guidelines for issue of summons?

Ans. The Central Board of Excise and Customs (CBEC) in the Department of Revenue, Ministry of

Finance has issued guidelines from time to time to ensure that summons provisions are not misused in the field. Some of the important highlights of these guidelines are given below:

i. *summons is to be issued as a last resort where assesses are not co-operating and this section should not be used for the top management;*

ii. *the language of the summons should not be harsh and legal which causes unnecessary mental stress and embarrassment to the receiver;*

iii. *summons by Superintendents should be issued after obtaining prior written permission from an officer not below the rank of Assistant Commissioner with the reasons for issuance of summons to be recorded in writing;*

iv. *where for operational reasons, it is not possible to obtain such prior written permission, oral/ telephonic permission from such officer must be obtained and the same should be reduced to writing and intimated to the officer according such permission at the earliest opportunity;*

v. *in all cases, where summons are issued, the officer issuing summons should submit a report or should record a brief of the proceedings in the case file and submit the same to the officer who had authorized the issuance of summons;*

vi. *senior management officials such as CEO, CFO, General Managers of a large company or a Public Sector Undertaking should not generally be issued summons at the first instance. They should be summoned only when there are indications in the investigation of their involvement in the decision making process which led to loss of*

revenue.

Q 31. What are the precautions to be observed while issuing summons?

Ans. The following precautions should generally be observed when summoning a person: -

(i) A summon should not be issued for appearance where it is not justified. The power to summon can be exercised only when there is an inquiry being undertaken and the attendance of the person is considered necessary.

(ii) Normally, summons should not be issued repeatedly. As far as practicable, the statement of the accused or witness should be recorded in minimum number of appearances.

(iii) Respect the time of appearance given in the summons. No person should be made to wait for long hours before his statement is recorded except when it has been decided very consciously as a matter of strategy.

(iv) Preferably, statements should be recorded during office hours; however, an exception could be made regarding time and place of recording statement having regard to the facts in the case.

Q 32. Are there any class of officers who are required to assist CGST/SGST officers?

Ans. Under section 72 of CGST/SGST Act, the following officers have been empowered and are required to assist CGST/SGST officers in the execution of CGST/SGST Act. The categories specified are as follows:

i. Police;

ii. Railways
iii. Customs;
iv. Officers of State/UT/ Central Government engaged in collection of GST;
v. *Officers of State/UT/ Central Government engaged in collection of land revenue;*
vi. *All village officers;*
vii. *Any other class of officers as may be notified by the Central/State Government.*

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20. Offences, Penalties, Prosecution and Compounding

Q 1. What are the prescribed offences under CGST/SGST Act?

Ans. The CGST/SGST Act codifies the offences and penalties in Chapter XVI. The Act lists 21 offences in section 122, apart from the penalty prescribed under section 10 for availing compounding by a taxable person who is not eligible for it. The said offences are as follows: -

1) *Making a supply without invoice or with false/ incorrect invoice;*
2) *Issuing an invoice without making supply;*
3) *Not paying tax collected for a period exceeding three months;*
4) *Not paying tax collected in contravention of the CGST/SGST Act for a period exceeding 3 months;*
5) *Non deduction or lower deduction of tax deducted at source or not depositing tax deducted at source under section 51;*
6) *Non collection or lower collection of or non-payment of tax collectible at source under section 52;*
7) *Availing/utilizing input tax credit without actual receipt of goods and/or services;*
8) *Fraudulently obtaining any refund;*
9) *Availing/distributing input tax credit by an Input Service Distributor in violation of Section 20;*
10) *Furnishing false information or falsification of financial records or furnishing of fake accounts/ documents with intent to evade payment of tax;*

11) *Failure to register despite being liable to pay tax;*

12) *Furnishing false information regarding registration particulars either at the time of applying for registration or subsequently;*

13) *Obstructing or preventing any official in discharge of his duty;*

14) *Transporting goods without prescribed documents;*

15) *Suppressing turnover leading to tax evasion;*

16) *Failure to maintain accounts/documents in the manner specified in the Act or failure to retain accounts/documents for the period specified in the Act;*

17) *Failure to furnish information/documents required by an officer in terms of the Act/Rules or furnishing false information/documents during the course of any proceeding;*

18) *Supplying/transporting/storing any goods liable to confiscation;*

19) *Issuing invoice or document using GSTIN of another person;*

20) *Tampering/destroying any material evidence;*

21) *Disposing of /tampering with goods detained/ seized/attached under the Act.*

Q 2. What is meant by the term penalty?

Ans. The word "penalty" has not been defined in the CGST/SGST Act but judicial pronouncements and principles of jurisprudence have laid down the nature of a

penalty as:

- *a temporary punishment or a sum of money imposed by statute, to be paid as punishment for the commission of a certain offence;*
- *a punishment imposed by law or contract for doing or failing to do something that was the duty of a party to do.*

Q 3. What are the general disciplines to be followed while imposing penalties?

Ans. The levy of penalty is subject to a certain disciplinary regime which is based on jurisprudence, principles of natural justice and principles governing international trade and agreements. Such general discipline is enshrined in section 126 of the Act. Accordingly—

- *no penalty is to be imposed without issuance of a show cause notice and proper hearing in the matter, affording an opportunity to the person proceeded against to rebut the allegations levelled against him,*
- *the penalty is to depend on the totality of the facts and circumstances of the case,*
- *the penalty imposed is to be commensurate with the degree and severity of breach of the provisions of the law or the rules alleged,*
- *the nature of the breach is to be specified clearly in the order imposing the penalty,*
- *the provisions of the law under which the penalty has been imposed is to be specified.*

Section 126 further specifies that, in particular, no substantial penalty is to be imposed for —

- *any minor breach (minor breach has been defined as a violation of the provisions in a case where the tax involved is less than Rs.5000), or*
- *a procedural requirement of the law, or*
- *an easily rectifiable mistake/omission in documents (explained in the law as an error apparent on record) that has been made without fraudulent intent or gross negligence.*

Further, wherever penalty of a fixed amount or a fixed percentage has been provided in the CGST/SGST Act, the same shall apply.

Q 4. What is the quantum of penalty provided for in the CGST /SGST Act?

Ans. Section 122(1) provides that any taxable person who has committed any of the offences mentioned in section 122 shall be punished with a penalty that shall be higher of the following amounts:

- *The amount of tax evaded, fraudulently obtained as refund, availed as credit, or not deducted or collected or short deducted or short collected, or*
- *A sum of Rs. 10,000/-.*

Further Section 122(2) provides that any registered person who has not paid tax or makes a short payment of taxon supplies shall be a liable to penalty which will be the higher of:

- *10% of the tax not paid or short paid, or*
- *Rs. 10,000/-*

Q 5. Is any penalty prescribed for any person other than the taxable person?

Ans. Yes. Section 122(3) provides for levy of penalty extending to Rs. 25,000/- for any person who-

- *aids or abets any of the 21 offences,*
- *deals in any way (whether receiving, supplying, storing or transporting) with goods that are liable to confiscation,*
- *receives or deals with supply of services in contravention of the Act,*
- *fails to appear before an authority who has issued a summon,*
- *fails to issue any invoice for a supply or account for any invoice in his books of accounts.*

Q 6. What is the penalty provided for any contravention for which no separate penalty has been prescribed under *CGST/SGST Act*?

Ans. Section 125 of the CGST/SGST Act provides that any person who contravenes any provision of the Act or the rules made under this Act for which no separate penalty has been prescribed shall be punishable with a penalty that may extend to Rs. 25,000/-

Q 6. What action can be taken for transportation of goods without valid documents or attempted to be removed without proper record in books?

