

MAR GREGORIOS COLLEGE OF ARTS & SCIENCE

Block No.8, College Road, Mogappair West, Chennai – 37

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DEPARTMENT OF COMMERCE (CORPORATE SECRETARYSHIP)

SUBJECT NAME: INDIRECT TAXATION

SUBJECT CODE: CYA6G

SEMESTER: IV

PREPARED BY: PROF.DORA JUNITA RATNAPRIYA

SYLLABUS

OBJECTIVES:

- To facilitate the students to gain knowledge of the principles of Indirect Taxation.
- To enable the students to gain knowledge of Goods and Services (GST)
- To highlight the students about customs duty.

OUTCOME:

- The students will be able to understand the concepts of Indirect taxation, types and Assessment procedures.

UNIT – I Introduction

History and Objectives of Taxation – Tax System in India- Direct & Indirect Taxes – Meaning and Types – Powers of Union and State to levy taxes. Constitutional Amendments leading to introduction of GST and their importance

UNIT – II GST – Overview & Concepts

Background behind implementing GST- The need for GST- objectives of GST- Business impact Benefits of GST-SGST- CGST and IGST- Taxes covered by GST- Definitions - Scope and Coverage Scope of supply- Levy of tax- Rate Structure- Taxable Events. Types of Supplies –Composite and Mixed Supplies –Composition Levy.

UNIT – II GST Taxation/ Assessment proceedings

Return- Refunds- Input Tax Credit- Reverse charge Mechanism, Transitional Provisions composition under GST- Administrative structure of GST-Officers as per CGST Act- Officers as per SGST Act-Jurisdiction- Appointment Powers. Relevance of Cross Empowerments

UNIT-IV GST Audit

Assessment and Audit under GST- Demands and Recovery- Appeals and revision- Advance ruling Offences and Penalties. National Anti-Profiteering Authority – GST Practitioners – eligibility and Practice and Career avenues.

UNIT-V Customs duty

The custom duty- Levy and collection of customs duty- Organisations of custom departments Officers of customs- powers- Appellate Machinery- Infringement of the Law- Offences and Penalties- Exemptions from duty customs duty draw back- duties free Zones. Export incentive schemes

Recommended Texts

1. ShilpiSahi – Concepts Building Approaches to Goods and Services Tax (GST), & Customs Law - CENGAGE , New Delhi

SUGGESTED READINGS

1. Sweta Jain GST law and practice Taxmann Publishers, July 2017
2. V.S.Daty – GST- Input Tax Credi- Taxmann Publishers, second edition August 2017
3. C.A. Anurag Pandey- Law and Practice of GST- Sumedha Publication House 2017
4. Dr.Vandana Banger- Beginners- Guide AadhayaPrakashan Publisher 2017
5. Dr.M. Govindarajan- A practical guide send text publishers July 201

UNIT – I Introduction

History of Taxation in India

The word 'tax' is derived from the Latin word *taxare* or *taxo*. It means 'to assess the worth of something'. Taxes are imposed by government for the use and service of the State. They are levied and collected by the State for the purchase or sale of merchandise or a service. Taxes provide revenue to the state, and is therefore one of the most significant aspects of any system of administration by any form of government.

The strength of an economy depends upon how good the tax system is. A just tax system can propel the economic growth of a country and lead to its prosperity. This in turns makes its citizens happy and more productive. An efficient taxation policy leads to growth in GDP; it is considered sound if it performs allocative, distributional and stabilization function in the economy.

There are two types of taxes – direct and indirect. Direct taxes are those that an entity remits to the government directly, and include income tax, property tax, etc. indirect taxes are those that an entity remits through third parties. Service tax is an example of indirect tax imposed by the government of India.

Any tax imposed by the government (Central, state or local) has the following important characteristics:

- **It is mandatory:** since any form of tax is imposed by the government for the benefit of the country, it is required by law to pay taxes
- **It is a contribution:** tax is a contribution made by citizens for the betterment of their country. The government of India provides basic healthcare, infrastructure, defence, etc. with the money collected from taxes
- **It is for public benefit:** the purpose of collecting taxes is for the benefit and upliftment of the society in general. Taxes are not supposed to favour specific individuals. Disaster maintenance and rescue is an important aspect of the money collected in the form of taxes
- **It is paid out of income earned or wealth:** you pay tax only when you generate income. If an individual does not generate a minimum threshold income (defined and modified from time to time by the government), they need not pay some taxes like income tax.
- **It boosts economy:** this is one of the most important aspects of collecting taxes. Since the government provides for infrastructure in the form of roads, trains, power stations, dams, etc., it utilizes the tax revenue for economic growth of the nation

History of Taxation in India

Income is the money that an individual or business receives in exchange for providing a good or services. A formal tax system was in existence in India since the time of Maurya dynasty. The higher class of citizens contributed 1/6th of their income as tax. It is said that even before the Mauryas, tax was mentioned in Manu Smriti, one of the most ancient scriptures of India. The subsequent Mughal invaders brought with them their own taxation system. The infamous *Jezia* was a tax imposed on the non-Islamic people of the land. In India, it was abolished by Akbar.

The income tax as we know today was first introduced in India in 1860 by the British. It was introduced to compensate for the losses sustained by the government due to the rebellion of

1857. Income tax is defined as the annual charge levied on both earned income (wages, salaries or commission) and unearned income like dividends, interest or rent. In addition to financing a government's operations, progressive income taxation is designed to distribute wealth creation more evenly in a population and to serve as buffer in case of fluctuations in the economic cycle. There are two basic types of income tax: personal income tax and corporation income tax.