Ans. *If any person transports any goods or stores any such goods while in transit without the documents prescribed under the Act (i.e. invoice and a declaration) or supplies or stores any goods that have not been recorded in the books or accounts maintained by him,*

then such goods shall be liable for detention along with any vehicle on which they are being transported.

***Where owner comes forward**: - Such goods shall be released on payment of the applicable tax and penalty equal to 100% tax or upon furnishing of security equivalent to the said amount.*

In case of exempted goods, penalty is 2% of value of goods or Rs 25,000/- whichever is lesser.

***Where owner does not come forward**: - Such goods shall be released on payment of the applicable tax and penalty equal to 50% of value of goods or upon furnishing of security equivalent to the said amount.*

In case of exempted goods, penalty is 5% of value of goods or Rs 25,000/- whichever is lesser.

Q 7. What is the penalty prescribed for a person who opts for composition scheme despite being ineligible for the said scheme?

Ans. Section 10(5) provides that if a person who has paid under composition levy is found as not being eligible for compounding then such person shall be liable to penalty to an amount equivalent to the tax payable by him under the provisions of the Act i.e. as a normal taxable person and that this penalty shall be in addition to the tax payable by him.

Q 8. What is meant by confiscation?

Ans. The word 'confiscation' has not been defined in the Act. The concept is derived from Roman law wherein it meant seizing or taking into the hands of emperor, and transferring to Imperial "fiscus" or Treasury. The word "confiscate" has been defined in Aiyar's Law Lexicon as to

"appropriate (private property) to the public treasury by way of penalty; to deprive of property as forfeited to the State."

In short in means transfer of the title to the goods to the Government.

Q 9. Under which circumstances can goods be confiscated under CGST/SGST Act?

Ans. Under Section 130 of the CGST Act, goods shall be liable to confiscation if any person:

- *supplies or receives any goods in contravention of any provision of this Act and such contravention results in evasion of tax payable under the Act, or*
- *does not account for any goods in the manner required under the Act, or*
- *supplies goods that are liable to tax under the Act without applying for registration, or*
- *uses any conveyance as a means of transport for carriage of goods in contravention of the provisions of CGST/SGST Act (unless used without knowledge of owner)*
- *contravenes any provision of the Act/Rules with the intention of evading payment of tax.*

Q 10. What happens to the goods upon confiscation of goods by the proper officer?

Ans. Upon confiscation, the title in the confiscated goods shall vest in the Government and every Police officer to whom the proper officer makes a request in this behalf, shall assist in taking possession of the goods.

Q 11. After confiscation, is it required to give option

to the person to redeem the goods?

Ans. Yes. In terms of section 130(2), the Owner or the person in-charge of the goods liable to confiscation is to be given the option for fine (not exceeding market price of confiscated goods) in lieu of confiscation. This fine shall be in addition to the tax and other charges payable in respect of such goods.

Q 12. Can any conveyance carrying goods without cover of prescribed documents be subject to confiscation?

Ans. Yes. Section 130 provides that any conveyance carrying goods without the cover of any documents or declaration prescribed under the Act shall be liable to confiscation. However, if the owner of the conveyance proves that the goods were being transported without cover of the required documents/declarations without his knowledge or connivance or without the knowledge or connivance of his agent then the conveyance shall not be liable to confiscation as aforesaid.

Q 13. What is Prosecution?

Ans. Prosecution is the institution or commencement of legal proceeding; the process of exhibiting formal charges against the offender. Section 198 of the Criminal Procedure Code defines "prosecution" as the institution and carrying on of the legal proceedings against a person.

Q 14. Which are the offences which warrant prosecution under the CGST/SGST Act?

Ans. Section 132 of the CGST/SGST Act codifies the major offences under the Act which warrant institution of criminal proceedings and prosecution. 12 such major

offences have been listed as follows:

a) *Making a supply without issuing an invoice or upon issuance of a false/incorrect invoice;*
b) *Issuing an invoice without making supply;*
c) *Not paying any amount collected as tax for a period exceeding 3 months;*
d) *Availing or utilizing credit of input tax without* actual receipt of goods and/or services;
e) Obtaining any fraudulent refund)
f) *evades tax, fraudulently avails ITC or obtains refund by an offence not covered under clause (a) to (e);*
g) *Furnishing false information or falsification of financial records or furnishing of fake accounts/ documents with intent to evade payment of tax;*
h) *Obstructing or preventing any official in the discharge of his duty;*
i) *Dealing with goods liable to confiscation i.e. receipt, supply, storage or transportation of goods liable to confiscation;*
j) *Receiving/dealing with supply of services in contravention of the Act;*
k) *tampers with or destroys any material evidence or documents*
l) *Failing to supply any information required of him under the Act/Rules or supplying false information;*
m) *Attempting to commit or abetting the commission of any of the offences at (a) to (l) above.*

Q 17. What is the punishment prescribed on conviction of any offence under the CGST/SGST Act?

Ans. The scheme of punishment provided in section 132(1) is as follows:

Offence involving--	*Punishment (Imprisonment extending to--)*
Tax evaded exceeding Rs. 5 crore or repeat offender250 lakh	*5 years and fine*
Tax evaded between Rs. 2 crore and Rs.5 crore	*3 years and fine*
Tax evaded between Rs.1 crore and Rs.2 crore	*1 years and fine*
• False records • Obstructing officer • Tamper records	*6 months*

Q 15. What are cognizable and non-cognizable offences under CGST/SGST Act?

Ans. In terms of Section 132(4) and 132(5) of CGST/SGST Act

- *all offences where the evasion of tax is less than Rs.5 crores shall be non-cognizable and bailable,*
- *all offences where the evasion of tax exceeds Rs.5 crores shall be cognizable and non- bailable.*

Q 16. Is prior sanction of competent authority mandatory for initiating prosecution?

Ans. Yes. No person shall be prosecuted for any offence without the prior sanction of the designated authority.

Q 17. Is 'mensrea' or culpable mental state necessary for prosecution under CGST/SGST Act?

Ans. Yes. However, Section 135 presumes the existence of a state of mind (i.e. "culpable mental state" or mensrea) required to commit an offence if it cannot be committed without such a state of mind

Q 18. What is a culpable state of mind?

Ans. While committing an act, a "culpable mental state" is a state of mind wherein-

- *the act is intentional;*
- *the act and its implications are understood and controllable;*
- *the person committing the act was not coerced and even overcomes hurdles to the act committed;*
- *the person believes or has reasons to believe that the act is contrary to law.*

Q 19. Can a company be proceeded against or prosecuted for any offence under the CGST/SGST Act?

Ans. Yes. Section 137 of the CGST/SGST ACT provides that every person who was in-charge of or responsible to a company for the conduct of its business shall, along-with the company itself, be liable to be proceeded against and punished for an offence committed by the company while such person was in-charge of the affairs of the company. If any offence committed by the company—

- *has been committed with the consent/ connivance of, or*

- *is attributable to negligence of—*

any officer of the company then such officer shall be deemed to be guilty of the said offence and liable to be proceeded against and punished accordingly.

Q 20. What is meant by compounding of offences?

Ans. Section 320 of the Code of Criminal Procedure defines "compounding" as to forbear from prosecution for consideration or any private motive.

Q 21. Can offences under CGST/SGST Act be compounded?

Ans. Yes. As per section 138 of the CGST/SGST Act, any offence, other than the following, may upon payment of the prescribed (compounding) amount be compounded and such compounding is permissible either before or after the institution of prosecution:

- *Offences numbered 1 to 6 of the 12 major offences (outlined in Q. 16 above), if the person charged with the offence had compounded earlier in respect of any of the said offences;*

- *Aiding/abetting offences numbered 1 to 6 of the 12 major offences, if the person charged with the offence had compounded earlier in respect of any of the said offences;*
- *Any offence (other than the above offences) under any SGST Act/IGST Act in respect of a supply with value exceeding Rs.1 crore, if the person charged with the offence had compounded earlier in respect of any of the said offences;*

- *Any offence which is also an offence under NDPSA or FEMA or any other Act other than CGST/SGST;*

Compounding is to be permitted only after payment of tax, interest and penalty and compounding shall not affect any proceeding already instituted under any other law.

Q 22. Are there any monetary limits prescribed for compounding of offence?

Ans. Yes. The lower limit for compounding amount is to be the greater of the following amounts: -

- *50% of tax involved, or*
- *Rs. 10,000.*

The upper limit for compounding amount is to be greater of the following amounts: -

- *150% of tax involved or*
- *Rs. 30,000.*

Q 23. What is the consequence of compounding of an offence under CGST/SGST Act?

Ans. Sub-section (3) of section 138 provides that on payment of compounding amount no further proceeding to be initiated under this Act and criminal proceeding already initiated shall stand abated.

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21. Overview of the IGST Act

Q 1. What is IGST?

Ans. "Integrated Goods and Services Tax" (IGST) means tax levied under the IGST Act on the supply of any goods and/ or services in the course of inter-State trade or commerce.

Q 2. What are inter-state supplies?

Ans. A supply of goods and/or services in the course of inter-State trade or commerce means any supply where the location of the supplier and the place of supply are in different States, two different union territory or in a state and union territory Further import of goods and services, supplies to SEZ units or developer, or any supply that is not an intra state supply. (Section 7 of the IGST Act).

Q 3. How will the Inter-State supplies of Goods and Services be taxed under GST?

Ans. IGST shall be levied and collected by Centre on inter-state supplies. IGST would be broadly CGST plus SGST and shall be levied on all inter-State taxable supplies of goods and services. The inter-State seller will pay IGST on value addition after adjusting available credit of IGST, CGST, and SGST on his purchases. The Exporting State will transfer to the Centre the credit of SGST used in payment of IGST. The Importing dealer will claim credit of IGST while discharging his output tax liability in his own State. The Centre will transfer to the importing State the credit of IGST used in payment of SGST. The relevant information is also submitted to the Central Agency which will act as a clearing house mechanism, verify the claims and inform the

respective governments to transfer the funds.

Q 4. What are the salient features of the draft IGST Law?

Ans. The draft IGST law contains 25 sections divided into9 Chapters. The law, inter alia, sets out the rules for determination of the place of supply of goods. Where the supply involves movement of goods, the place of supply shall be the location of goods at the time at which the movement of goods terminates for delivery to the recipient. Where the supply does not involve movement of goods, the place of supply shall be the location of such goods at the time of delivery to the recipient. In the case of goods assembled or installed at site, the place of supply shall be the place of such installation or assembly. Finally, where the goods are supplied on board a conveyance, the place of supply shall be the location at which such goods are taken on board.

The law also provides for determination of place of supply of service where both supplier and recipient are located in India (domestic supplies) or where supplier or recipient is located outside India (international supplies). This is discussed in details in the next Chapter.

It also provides for certain other specific provisions like payment of tax by online information and database access service provider located outside India to an unregistered person in India, upon taking registration in India, under the IGST Act, following a simplified provision (section 14 of the IGST Act),

Q 5. What are the advantages of IGST Model?

Ans. The major advantages of IGST Model are:

a. Maintenance of uninterrupted ITC chain on inter-State transactions;

b. No upfront payment of tax or substantial blockage of funds for the inter-State seller or buyer;

c. No refund claim in exporting State, as ITC is used up while paying the tax;

d. Self-monitoring model;

e. Ensures tax neutrality while keeping the tax regime simple;

f. Simple accounting with no additional compliance burden on the taxpayer;

g. Would facilitate in ensuring high level of compliance and thus higher collection efficiency. Model can handle 'Business to Business' as well as 'Business to Consumer' transactions.

Q 6. How will imports/exports be taxed under GST?

Ans. All imports/exports will be deemed as inter-state supplies for the purposes of levy of GST (IGST). The incidence of tax will follow the destination principle and the tax revenue in case of SGST will accrue to the State where the imported goods and services are consumed. Full and complete set-off will be available as ITC of the IGST paid on import on goods and services. Exports of goods and services will be zero rated. The exporter has the option either to export under bond without payment of duty and claim refund of ITC or pay IGST at the time of export and claim refund of IGST. The IGST on imports is leviable under the provisions of the Customs Tariff Act and shall be levied at

the time of imports along with the levy of the Customs Act (Section 5 of the IGST Act)

Q 7. How will the IGST be paid?

Ans. The IGST payment can be done utilizing ITC or by cash. However, the use of ITC for payment of IGST will be done using the following hierarchy, -

- *First available ITC of IGST shall be used for payment of IGST;*
- *Once ITC of IGST is exhausted, the ITC of CGST shall be used for payment of IGST;*
- *If both ITC of IGST and ITC of CGST are exhausted, then only the dealer would be permitted to use ITC of SGST for payment of IGST.*

Remaining IGST liability, if any, shall be discharged using payment in cash. GST System will ensure maintenance of this hierarchy for payment of IGST using the credit.

Q 8. How will the settlement between Centre, exporting state and importing state be done?

Ans. There would be settlement of account between the Centre and the states on two counts, which are as follows-

- *Centre and the exporting state: The exporting state shall pay the amount equal to the ITC of SGST used by the supplier in the exporting state to the Centre.*

- *Centre and the importing state: The Centre shall pay the amount equal to the ITC of IGST used by a dealer for payment of SGST on intra- state supplies.*

The settlement would be on cumulative basis for a state taking into account the details furnished by all the dealer in the settlement period. Similar settlement of amount would also be undertaken between CGST and IGST account.

Q 9. What treatment is given to supplies made to SEZ units or developer?

Ans. Supplies to SEZ units or developer shall be zero rated in the same manner as done for the physical exports. Supplier shall have option to make supplies to SEZ without payment of taxes and claim refunds of input taxes on such supplies (section 16 of the IGST Act).

Q 10. Are business processes and compliance requirement same in the IGST and CGST Acts?

Ans. The procedure and compliance requirement are same for processes likes registration, return filing and payment of tax. Further, the IGST act borrows the provisions from the CGST Act as relating to assessment, audit, valuation, time of supply, invoice, accounts, records, adjudication, appeal etc. (Section 20 of the IGST Act)

22. Place of Supply of Goods and Service

Q 1. What is the need for the Place of Supply of Goods and Services under GST?

Ans. The basic principle of GST is that it should effectively tax the consumption of such supplies at the destination thereof or as the case may at the point of consumption. So place of supply provision determines the place i.e. taxable jurisdiction where the tax should reach. The place of supply determines whether a transaction is intra-state or inter-state. In other words, the place of Supply of Goods or services is required to determine whether a supply is subject to SGST plus CGST in a given State or union territory or else would attract IGST if it is an inter-state supply.

Q 2. Why are place of supply provisions different in respect of goods and services?