The Income Tax Act was passed in India in 1886, and there have been constant revisions and refinements in the Act since then. After the first World War, a new Income Tax Act was passed, in 1918, again to counter the residual effects of economic devastation caused by the war. This income tax Act was in place till 1922, when it was replaced by another Act. After 40 years, and 15 years after India gained freedom from the British, the income tax Act was modified again. The current Income Tax Act has been adopted in 1961, and brought into force with effect from April 1, 1962. It encompasses the whole of India, including Sikkim, Jammu and Kashmir. The Central Board of Revenue bifurcated and created a separate Board for Direct Taxes called as the Central Board of Direct Taxes under the aegis of Central Board of Revenue Act, 1963.

Currently, there are five broad heads under which income is taxed by the govt. of India:

- Income from salary
- Income from business or profession
- Income from capital gains
- Income from property
- Income from other sources

Each successive government amends the Act with an aim to finance government operations, and to try and distribute wealth more evenly. A noticeable feature of the Income Tax Act of India is that agricultural income in India is not taxable. Income tax in India (and all other countries) is assessed annually for the previous financial year.

India currently has a three tier setup for taxation. The central government and the state government can both impose tax. The State government in turn can delegate taxation to the local governing bodies like the municipal corporations and grampanchayats. It is said that that the Indian tax system is one of the most complex in the world, including the likes of income tax, wealth tax, property tax, gift tax, sales tax, VAT, custom duty, excise duty (now replaced by GST), corporate tax, income tax and a plethora of other taxes? Indeed, it is one of the reasons why there is a high demand in India for income tax consultants, GST consultants, auditors, and other professionals.

As a nation evolves, its needs change. India is no exception. No doubt as the nation progresses, the tax structure of India will undergo many refinements. For example, the Goods and Services Tax (GST), which has replaced the Central and State indirect taxes such as VAT, excise duty and service tax, was implemented in India on July 1, 2017. GST has been already introduced in more than 160 countries, starting from France where it was introduced way back in 1954. So, it can be safely said that GST is a tried and tested taxation solution; India need not worry unnecessarily about its effectiveness.

Objectives of Taxation:

The primary purpose of taxation is to raise revenue to meet huge public expenditure. Most governmental activities must be financed by taxation. But it is not the only goal. In other words, taxation policy has some non-revenue objectives.

Truly speaking, in the modern world, taxation is used as an instrument of economic policy. It affects the total volume of production, consumption, investment, choice of industrial location and techniques, balance of payments, distribution of income, etc.

Here we will discuss the objectives of taxation in modern public finance:

1. Economic Development
2. Full Employment
3. Price Stability
4. Control of Cyclical Fluctuations
- . Reduction of BOP Difficulties
6. Non-Revenue Objective

1. Economic Development:

One of the important objectives of taxation is economic development. Economic development of any country is largely conditioned by the growth of capital formation. It is said that capital formation is the kingpin of economic development. But LDCs usually suffer from the shortage of capital.

To overcome the scarcity of capital, governments of these countries mobilize resources so that a rapid capital accumulation takes place. To step up both public and private investment, government taps tax revenues. Through proper tax planning, the ratio of savings to national income can be raised.

By raising the existing rate of taxes or by imposing new taxes, the process of capital formation can be made smooth. One of the important elements of economic development is the raising of savings- income ratio which can be effectively raised through taxation policy.

However, proper care has to be taken, regarding investment. If financial resources or investments are channelized in the unproductive sectors of the economy the economic development may be jeopardized, even if savings and investment rates are increased. Thus, the tax policy has to be employed in such a way that investment occurs in the productive sectors of the economy, including the infrastructural sectors.

2. Full Employment:

Second objective is the full employment. Since the level of employment depends on effective demand, a country desirous of achieving the goal of full employment must cut down the rate of taxes. Consequently, disposable income will rise and, hence, demand for goods and

services will rise. Increased demand will stimulate investment leading to a rise in income and employment through the multiplier mechanism.

3. Price Stability:

Thirdly, taxation can be used to ensure price stability—a short run objective of taxation. Taxes are regarded as an effective means of controlling inflation. By raising the rate of direct taxes, private spending can be controlled. Naturally, the pressure on the commodity market is reduced.

But indirect taxes imposed on commodities fuel inflationary tendencies. High commodity prices, on the one hand, discourage consumption and, on the other hand, encourage saving. Opposite effect will occur when taxes are lowered down during deflation.

4. Control of Cyclical Fluctuations:

Fourthly, control of cyclical fluctuations—periods of boom and depression—is considered to be another objective of taxation. During depression, taxes are lowered down while during boom taxes are increased so that cyclical fluctuations are tamed.