Ans. Goods being tangible do not pose any significant problems for determination of their place of consumption. Services being intangible pose problems w.r.t determination of place of supply mainly due to following factors:

(i) The manner of delivery of service could be altered easily. For example, telecom service could change from mostly post-paid to mostly pre-paid; billing address could be changed, billers address could be changed, repair or maintenance of software could be changed from onsite to online; banking services were earlier required customer to go to the bank, now the customer could avail service from anywhere;

(ii) Service provider, service receiver and the service provided may not be ascertainable or may easily be suppressed as nothing tangible moves and there would hardly be a trail;

(iii) For supplying a service, a fixed location of service provider is not mandatory and even the service recipient may receive service while on the move. The location of billing could be changed overnight;

(iv) Sometime the same element may flow to more than one location, for example, construction or other services in respect of a railway line, a national highway or a bridge on a river which originate in one state and end in the other state. Similarly, a copy right for distribution and exhibition of film could be assigned for many states in single transaction or an advertisement or a programme is broadcasted across the country at the same time. An airline may issue seasonal tickets, containing say 10 leafs which could be used for travel between any two locations in the country. The card issued by Delhi metro could be used by a person located in Noida, or Delhi or Faridabad, without the Delhi metro being able to distinguish the location or journeys at the time of receipt of payment;

(v) Services are continuously evolving and would thus continue to pose newer challenges. For example, 15-20 years back no one could have thought of DTH, online information, online banking, online booking of tickets, internet, mobile telecommunication etc.

Q 3. What proxies or assumptions in a transaction can be used to determine the place of supply?

Ans. The various element involved in a transaction in services can be used as proxies to determine the place of supply. An assumption or proxy which gives more appropriate result than others for determining the place of supply, could be used for determining the place of supply. The same are discussed below:

(a) location of service provider;

(b) the location of service receiver;

(c) the place where the activity takes place/ place of performance;

(d) the place where it is consumed; and

(e) the place/person to which actual benefit flows

Q 4. What is the need to have separate rules for place of supply in respect of B2B (supplies to registered persons) and B2C (supplies to unregistered persons) transactions?

Ans. In respect of B2B transactions, the taxes paid are taken as credit by the recipient so such transactions are just pass through. GST collected on B2B supplies effectively create a liability for the government and an asset for the recipient of such supplies in as much as the recipient is entitled to use the input tax credit for payment of future taxes. For B2B transactions the location of recipient takes care in almost all situations as further credit is to be taken by recipient. The recipient usually further supplies to another customer. The supply is consumed only when a B2B transaction is further converted into B2C transaction. In respect of B2C transactions, the supply is finally consumed

and the taxes paid actually come to the government.

Q 5. What would be the place of supply where goods are removed?

Ans. The place of supply of goods shall be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient. (Section 10 of IGST Act)

Q 6. What will be the place of supply if the goods are delivered by the supplier to a person on the direction of a third person?

Ans. It would be deemed that the third person has received the goods and the place of supply of such goods shall be the principal place of business of such person. (Section 10 of IGST Act)

Q 7. What will be the place of supply where the goods or services are supplied on board a conveyance, such as a vessel, an aircraft, a train or a motor vehicle?

Ans. In respect of goods, the place of supply shall be the location at which such goods are taken on board. (Section 10 of IGST Act)

However, in respect of services, the place of supply shall be the location of the first scheduled point of departure of that conveyance for the journey. (Section 12 and 13 of IGST Act)

Q 8. What is the default presumption for place of supply in respect of B2B supply of services?

Ans. The terms used in the IGST Act are registered taxpayers and non-registered taxpayers. The presumption in case of supplies to registered person is the location of such person. Since the recipient is registered, address of recipient is always there and the same can be taken as proxy for place of supply.

Q 9. What is the default presumption for place of supply in respect of unregistered recipients?

Ans. In respect of unregistered recipients, the usual place of supply is location of recipient. However, in many cases, the address of recipient is not available, in such cases, location of the supplier of services is taken as proxy for place of supply.

Q 10. The place of supply in relation to immovable property is the location of immovable property. Suppose a road is constructed from Delhi to Mumbai covering multiple states. What will be the place of supply?

Ans. Where the immovable property 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. (The Explanation clause to section 12(3) of the IGST Act, for domestic

supplies)

Q 11. What would be the place of supply of services provided for organizing an event, say, IPL cricket series which is held in multiple states?

Ans. In case of an event, if the recipient of service is registered, the place of supply of services for organizing the event shall be the location of such person.

However, if the recipient is not registered, the place of supply shall be the place where event is held. Since the event is being held in multiple states and a consolidated amount is charges for such services, the place of supply shall be taken as being in each state in proportion to the value of services so provided in each state. (The Explanation clause to section 12(7) of the IGST Act)

Q 12. What will be the place of supply of goods services by way of transportation of goods, including mail or courier?

Ans. In case of domestic supply: If the recipient is registered, the location of such person shall be the place of supply.

However, if the recipient is not registered, the place of supply shall be the place where the goods are handed over for transportation (section 12 of the IGST Act.

For international supplies: The place of supply of transport

services, other than the courier services, shall be the destination of goods. For courier, the place of supply of services is where goods are handed over to courier. However, if the courier services are performed even partially in India, the place of supply shall be deemed as India (section 13(3), 13(6) and 13(9) of the IGST Act).

Q 13. What will be the place of supply of passenger transportation service, if a person travels from Mumbai to Delhi and back to Mumbai?

Ans. If the person is registered, the place of supply shall be the location of recipient. If the person is not registered, the place of supply for the forward journey from Mumbai to Delhi shall be Mumbai, the place where he embarks.

However, for the return journey, the place of supply shall be Delhi as the return journey has to be treated as separate journey. (The Explanation clause to section 12(9) of the IGST Act)

Q 14. Suppose a ticket/ pass for anywhere travel in India is issued by M/s Air India to a person. What will be the place of supply?

Ans. In the above case, the place of embarkation will not be available at the time of issue of invoice as the right to passage is for future use. Accordingly, place of supply cannot be the place of embarkation. In such cases, the default rule shall apply. (The proviso clause to section 12(9) of the IGST Act)

Q 15. What will be the place of supply for mobile

connection? Can it be the location of supplier?

Ans. For domestic supplies: The location of supplier of mobile services cannot be the place of supply as the mobile companies are providing services in multiple states and many of these services are inter-state. The consumption principle will be broken if the location of supplier is taken as place of supply and all the revenue may go to a few states where the suppliers are located.

The place of supply for mobile connection would depend on whether the connection is on postpaid or prepaid basis. In case of postpaid connections, the place of supply shall be the location of billing address of the recipient of service.

In case of pre-paid connections, the place of supply shall be the place where payment for such connection is received or such pre-paid vouchers are sold. However, if the recharge is done through internet/e-payment, the location of recipient of service on record shall be the taken as the place of service.

For international supplies: The place of supply of telecom services is the location of the recipient of service.

Q 16. A person in Goa buys shares from a broker in Delhi on NSE (in Mumbai). What will be the place of supply?

Ans. The place of supply shall be the location of the recipient of services on the records of the supplier of services. So Goa shall be the place of supply.

Q 17. A person from Mumbai goes to Kullu-Manali

and takes some services from ICICI Bank in Manali. What will be the place of supply?

Ans. If the service is not linked to the account of person, place of supply shall be Kullu i.e. the location of the supplier of services. However, if the service is linked to the account of the person, the place of supply shall be Mumbai, the location of recipient on the records of the supplier.

Q 18. A person from Gurgaon travels by Air India flight from Mumbai to Delhi and gets his travel insurance done in Mumbai. What will be the place of supply?

Ans. The location of the recipient of services on the records of the supplier of insurance services shall be the place of supply. So Gurgaon shall be the place of supply. (Proviso clause to section 12(13) of the IGST Act)

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23. GSTN and Frontend Business Process on GST Portal

Q 1. What is GSTN?

Ans. Goods and Services Tax Network (GSTN) is a not-for-profit, non-government company promoted jointly by the Central and State Governments, which will provide shared IT infrastructure and services to both central and state governments including tax payers and other stakeholders. The Frontend services of Registration, Returns, Payments, etc. to all taxpayers will be provided by GSTN. It will be the interface between the government and the taxpayers.

Q 2. What was need to create GSTN?

Ans. The GST System Project is a unique and complex IT initiative. It is unique as it seeks, for the first time to establish a uniform interface for the tax payer and a common and shared IT infrastructure between the Centre and States. Currently, the Centre and State indirect tax administrations work under different laws, regulations, procedures and formats and consequently the IT systems work as independent sites. Integrating them for GST implementation would be complex since it would involve integrating the entire indirect tax ecosystem so as to bring all the tax administrations (Centre, State and Union Territories) to the same level of IT maturity with uniform formats and interfaces for taxpayers and other external stakeholders. Besides, GST being a destination based tax, the inter-state trade of goods and services (IGST) would need a robust settlement mechanism amongst the States and the Centre. This is possible only when there is a strong

IT Infrastructure and Service back bone which enables capture, processing and exchange of information amongst the stakeholders (including taxpayers, States and Central Government, Bank and RBI). To achieve these objectives GSTN was created.

Q 3. What is the genesis of GSTN?

Requirements of strong IT Infrastructure was discussed in the 4th meeting of 2010 of the Empowered Committee of State Finance Ministers held on 21/7/2010. In the said meeting the EC approved creation of an 'Empowered Group on IT Infrastructure for GST' (referred to as EG) under the chairmanship of Dr. Nandan Nilekani with Additional Secretary (Rev), Member (B&C) CBEC, DG (Systems), CBEC, FA Ministry of Finance, Member Secretary EC and five state commissioners of Trade Taxes (Maharashtra, Assam, Karnataka, West Bengal and Gujarat) as members. The Group was mandated to suggest, inter alia, the modalities for setting up a National Information Utility (NIU/ SPV) for implementing the Common Portal to be called GST Network (GSTN) and recommend the structure and terms of reference for the NIU/ SPV, detailed implementation strategy and the road map for its creation in addition to other items like training, outreach etc.

In March 2010, TAGUP constituted by the Ministry of Finance had recommended that National Information Utilities should be set up as private companies with a public purpose for implementation of large and complex Government IT projects including GST. Mandate of TAGUP was to examine the technological and systemic issues relating to the various IT projects such as GST, TIN, NPS,

etc.

The EG had seven meetings between 2nd August 2010 and 8th August 2011 to discuss the modalities. After due deliberations, the EG recommended creation of a Special Purpose Vehicle for implementing the GST System Project. To enable efficient and reliable provision of services in a demanding environment, the EG recommended a non-Government structure for the GSTN SPV with Government equity of 49% (Centre – 24.5% and States – 24.5%) after considering key parameters such as independence of management, strategic control of Government, flexibility in organizational structure, agility in decision making and ability to hire and retain competent human resources.

In view of the sensitivity of the role of GSTN and the information that would be available with it, the EG also considered the issue of strategic control of Government over GSTN. The Group recommended that strategic control of the Government over the SPV should be ensured through measures such as composition of the Board, mechanisms of Special Resolution and Shareholders Agreement, induction of Government officers on deputation, and agreements between GSTN SPV and Governments. Also, the shareholding pattern would ensure that the Centre individually and States collectively are the largest stakeholders at 24.5% each. In combination, the Government shareholding at 49% would far exceed that of any single private institution.

EG also brought out the need to have technology specification to run this company so that there is 100 percent matching of returns. The business knowledge resides with the officials of Government of India and States. However, professionals with sophisticated technology knowledge will be required to run this company independently, similar to NSDL which is working

professionally and independently. EG also recommended a non-government company as that will have operational freedom.

These recommendations were presented before the Empowered Committee of State Finance Ministers in its 3rd meeting of 2011 held on 19th August 2011 and in the 4th meeting of 2011 of the EC held on 14th Oct 2011. The proposal of the EG on IT infrastructure for GST regarding GSTN and formation of a not-for-profit section 25 company with the strategic control of the Government were approved by the Empowered Committee of State Finance Ministers (EC) in its meeting held on14.10.11.

The note of Department of Revenue for setting up a Special Purpose Vehicle to be called Goods and Services Tax Network (GSTN-SPV) on the lines mentioned above was considered by the Union Cabinet on 12th April 2012 and approved. The Union cabinet also approved the following:

i. *Suitable and willing non-government institutions will be identified and firmed up by the Ministry of Finance to invest in GSTN-SPV prior to its incorporation.*

ii. *The strategic control of the Government over the SPV would be ensured through measures such as composition of the Board, mechanisms of Special Resolution and Shareholders Agreement, induction of Government officers on deputation, and agreements between GSTN SPV and Governments.*

iii. *The Board of Directors of GSTN SPV would comprise 14 Directors with 3 Directors from the Centre, 3 from the States, a Chairman of the*

Board of Directors appointed through a joint approval mechanism of Centre and States, 3 Directors from private equity stake holders, 3 independent Directors who would be persons of eminence and a CEO of the GSTN SPV selected through an open selection process.

iv. *Relaxation in relevant rules to enable deputation of Government officers to the GSTN SPV for exercise of strategic control and for bringing in necessary domain expertise.*

v. *GSTN SPV would have a self- sustaining revenue model, where it would be able to levy user charges on the tax payers and the tax authorities availing services.*

vi. *GSTN SPV to be the exclusive national agency responsible for delivering integrated indirect Tax related services involving multiple tax authorities. Accordingly, any other service provider seeking to deliver similar integrated services would be required to enter into a formal arrangement with GSTN SPV for the services.*

vii. *A one- time non- recurring Grant- in aid of Rs. 315 crores from the Central Government towards functioning of the SPV for a three-year period after incorporation.*

Q 4. What is the equity structure and Revenue Model of GSTN?

Ans. (a) ***Equity Structure****: - In compliance of the Cabinet decision, GST Network was registered as a not-for-profit, non-Government, private limited company under section 8 of the Companies Act, 1956 with the following equity structure:*

Central Govt	*2*
State Govts	*2*
HDFC	*1*
HDFC Bank	*1*
ICICI Bank	*1*
NSE Strategic Investment Co	*1*
LIC Housing Finance Ltd	*1*

The GSTN in its current form was created after taking approval of the Empowered Committee of State Finance Ministers and Union Government after due deliberations over a long period of time.

***(b) Revenue Model**: An amount of 315 Cr. was approved by the Govt. of India as Grants-in-Aid for initial setting up of the GSTN-SPV in 2013. During the period 31.03.2013 to 31.03.2016, an amount of **Rs 143.96** Crores was released as Grant-In-Aid to GSTN out of Rs 315 Crores approved by Govt of India. Out of the grant-in-aid received, only Rs. **62.11 Cr** was spent during this period in setting of the Company and making it functional. The balance grant was returned to Govt. of India. During FY 2016-17, GSTN has got loan sanctioned from a commercial bank to meet expenditure over setting up the IT Platform to provide services to the Center and States through GST portal and developing the backend for 27 States and Union Territories. The Revenue model for GSTN has been approved by **the Empowered Committee of State Finance Ministers** under which user charges will be paid by the Centre and States/UTs equally on behalf of taxpayers and other stakeholders for availing services from the GST Portal. The user charges will be shared equally by the Centre and the States. The user charges for States will be apportioned amongst them based on*

number of registered taxpayers.

Q 5. What services will be rendered by GSTN?

Ans. GSTN will render the following services through the Common GST Portal:

(a) Registration (including existing taxpayer migration, a process which began on 8th Nov 2016);
(b) Payment management including payment Gateways and integration with banking systems;
(c) Return filing and processing;
(d) Taxpayer management, including account management, notifications, information, and status tracking;
(e) Tax authority account and ledger Management;
(f) Computation of settlement (including IGST Settlement) between the Centre and States; Clearing house for IGST;
(g) Processing and reconciliation of GST on import and integration with EDI systems of Customs;
(h) MIS including need based information and business intelligence;
(i) Maintenance of interfaces between the Common GST Portal and tax administration systems;
(j) Provide training to stakeholders;
(k) Provide Analytics and Business Intelligence to tax authorities; and
(l) Carry out research and study best practices.