5. Reduction of BOP Difficulties:

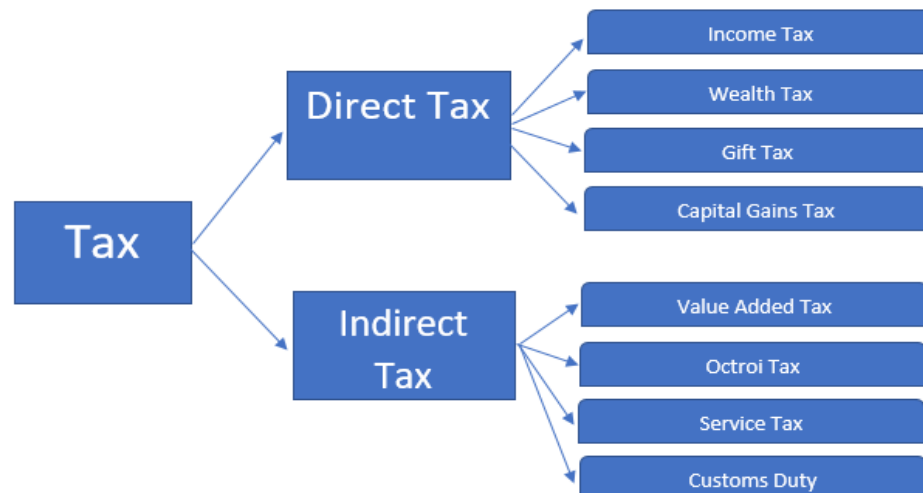
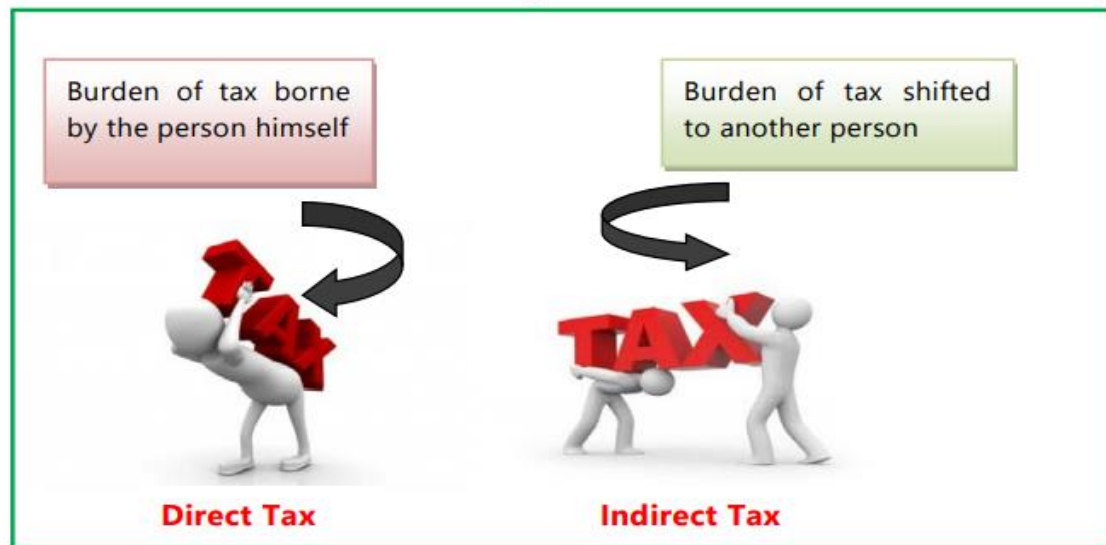
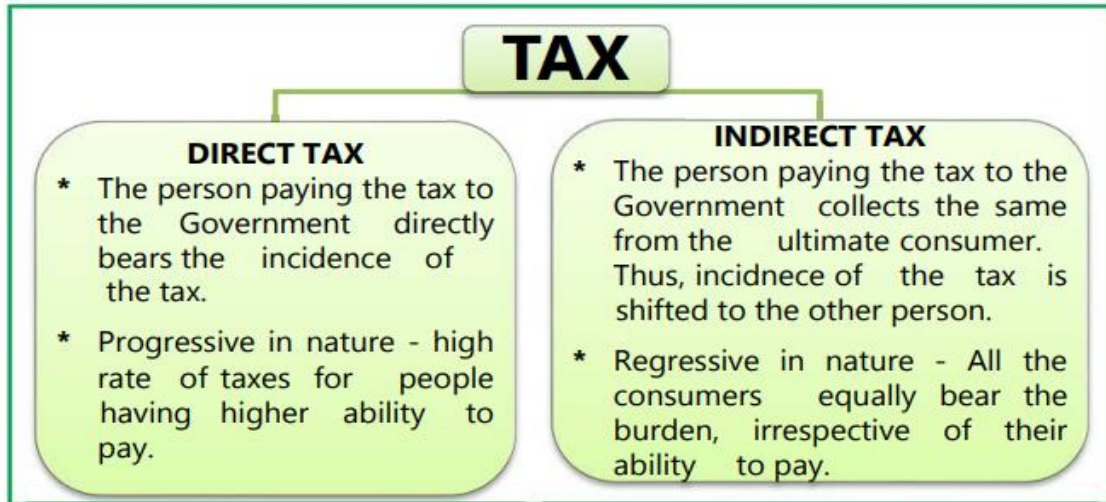
Fifthly, taxes like custom duties are also used to control imports of certain goods with the objective of reducing the intensity of balance of payments difficulties and encouraging domestic production of import substitutes.

6. Non-Revenue Objective:

Finally, another extra-revenue or non-revenue objective of taxation is the reduction of inequalities in income and wealth. This can be done by taxing the rich at higher rate than the poor or by introducing a system of progressive taxation.

Tax System in India:

The **tax system in India** allows for two types of taxes—Direct and Indirect Tax.



The **tax system in India** for long was a complex one considering the length and breadth of India. Post GST implementation, which is one of the biggest tax reforms in India, the process has become smoother. It serves as an all-inclusive indirect tax which has helped in eradicating the cascading effect of tax as a whole. It is simpler in nature and has led to upgraded the productivity of logistics.