Q 6. What is the interface system between GSTN and the States/CBEC?

Ans. In GST regime, while taxpayer facing core services of applying for registration, uploading of invoices, filing of return, making tax payments shall be hosted by GST System, all the statutory functions (such as approval of registration, assessment of return, conducting investigation and audit

etc.) shall be conducted by the tax authorities of States and Central governments.

Thus, the frontend (GST Portal services) shall be provided by GSTN and the backend modules shall be developed by states and Central Government themselves. However, 27 states (termed as Model-2 states) have asked GSTN to develop their backend modules also. The CBEC and rest of the 9 states (Model 1) have decided to develop and host the back-end modules themselves. For Model 1 states/ CBEC full data (registration, return, payment etc.) submitted by taxpayers will be shared with them for information and analysis as deemed fit by them.

Q 7. What will be the role of GSTN in registration?

Ans. The application for Registration will be made Online on GST Portal.

Some of the key data like PAN, Business Constitution, Aadhaar, CIN/DIN etc. (as applicable) will be validated by the GST Portal online with the respective agency i.e. CBDT, UID, MCA etc., thereby ensuring minimum need for submission of documentation.

The application data along with supporting scanned documents shall be sent by GSTN to states/ Centre, which in turn shall send the query, if any, or approval or rejection intimation and digitally signed registration to GSTN for eventual download by the taxpayer.

Q 8. What is the role of Infosys in GSTN?

Ans. GSTN has engaged M/S Infosys as a single Managed Service Provider (MSP) for the design, development and deployment of GST system, including all application software, tools and Infrastructure and for operating &

maintaining the system for a period of 5 years from the Go-Live date.

Q 9. What are the basic features of GST common portal?

Ans. The GST portal (www.gst.gov.in) is accessible over Internet (by Taxpayers and their CAs/Tax Advocates etc.) and Intranet by Tax Officials etc. The portal is going to be one single common portal for all GST related services e.g.–

i. Tax payer registration (New, surrender, cancelation, amendment etc.);

ii. Invoice upload, auto-drafting of Purchase register of buyer, GST Returns filing on stipulated dates for each type of return (GSTR [1, 2, 3, 5, 9.etc];

iii. Tax payment by creation of Challan and integration with agency Banks;

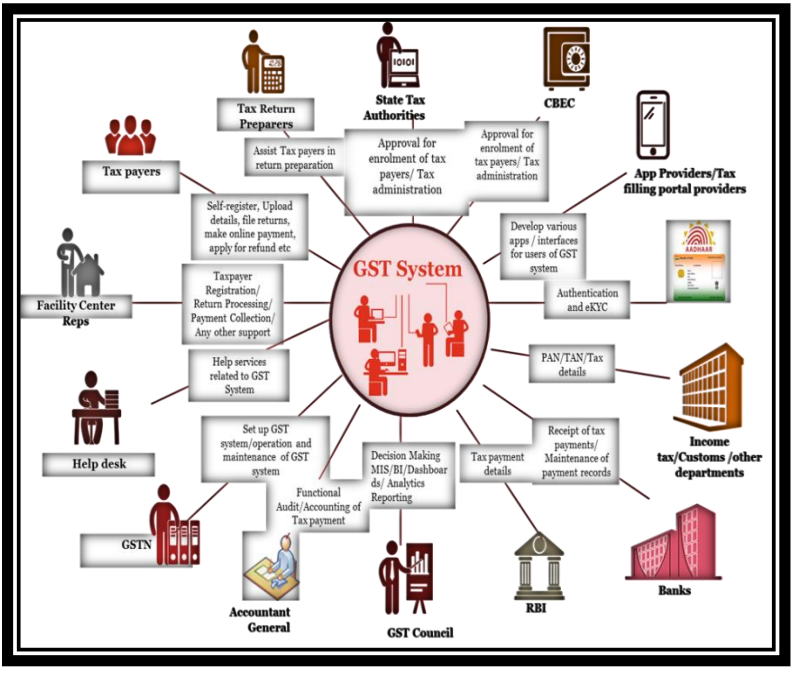
iv. ITC and Cash Ledger and Liability Register;

v. MIS reporting for tax payers, tax officials and other stakeholders;

vi. BI/Analytics for Tax officials.

Q 10. What is the concept of GST Eco-system?

Ans. A common GST system will provide linkage to all State/UT Commercial Tax departments, Central Tax authorities, Taxpayers, Banks and other stakeholders. The eco-system consists of all stakeholders starting from taxpayer to tax professional to tax officials to GST portal to Banks to accounting authorities. The diagram given below depicts the whole GST eco-system.



Q 11. What is GSP (GST Suvidha Provider)?

Ans. GST System will provide a GST portal for taxpayers to access the GST System and do all the GST compliance activities. But there will be wide variety of tax payers (SME, Large Enterprise, Micro Enterprise etc.) which may require different kind of facilities like converting their purchase/sales register data in GST compliant format, Integration of their Accounting Packages/ERP with GST System etc., various kind of dashboards to view Matched/Mismatched ITC claims, Tax liability, Filing status etc. As invoice level filing is required, so large organizations may require an automated way to interact with GST system as it may be practically impossible for them to upload large number of invoices through a web portal. So an eco- system is required, which can help such taxpayers in GST compliance.

As Tax payer convenience will be the key to success of GST regime, this eco-system will also provide Tax payer options of using third party applications, which can provide different kind of interfaces on desktop/mobile for them to be GST compliant.

All above reasons require an eco-system of third party service providers, who have access to GST System and capability to develop such applications. These service providers have been given a generic name, GST Suvidha Providers or GSP.

Q 12. What will be the role of GST Suvidha Providers (GSP)?

Ans. GSP will be developing applications having features like return filing, reconciliation of purchase register data with auto populated data for acceptance/rejection/Modification, dashboards for taxpayers for quick monitoring of GST compliance activities. they may also provide role based access to divide various GST related activities like uploading invoice, filing returns etc., among different set of users inside a company (medium or large companies will need it), Applications for Tax Professional to manage their client's GST compliance activities, Integration of existing accounting packages/ERP with GST System, etc.

Q 13. What are the benefits to taxpayers in using the GSPs?

Ans. At the outset it is clarified that all required functions under GST can be performed by a taxpayer at the GST portal. GSP is an additional channel being made available for performing some of the functions and use of their services is optional. Some of the specific solution(s) which

could be offered by the GSPs to meet specific requirements of Taxpayers for GST compliance are given below:

1. *Conversion of their current invoice format generated by their existing accounting software, which could be in csv, pdf, excel, word format, into GST compliant format.*
2. *Reconciliation of auto populated data from GST portal with their purchase register data, where purchase register data can be on excel, csv or in any proprietary database and uploaded data from GST format could be in json/csv.*
3. *Organization having various branches will need a way to upload branch wise invoices, as GST System will only provide one user-id/password for GST system access. An application having role based access and different view for different branches will be needed.*
4. *A company registered in multiple States may require unified view of all branches in one screen,*
5. *GST professionals will need some specific applications to manage and undertake GST compliance activities for their client Tax payers from one dashboard, etc.*

Above are just a few illustrations. There will be many more requirements of different sets of Tax payers. These requirements of taxpayers can be met by GSPs.

Q 14. What are the functions which a taxpayer will perform at the GST Common Portal being developed and maintained by GSTN for the taxpayers?