Direct Tax:

Direct Tax is levied directly on individuals and corporate entities. This tax cannot be transferred or borne by anybody else. Examples of direct tax include income tax, wealth tax, gift tax, capital gains tax.

Income tax is the most popular tax within this section. Levied on individuals on the income earned with different tax slabs for income levels. The term 'individuals' includes individuals, Hindu Undivided Family (HUF), Company, firm, Co-operative Societies, Trusts.

Indirect Tax:

Indirect taxes are [taxes which are indirectly levied](#) on the public through goods and services. The sellers of the goods and services collect the tax which is then collected by the government bodies.

- **Value Added Tax (VAT)**– A sales tax levied on goods sold in the state. The rate depends on the government.
- **Octroi Tax**– Levied on goods which move from one state to another. The rates depend on the state governments.
- **Service Tax**– Government levies the tax on service providers.
- **Customs Duty**– It is a tax levied on anything which is imported into India from a foreign nation.

Tax Collection Bodies:

The three bodies which collect the **taxes in India** have clearly defined the rules on what type of taxes they are permitted to collect.

- **The Central Government:** income tax, custom duties, central excise duty.
- **The State Governments:** tax on agricultural income, professional tax, value- added tax, state excise duty, stamp duty.
- **Local Bodies:** property tax, water tax, other taxes on drainage and small services.

GST:

In India, the three government bodies collected **direct and indirect taxes** until 1 July 2017 when the Goods and Services Act (GST) was implemented. GST incorporates many of the indirect taxes levied by states and the central government. What does the Some of the taxes GST replaced include:

- **Sales Tax**
- **Central Excise Duty**
- **Entertainment Tax**
- **Octroi**
- **Service Tax**
- **Purchase Tax**

It is a multi-stage destination-based tax. Multi-stage because it is levied on each stage of the supply chain right from purchase of raw material to the sale of the finished product to the end consumer whenever there is value addition and each transfer of ownership.

Destination-based because the final purchase is the place whose government can collect GST. If a fridge is manufactured in Delhi but sold in Mumbai, the Maharashtra government collects GST.

A major benefit is the simplification of **taxation in India** for government bodies.

GST has three components:

- **CGST**-Stands for **Central Goods and Services Act**. The central government collects this tax on an intrastate supply of goods or services.
(Within Maharashtra)
- **SGST**:Stands for **State Goods and Services Tax**. The state government collects this tax on an intrastate supply of goods or services.
(Within Maharashtra)
- **IGST**:Stands for **Integrated Goods and Services Tax**. The central government collects this for inter-state sale of goods or services.(Maharashtra to Karnataka)

Other Government Bodies:

For a smooth implementation of the **Indian tax system**, there are bodies dedicated to it. Popularly known as the revenue authorities.

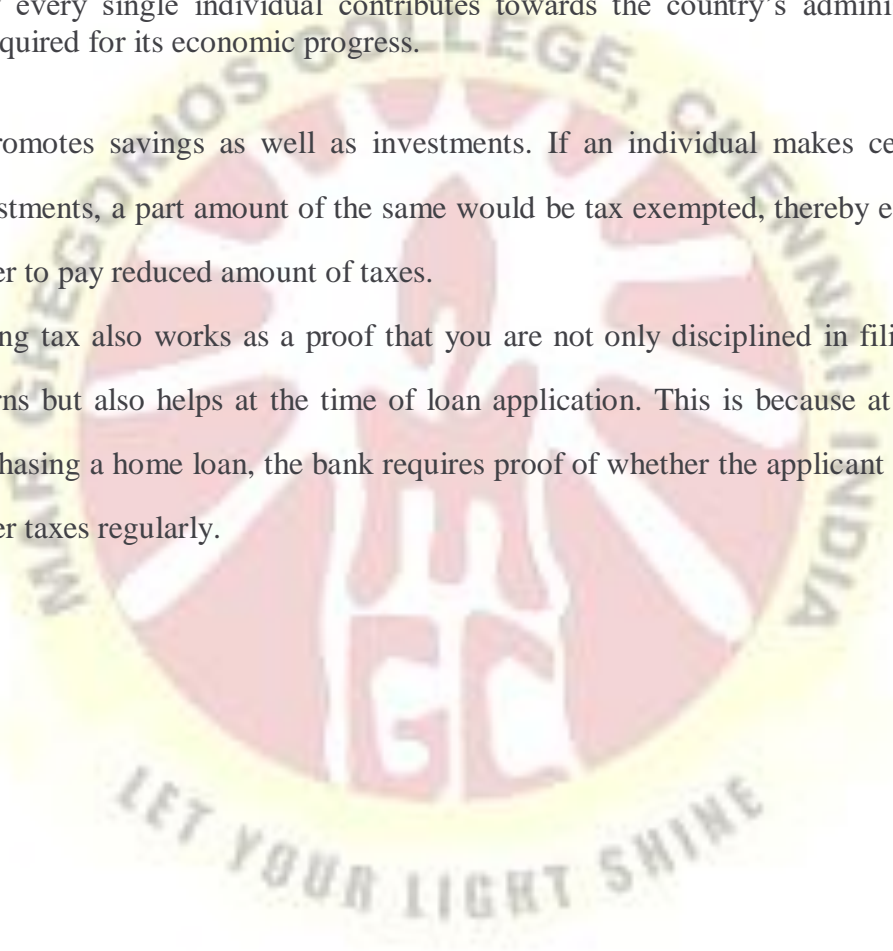
- **CBDT**:The Central Board of Direct Taxes is a part of the revenue department under the Ministry of Finance. It has a two-fold role. One, it provides important ideas and inputs for planning and policy with regard to direct tax in India. Second, it assists the Income Tax department in the administration of direct taxes.