Ans. GST Common Portal is envisaged as one-stop-

shop for all requirements under GST for the taxpayers. Illustrative list of functions that can be performed by taxpayers through GST Portal managed by GSTN are:

- *Application for registration as well as amendment in registration, cancellation of registration and profile management;*
- *Payment of taxes, including penalties, fines, interest, etc. (in terms of creation of Challan as payment will take place at bank's portal or inside a bank premises);*
- *Change of status of a taxpayer from normal to Compounding and vice-versa*;
- *Uploading of Invoice data & filing of various statutory returns/Annual statements;*
- *Track status of return/tax ledger/cash ledger etc. using unique Application Reference Number (ARN) generated on GST Portal.*
- *File application for refund etc.*
- *Status review of return/tax ledger/cash ledger*

Q 15. What will be the role of tax officers from State and Central Govt in respect of the GST system being developed by GSTN?

Ans. The officers will use information/ application submitted by taxpayer on GST Portal for following statutory functions:

- *Approval/rejection for enrollment/registration of taxpayers;*
- *Tax administration (Assessment / Audit /Refund / Appeal/ Investigation etc.);*
- *Business Analytics, MIS and other statutory functions.*

Q 16. Will GSTN generate a unique identification for each invoice line in GSTN system?

Ans. No, GSTN will not generate any new identification. The combination of Supplier's GSTIN, Invoice no and Financial year will make each Invoice unique.

Q 17. Can invoice data be uploaded on day to day basis?

Ans. Yes, GST Portal will have functionality for taxpayers to upload invoice data on any time basis. Early upload of invoices by supplier taxpayer will help receiver taxpayer in early reconciliation of data in Invoices as well as help supplier taxpayer in avoiding last minute rush of uploading returns on the last day.

Q 18. Will GSTN provide tools for uploading invoice data on GST portal?

Ans. Yes, GSTN will provide spreadsheet like tools (such as Microsoft Excel), free of cost, to taxpayers to enable them to compile invoice data in the same and generate files which can then be uploaded on GST portal. This will be an offline tool which can be used to input/capture invoice data without being online and then generate final files in compatible format for uploading to GST portal.

Q 19. Will GSTN be providing mobile based Apps to view ledgers and other accounts?

Ans. The GST portal is being designed in such a way that it can be seen on any smart phone. Thus ledgers like cash ledger, liability ledger, ITC ledger etc. can be seen on a mobile phone using compatible browsers.

Q 20. Will GSTN provide separate user ID and password for GST Practitioner to enable them to work on behalf of their customers (Taxpayers) without requiring user ID and password of taxpayers, as happens today?

Ans. Yes, GSTN will be providing separate user ID and Password to GST Practitioner to enable them to work on behalf of their clients without asking for their user ID and passwords. They will be able to do all the work on behalf of taxpayers as allowed under GST Law.

Q 21. Will tax payer be able to change the GST Practitioner once chosen in above mentioned facility?

***Ans**. Yes, a taxpayer may choose a different GST Practitioner by simply unselecting the previous one and then choosing a new GST Practitioner on the GST portal.*

Q 22. Will existing taxpayers under Central Excise or Service Tax or State VAT have to apply for fresh registration under GST?

***Ans**. No, the existing taxpayers under taxes which are to be subsumed under GST and whose PAN have been validated from CBDT database will not be required to apply afresh. They will be issued provisional GSTIN by GST portal, which will be valid for six months. Such taxpayers will be required to provide relevant data as per GST enrollment form online on GST Portal. On completion of data filing the status of taxpayer will change to Migrated. On appointed day the status of taxpayer will change to Active and he will be able to comply with requirements of GST regime for payment of taxes, filing of returns etc., on GST Portal.*

GSTN has issued Provisional IDs and passwords to all such taxpayers and the same has been shared with tax authorities for conveying the same to the taxpayers. Enrolment of existing taxpayers for GST started at GST portal on 8th November 2016 and by end of March 2017 a large number of them have activated the Provisional ID and many have completed the migration process. More details are available at https://www.gst.gov.in/help

Q 23. What material will be provided by GSTN, on various aspects of working on GST portal, for the benefit of taxpayers?

Ans. GSTN is preparing Computer Based Training materials (CBT's) which have videos embedded into them for each process to be performed on the GST portal. These will be put on the GST portal as well as on the website of all tax authorities. Apart from CBT's, Various User Manuals, FAQ's etc., will also be placed on GST Portal for education of the taxpayers. Apart from it, a helpdesk has been set up for the taxpayers for logging of their tickets via mail (helpdesk@gst.gov.in) or phone (0124-4688999). CBT, FAQ and User Manual for enrolment process are available at https://www.gst.gov.in/help.

Q 24. Will the return and registration data furnished by the taxpayers on the GST Common Portal will remain Confidential?

Ans. Yes, all steps are being taken by GSTN to ensure the confidentiality of personal and business information furnished by the taxpayers on GST Common Portal. This will be done by ensuring Role Based Access Control (RBAC) and encryption of critical data of taxpayers both during transit and in storage. Only the authorized tax authorities

will be able to see and read the data.

Q 25. What are the security measures being taken by GSTN to ensure security of the GST system?

Ans. GST Systems project has incorporated state of art security framework for data and service security. Besides high end firewalls, intrusion detection, data encryption at rest as well as in motion, complete audit trail, tamper proofing using consistent hashing algorithms, OS and host hardening etc., GSTN is also establishing a primary and secondary Security Operations Command & Control center, which will proactively monitor and protect malicious attack in real time. GSTN is also ensuring secure coding practices through continuous scanning of source code & libraries being used in GST system to protect against commonly known and unknown threats.

24. Transitional Provisions

Q 1. Will CENVAT credit (or VAT credit) carried forward in the last return prior to GST under existing law be available as ITC under GST?

Ans. A registered person, other than a person opting to pay tax under composition scheme, shall be entitled to take credit in his electronic credit ledger the amount of CENVAT (or VAT credit) credit carried forward in the return of the last period before the appointed day, subject to the conditions stated therein. (Section 140(1) of the CGST/SGST Act)

Q 2. What are those conditions?

Ans. The conditions are that: -

(i) the said amount of credit is admissible as input tax credit under this Act;

(ii) the registered person has furnished all the returns required under the existing law (i.e. Central Excise and VAT) for the period of six months immediately preceding the appointed date;

(iii) the said amount of credit does not relate to goods manufactured and cleared under such notifications as are notified by the Central Government.)

Under SGST law there will be one more condition as given below: -

So much of the said credit as is attributable to any claim related to section

3, sub-section (3) of section 5, section 6, section 6A or sub-section (8) of section 8 of the Central Sales Tax Act, 1956 that is not substantiated in the manner, and within the period, prescribed in rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957 shall not be eligible to be credited to the electronic credit ledger:

However, an amount equivalent to the credit specified above shall be refunded under the existing law when the said claims are substantiated in the manner prescribed in rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957.

Q 3. A registered person, say, purchases capital goods under the existing law (Central Excise) in the June quarter of 2017-18. Though the invoice has been received within 30th June but the capital goods are received on 5th July, 2017 (i.e. in GST regime). Will such a person get full credit of CENVAT in GST regime?

Ans. Yes, he will be entitled to credit in 2017-18 provided such a credit was admissible as CENVAT credit in the existing law and is also admissible as credit in CGST - section 140(2) of the CGST Act.

Q 4. VAT credit was not available on items 'X' & 'Y' as capital goods in the existing law (Central Excise). Since they are covered in GST, can the registered taxable person claim it now?

Ans. He will be entitled to credit only when ITC on such goods are admissible under the existing law and is also admissible in GST. Since credit is not available under the existing law on such goods, the said person cannot claim it in GST – proviso to section 140(2) of the SGST Act.

Q 5. Assuming the registered person has wrongly enjoyed the credit (Refer to Q4) under the existing law, will the recovery be done under the GST Law or the existing law?