- **CBEC:**The Central Board of Excise and Customs deals with policy formulation with regard to levy and collection of customs and central excise duties and service tax.
- **CBIC:** Post GST implementation, the CBEC has been renamed as the Central Board of Indirect Taxes & Customs (CBIC). The main role of CBIC is assisting the government in policy-making matters related to GST.

Benefits of Taxes:

While paying taxes may not be a pleasant feeling, however, it is prudent to understand that tax paid by every single individual contributes towards the country's administration and resources required for its economic progress.

- It promotes savings as well as investments. If an individual makes certain set of investments, a part amount of the same would be tax exempted, thereby enabling him or her to pay reduced amount of taxes.
- Paying tax also works as a proof that you are not only disciplined in filing your tax returns but also helps at the time of loan application. This is because at the time of purchasing a home loan, the bank requires proof of whether the applicant has filed his or her taxes regularly.



BASIS OF COMPARISON	DIRECT TAX	INDIRECT TAX
Meaning	Direct tax is referred to as the tax, which is paid by the person to the government to whom it is levied and charged on the income and wealth of persons.	Indirect Tax is referred to as the tax, which is paid by the taxpayer to the government indirectly, charged on goods and services.
Burden	The person on whom it is levied bears its burden.	The burden of tax can be shifted to another person.
Types	Wealth Tax, Income Tax, Property Tax, Corporate Tax, Import and Export Duties.	Central Sales tax, VAT (Value Added Tax), Service Tax, STT (Security Transaction Tax), Excise Duty, Custom Duty.
Evasion	Tax evasion is possible.	Tax evasion is hardly possible because it is included in the price of goods and services.
Inflation	Direct tax helps in reducing inflation.	Indirect taxes promotes inflation.
Levied on	Persons, i.e. Individual, HUF (Hindu Undivided Family), Company, Firm etc.	Consumers of goods and services.
Nature	Progressive	Regressive

Types of Taxes

Mainly, there are two kinds of taxes defined under the Indian tax system, which get further sub-divided into other categories:

1. Direct taxes in India
2. Indirect taxes in India

Let's understand direct and indirect taxes applicable in India.

1. Direct Taxes in India

As per the Indian tax system, direct taxes in India are the ones that are directly levied on an individual or taxpayer's income. The Central Board of Direct Taxes (CBDT) overlook the

direct taxes in India, and they cannot get transferred to any other individual or legal entity.

The following are the types of direct taxes in India, as defined under the Indian tax system:

1. **Income tax**

The tax that gets levied on the annual income or the profits of an individual or an entity is Income Tax. Therefore, the Indian tax system recognises both salaried and self-employed individuals who are earning an income, to be liable to pay income tax. Also, there is also a tax exemption limit of up to Rs.2.5 lakh per annum under the Indian tax system, given to individuals below 60 years of age.

Similarly, the Indian tax system provides a tax exemption limit of up to Rs.3 lakh for individuals of the age of 60 or above but less than 80. The limit is Rs.5 lakh for individuals of the age of 80 or above. The tax slabs differ with income.

2. **Securities Transaction Tax**

The securities transaction tax, as defined under the Indian tax system, gets levied on the stock market and securities trading. This tax is imposed on the price of the share and the traded securities traded on the ISE (Indian Stock Exchange).

Direct tax

Following are some other types of taxes which fall under the direct tax category:

1. Wealth Tax
2. Gift Tax
3. Estate Duty
4. Expenditure Tax
5. Fringe Benefit Tax

2. **Indirect taxes in India**

Taxes that get imposed on products and services when they are bought and sold are called indirect taxes in India. The sellers of the service or products collect these taxes under the Indian tax system. The tax gets levied as an addition to the original price of the product or service, which increases their cost. Following are the different types of indirect taxes in India.

Goods and Services Tax

Goods or Services Tax (GST) is a consumption tax imposed on services and goods supply and has completely replaced the indirect taxes in India. The Indian tax system stipulates that every stage of the goods production process and value-added services is under the obligation to pay GST.

The introduction of GST under the Indian tax system has resulted in the abolition of other kinds of indirect taxes in India and charges like Value Added Tax (VAT), OCTROI, Central Value Added Tax (CENVAT), and also custom and excise taxes.

As per the Indian tax system, an exemption is given to the products or services such as electricity, alcoholic drinks, and petroleum products that do not get taxed under GST. This tax is imposed according to the previous tax regime decided by the different state governments.

Taxes that come under Indirect Taxes

Following are some other types of taxes which fall under the indirect tax category:

1. Securities Transaction Tax
2. Dividend Distribution Tax
3. Property Tax
4. Professional Tax
5. Entertainment Tax
6. Registration Fees, Stamp Duty, Transfer Tax
7. Education cess
8. Entry Tax
9. Road Tax and Toll Tax

Powers of Union and State to levy taxes

Indian constitution has divided the taxing powers as well as the spending powers (and responsibilities) between the Union and the state governments. The subjects on which Union or State or both can levy taxes are defined in the 7th schedule of the constitution. Further, limited financial powers have been given to the local governments also as per 73rd and 74th amendments of the constitution and enshrined in Part IX and IX-A of the constitution.

Since the taxing abilities of the states are not necessarily commensurate with their spending responsibilities, some of the centre's revenues need to be assigned to the state governments.

On what basis this assignment should be made and on what guidelines the government should act – the Constitution provides for the formation of a Finance Commission (FC) by President of India, every five years, or any such earlier period which the President deems necessary via Article 280. Based on the report of the Finance Commission, the central taxes are devolved to the state governments.

Separation of Powers

The Union government is responsible for issues that usually concern the country as a whole, for example national defence, foreign policy, railways, national highways, shipping, airways, post and telegraphs, foreign trade and banking. The state governments are responsible for other items including, law and order, agriculture, fisheries, water supply and irrigation, and public health.

Some items for which responsibility vests in both the Centre and the states include forests, economic and social planning, education, trade unions and industrial disputes, price control and electricity. Then, there is devolution of some powers to local governments at the city, town and village levels.

The taxing powers of the central government encompass taxes on income (except agricultural income), excise on goods produced (other than alcohol), customs duties, and inter-state sale of goods. The state governments are vested with the power to tax agricultural income, land

and buildings, sale of goods (other than inter-state), and excise on alcohol. Local authorities such as Panchayat and Municipality also have power to levy some **minor** taxes.

The authority to levy a tax is comes from the Constitution which allocates the power to levy various taxes between the Centre and the State. An important restriction on this power is Article 265 of the Constitution which states that “*No tax shall be levied or collected except by the authority of law.*” This means that no tax can be levied if it is not backed by a legislation passed by either Parliament or the State Legislature.

Sources of Revenue for Union Government

The sources of Revenue of the Union Government are as follows:

- Income (except tax on agricultural income), Corporation Tax & Service Tax
- Currency, Coinage, legal tender, Foreign Exchange
- Custom duties (except export duties)
- Excise on tobacco and other goods.
- Estate Duty (except on agricultural goods) (Kindly note that its mentioned in the constitution but Estate duty was abolished in India in 1985 by Rajiv Gandhi Government)
- Fees related to any matter in Union list except Court Fee
- Foreign Loans
- Lotteries by Union as well as State Governments.
- Post Office Savings bank, Posts, Telegraphs, Telephones, Wireless Broadcasting, other forms of communication
- Property of the Union
- Public Debt of the Union
- Railways
- Stamp duty on negotiable instruments such as Bills of Exchange, Cheques, Promissory notes etc.
- Reserve Bank of India
- Capital gains taxes, Taxes on capital value of assets except farm land
- Taxes other than stamp duties on transactions in stock exchanges and future markets
- Taxes on the sale and purchase of newspapers and advertisements published therein.
- Terminal Taxes on Goods and passengers, carried by Railways and sea or air.

Sources of revenue for State Governments

The following are sources of revenue for State Governments.

- Taxes and duties related to agricultural lands
- Capitation Taxes
- Excise on liquors, opium etc.
- Fees on matters related to state list except court fee
- Land Revenue, Land and buildings related taxes
- Rates of Stamp duties in respect of documents other than those specified in the Union List

- Taxes on mineral rights subject to limitations imposed by the parliament related to mineral development
- Taxes on the consumption or sale of electricity
- Sales tax on goods (other than newspapers) for consumption and use within state.
- Taxes on advertisements except newspaper ads.
- Taxes on goods and passengers carried by road or on inland waterways
- Taxes on vehicles, animals and boats, professions, trades, callings, employments, luxuries, including the taxes on entertainments, amusements, betting and gambling.
- Toll Taxes.

Certain Taxes levied as Concurrent Powers

Please note that the Union and the State Governments have the concurrent powers to fix the principles on which taxes on motor vehicles shall be levied and to impose stamp duties on non-judicial stamps. The property of the Union is exempted from State Taxation; and the property of the states is exempted from the Union Taxation. But the parliament of India can pass legislation for taxation by Union Government of any business activities / trade of the state which are not the ordinary functions of the state.

Residuary Power of Taxation

Union Government has exclusive powers to impose taxes which are not specifically mentioned in the state or concurrent lists. Some taxes imposed using these powers include Gift tax, wealth tax and expenditure tax.

State's power Regarding Sales Tax

The sales tax on consumer goods such as toothpastes, soaps, daily use items, electronic items etc. are *imposed, collected and appropriated by state governments*. However, newspapers and newspaper ads are exception to this. Further, there are four restrictions to this power of the state. These include:

- A state cannot impose sales tax if a good is produced there but is sold outside the state.
- A state cannot impose sales tax if the sale and purchase is taking place for items due for export.
- A state cannot impose tax on interstate trade and commerce of goods
- State cannot impose a tax on a good that has been declared of special importance by parliament.

Other facts about levying and appropriation of Taxes

- Sales tax is imposed, levied, collected, appropriated by states as mentioned above
- Income tax, Corporation Tax, Service tax are levied and collected by Centre but are appropriated by both states and centres as per distribution formula recommended by Finance Commission. This formula is NOT binding upon the parliament.
- However states have no share in surcharges, cesses on these taxes.
- Stamp duties on negotiable instruments and excise duties on medicinal and toilet preparations that have use of alcohol and narcotics are levied by Centre. But these taxes don't make a part of consolidated fund of India. They are assigned to respective states only, which appropriate these taxes.
- Sales tax in case of Inter-state trade of goods (except newspapers) is levied and collected by the centre but such proceeds are assigned to states. (This is known as Central Sales Tax)

Amendment of Indian Constitution for GST

The Constitution contains the Union List and the State List within which the power to levy separate taxes is given to the Centre and States respectively. GST was to be levied in such a way that both the Centre and the States received the power to levy and collect it. Further, the legislation had to remain consistent across the Centre and the various State/Union Territory Legislatures. To provide for this, an amendment in the Constitution was necessary.