Ans. The recovery relating to ITC wrongfully enjoyed, unless recovered under the existing law, will be recovered as arrears of tax under GST.

Q 6. Give two examples of registered taxable persons who are not liable to be registered under the existing law (Central Excise / VAT) but are required to be registered under GST?

Ans. A manufacturer having a turnover of say Rs 60 lakh who is enjoying SSI exemption under the existing law will have to be registered under GST as the said turnover exceeds the basic threshold of Rs 20 lakh - section 22.
A trader having turnover below the threshold under VAT but, making sales through e-commerce operator will be required to be registered in GST. There will be no threshold for such person(s) – section 24.

Q 7. Will ITC be allowed to a service provider on VAT paid inputs held as stock on the appointed

day?

Ans. Yes, he will be entitled to input tax credit on inputs held in stock in accordance with the provisions of section 140(3).

Q 8. A registered person has excess ITC of Rs 10, 000/- in his last VAT return for the period immediately preceding the appointed day. Under GST he opts for composition scheme. Can he carry forward the aforesaid excess ITC to GST?

Ans. The registered person will not be able to carry forward the excess ITC of VAT to GST if he opts for composition scheme – Section 140(1).

Q 9. Sales return under CST (i.e. Central Sales Tax Act) is allowable as deduction from the turnover within six months? If, say, goods are returned in GST regime by a buyer within six months from appointed day, will it become taxable in GST?

Ans. Where tax has been paid under the existing law [CST, in this case] on any goods at the time of sale, not being earlier than six months prior to the appointed day, and such goods are returned by the buyer after the appointed day, the sales return will be considered as a supply of the said buyer in GST and tax has to be paid on such supply, if, –

(i) the goods are taxable under the GST Law; and

(ii) the buyer is registered under the GST Law.

However, the seller is entitled to refund of such tax [CST, in this case] paid under the existing law if the

aforesaid buyer is an unregistered person under GST and the goods are returned within 06(six) months (or within the extended period of maximum two months) from the appointed day and the goods are identifiable - Section 142(1).

Q 10. Shall a manufacturer or a job worker become liable to pay tax if the inputs or semi-finished goods sent for job work under the existing law are returned after completion of job work after the appointed day?

Ans. No tax will be payable by the manufacturer or the job worker under the following circumstances: –

(i) Inputs/ semi-finished goods are sent to the job worker in accordance with the provisions of the existing law before the appointed day.

(ii) The job worker returns the same within six months from the appointed day (or within the extended period of maximum two months).

(iii) Both the manufacturer and the job worker declare the details of inputs held in stock by the job worker on the appointed day in the prescribed form.

The relevant sections are 141(1), 141(2) & 141 (4).

However, if the said inputs/semi- finished goods are not returned within six months (or within the extended

period of maximum two months), the input tax credit availed is liable to be recovered.

Q 11. What happens if the job worker does not return the goods within the specified time?

Ans. Input tax credit availed by manufacturer will be payable by said manufacturer on the said goods if they are not returned to the place of business of the manufacturer within six months (or within the extended period of maximum two months) from the appointed day –

Q 12. Can a manufacturer transfer have finished goods sent for testing purpose to the premises of any other taxable person?

Ans. Yes, a manufacturer can transfer finished goods sent for testing purpose to the premise of any other registered person on payment of tax in India or without payment of tax for exports within six months (or within the extended period of maximum two months)– section 141(3)

Q 13. If finished goods removed from a factory for carrying out certain processes under existing law are returned on or after the appointed day, whether GST would be payable?

Ans. No tax under GST will be payable if finished goods removed from factory prior to the appointed day to any other premise for carrying out certain processes are returned to the said factory after undergoing tests or any other process within six months (or within the extended

period of maximum two months) from the appointed day - section 141(3).

Q 14. When tax shall become payable in GST on manufactured goods sent to a Job worker for carrying out tests or any other process not amounting to manufacture under the existing law?

Ans. Where manufactured goods are sent to a job worker prior to the appointed day for carrying out tests or any process not amounting to manufacture under the existing law and if such goods are not returned to the manufacturer within six months (or within the extended period of maximum two months) from the appointed day, the input tax credit availed by the manufacturer will liable to be recovered if the aforesaid goods are not returned within six months from the appointed day. – Section 141(3)

Q 15. Is extension of two months as discussed in section 141 automatic?

Ans. No, it is not automatic. It may be extended by the Commissioner on sufficient cause being shown.

Q 16. What is the time limit for issue of debit/credit note(s) for revision of prices?

Ans. The taxable person may issue the debit/credit note(s) or a supplementary invoice within 30 days of the price revision.

In case where the price is revised downwards the taxable person will be allowed to reduce his tax liability only if the recipient of the invoice or credit note has reduced his ITC corresponding to such reduction of tax liability–section 142(2).

Q 17. What will be the fate of pending refund of tax/interest under the existing law?

Ans. The pending refund claims will be disposed of in accordance with the provisions of the existing law – section 142(3).

Q 18. What will be fate of any appeal or revision relating to a claim of CENVAT/ITC on VAT which is pending under the existing law? If say, it relates to output liability then?

Ans. Every proceeding of appeal, revision, review or reference relating to a claim for CENVAT/input tax credit or any output tax liability initiated whether before, on or after the appointed day, will be disposed of in accordance with the existing law and any amount of credit of CENVAT/ input tax credit or output tax found admissible for refund will have to be refunded in accordance with the existing law. However, any amount which becomes recoverable will have to be recovered as arrears of tax under the GST Law---Section 142(6)/142(7).

Q 19. If the appellate or revisional order goes in favour of the assessee, whether refund will be made in GST? What will happen if the decision

goes against the assessee?

Ans. The refund will be made in accordance with the provisions of the existing law only. In case any recovery is to be made then, unless recovered under existing law, it will be recovered as an arrear of tax under GST – sections 142(6) & 142(7)

Q 20. How shall the refund arising from revision of return(s) furnished under the existing law be dealt in GST?

Ans. Any amount found to be refundable as a consequence of revision of any return under the existing law after the appointed day will be refunded in cash in accordance with the provisions of the existing law – section 142(9)(b).

Q 21. If any goods or services are supplied in GST, in pursuance of contract entered under existing law, which tax will be payable?

Ans. GST will be payable on such supplies– section 142(10) of the CGST Act.

Q 22. Tax on a particular supply of goods/services is leviable under the existing law. Will GST be also payable if the actual supply is made in GST regime?

Ans. No tax will be payable on such supply of goods/services under GST to the extent the tax is leviable under the existing law – section 142(11).

Q 23. In pursuance of any assessment or adjudication proceedings instituted, after the appointed day, under the existing law, an amount of tax, interest, fine or penalty becomes refundable. Shall such amount be refundable under the GST law?

Ans. No refund of such amount will be made in cash under the existing law – section 142(8)(b) of the CGST Act.

Q 24. If services are received by ISD under the earlier law, can the ITC relating to it be distributed in GST regime?

Ans. Yes, irrespective of whether the invoice(s) relating to such services is received on or after the appointed day – section 140(7) of the CGST Act.

Q 25. Where any goods are sold on which tax was required to be deducted at source under State VAT law and an invoice was also issued before the appointed day, shall deduction of tax at source shall be made under this Act if the payment is made after the appointed day?

Ans. No, in such case no deduction of tax at source shall be made under GST.

Q 26. Goods were sent on approval not earlier than six months before the appointed day but are

returned to the seller after 6 months from the appointed day, will tax be payable under GST?

Ans. Yes, if such goods are liable to tax under GST and the person who has rejected or has not approved the goods, returns it after 6 months (or within the extended period of maximum two months) from the appointed day. In that case tax shall also be payable by the person who has sent the goods on approval basis- section 142(12).

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