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Compensation to States Under GST

What does the Seventh Schedule State?

Constitution (101st Amendment) Act, 2016

In order to suitably implement the GST legislation, this Act resulted in the insertion, deletion and amendment of certain Articles of the Constitution. The following matters were dealt with as a result of these changes:

The delineation of powers to levy and make laws with respect to GST

The applicability and scope of the GST law

The manner of apportionment of revenue from GST among Centre and States

The constitution, powers and duties of the GST Council

The discontinuation of existing taxes to give way for GST

The manner of providing compensation to States for loss of revenue on account of the introduction of GST

Article 246A: Special Provision for GST

This Article was newly inserted to give power to the Parliament and the respective State/Union Legislatures to make laws on GST respectively imposed by each of them. However, the Parliament of India is given the exclusive power to make laws with respect to inter-state supplies. The IGST Act deals with inter-state supplies. Thus, the power to make laws under the IGST Act will rest exclusively with the Parliament. Further, the article excludes the following products from the scope of GST until a date recommended by the GST Council:

Petroleum Crude

High-Speed Diesel

Motor Spirit

Natural Gas

Aviation Turbine Fuel

Article 269A: Levy and Collection of GST for Inter-State Supply

While Article 246A gives the Parliament the exclusive power to make laws with respect to inter-state supplies, the manner of distribution of revenue from such supplies between the Centre and the State is covered in Article 269A. It allows the GST Council to frame rules in this regard. Import of goods or services will also be called as inter-state supplies. This gives the Central Government the power to levy IGST on import transactions. Import of goods was subject to Countervailing Duty (CVD) in the earlier scheme of taxation. IGST levy helps a taxpayer to avail the credit of IGST paid on import along the supply chain, which was not possible before.

Article 279A: GST Council

This Article gives power to the President to constitute a joint forum of the Centre and States called the GST Council. The GST Council is an apex member committee to modify, reconcile or to procure any law or regulation based on the context of Goods and Services Tax in India.

Article 286: Restrictions on Tax Imposition

This was an existing article which restricted states from passing any law that allowed them to collect tax on sale or purchase of goods either outside the state or in the case of import transactions. It was further amended to restrict the passing of any laws in case of services too. Further, the term 'supply' replaces 'sale or purchase'.

Article 366: Addition of Important definitions

Article 366 was an existing article amended to include the following definitions:

- Goods and Services Tax means the tax on supply of goods, services or both. It is important to note that the supply of alcoholic liquor for human consumption is excluded from the purview of GST.
- Services refer to anything other than goods.
- State includes Union Territory with legislature.

Compensation to States Under GST

This Act also contains a provision to provide for relief to states on account of the revenue loss to the states arising due to the implementation of GST. It has a validity period of five years. The Goods and Services Tax (Compensation to States) Act, 2017 was born as a result.

Website:

[Cons.amend 101-060717.pdf \(legislative.gov.in\)](https://www.legislative.gov.in/Cons.amend/101-060717.pdf)

[BASIC CONCEPTS OF GST \(PART- 12\) – Constitutional Amendment for GST\) – GST India-Goods and Services Tax in India](#)

UNIT – II GST – Overview & Concepts

Background of GST

A comprehensive GST based on the Value Added Tax (VAT) principle was first suggested by the Kelkar Task Force in December 2002. The introduction of GST in India was first announced in the Union Budget 2006-07. Since then the Empowered Committee of Ministers had worked on preparing the back ground material for GST and the draft GST Acts. Implementation of GST finally materialised with the Parliament passing the Constitutional Amendment Act in September 2016, followed by the State Legislatures and GST was rolled out with effect from 1 July 2017 (including Jammu and Kashmir with effect from 8 July 2017). As stated by the President of India Sri Pranab Mukherjee on the launch of GST from the Central Hall of Parliament on 30 June 2017, “GST is the result of a broad consensus arrived at between the Centre and the States and is a tribute to the maturity and wisdom of India’s democracy”.

Concept of GST

Definition of GST

GST is a tax on supply of goods or services or both and a single tax on entire value chain of supply, right from the manufacturer to the consumer. Credit of input taxes paid at each stage will be available in the subsequent stage of value addition, which makes GST essentially a tax only on value addition at each stage. The final consumer will thus bear only the GST charged by the last dealer in the supply chain, with set-off benefits at all the previous stages. GST is a consumption based tax i.e. tax accrues to the State where goods and / or services are

finally consumed. Report No. 11 of 2019 (Indirect Taxes – Goods and Services Tax) 2 1.2.2
Taxes subsumed GST subsumed the following central and state taxes: -

Taxes subsumed

GST subsumed the following central and state taxes: -

Central Taxes subsumed	State Taxes subsumed
<ul style="list-style-type: none"> • Central Excise Duty (except five Petroleum¹ and tobacco products) • Additional Excise Duty • Service Tax • Additional Customs Duty commonly known as Countervailing Duty • Special Additional Duty of Customs. 	<ul style="list-style-type: none"> • State Value Added Tax (VAT)/Sales Tax (except five petroleum products and alcoholic liquor for human consumption) • Entertainment Tax (other than the tax levied by the local bodies) • Central Sales Tax (levied by the Centre and collected by the States) • Octroi and Entry tax • Purchase tax • Luxury tax • Taxes on lottery, betting and gambling

Central / State Excise duty and VAT would be continued on five Petroleum products, which would be subject to the levy of GST whenever notified on the recommendation of the GST Council. Tobacco products could be subjected to both Central Excise duty and GST. Alcoholic liquor for human consumption had been kept outside the ambit of GST.

Components of GST

There are three components of GST as follows: -

- Central Goods and Services Tax (CGST) : payable to the Central Government on supply of goods and services within the State/Union Territory.
- State/Union Territory Goods and Services Tax (SGST/UTGST) : payable to the State/Union Territory Government on supply of goods and services within the State/Union Territory.
- Integrated Goods and Services Tax (IGST) : in case of inter-state supply of goods and services, IGST is levied by the Government of India. Equivalent

IGST is also levied on imports into India. IGST shall be apportioned between the Union and the States as per the provisions of IGST Act.

- GST Compensation Cess: In addition to GST, a cess named GST Compensation Cess can be levied on notified goods and services and currently such cess is levied on pan masala, tobacco, aerated drinks, cars and coal.

NEED FOR GST IN INDIA:

The introduction of CENVAT removed to a great extent cascading burden by expanding the coverage of credit for all inputs, including capital goods. CENVAT scheme later also allowed credit of services and the basket of inputs, capital goods and input services could be used for payment of both central excise duty and service tax. Similarly, the introduction of VAT in the States has removed the cascading effect by giving set-off for tax paid on inputs as well as tax paid on previous purchases and has again been an improvement over the previous sales tax regime.

But both the CENVAT and the State VAT have certain incompleteness. The incompleteness in CENVAT is that it has yet not been extended to include chain of value addition in the distributive trade below the stage of production. Similarly, in the State-level VAT, CENVAT load on the goods has not yet been removed and the cascading effect of that part of tax burden has remained unrelieved. Moreover, there are several taxes in the States, such as, Luxury Tax, Entertainment Tax, etc. which have still not been subsumed in the VAT. Further, there has also not been any integration of VAT on goods with tax on services at the State level with removal of cascading effect of service tax.

CST was another source of distortion in terms of its cascading nature. It was also against one of the basic principles of consumption taxes that tax should accrue to the jurisdiction where consumption takes place. Despite remarkable harmonization in VAT regimes under the auspices of the EC, the national market was fragmented with too many obstacles in free movement of goods necessitated by procedural requirement under VAT and CST.

In the constitutional scheme, taxation powers on goods was with Central Government but it was limited up to the stage of manufacture and production while States have powers to tax sale and purchase of goods. Centre had powers to tax services and States also had powers to tax certain services specified in clause (29A) of Article 366 of the Constitution. This sort of division of taxing powers created a grey zone which led to legal disputes. Determination of what constitutes a goods or service is difficult because in modern complex system of production, a product is normally a mixture of goods and services.

As can be seen from the previous paragraphs, India moved towards value added taxation both at Central and State level, and this process was complete by 2005. Integration of Central VAT and State VAT therefore is nothing but an inevitable consequence of the reform process. The Constitution of India envisages a federal nature of power bestowed upon both Union and States in the Constitution itself. As a natural corollary of this, any unification of the taxation system required a dual GST, levied and collected both by the Union and the States.

Objectives of GST in India

- **To Eliminate the Cascading Effect:** Cascading effect means when is the tax on tax levied on a product at every step of the sale until it is sold to the final consumer. GST would be levied only to the net value added on the product, not to the whole value of the product.
- **Uniform Tax Structure:** *ONE NATION ONE TAX* Before the GST the tax rate is different for the different parts of the Country on different goods and services. Before GST People come to Delhi and used to buy electronics from Delhi because the tax

rate on electronics in Delhi is less than in other states in India. Now, tax is the same in every state.

- **Ease Of Doing Business:** After GST, the problems in indirect tax have been reduced. Earlier firms faced many problems for registration of excise customs, VAT, dealing with tax authorities, etc. The benefits of GST has helped companies to carry out their business with ease.
- **Regulation Of Unorganized Sector:** In India, there is a lot of Sector which still Unorganized. The government tries to put those firms into the main streamline. This business can be a bakery in your locality or maybe a small factory. Now, these firms/factories/business also paying GST which increases the revenue of the Indian Government.
- **Increase In Revenue:** GST increases the revenues of the central government and state governments. Tax Evasion is very hard so every firm needs to pay taxes(GST). The false claim is very less due to it as this requires matching of invoices between the recipient and the suppliers.
- **Online Procedure:** The entire process under the GST regime starting from registration to return filling is online. Filling the GST is easier than the old Tax because we fill only one return under GST and before GST we need to fill return to every tax to tax departments.
- **Product Competitiveness:** GST is meeting the India Tax system with international tax standards. After GST the production cost will decrease as there is no more Cascading effect in the tax system. So, Indian product costs will be low and products can more competitive in the global market.

GST on Business Owners

Goods and Services Tax or GST is an indirect tax regime used in India on the supply of goods and services. GST came into action from July 1st, 2017 through the implementation of the One Hundred and First Amendment of the Constitution of India by the Government of India. It replaced existing multiple taxes levied by the central and state governments.

GST has brought in 'one nation one tax' system, it is a comprehensive, destination-based, multistage, tax and it has successfully subsumed almost all the indirect taxes except a few state taxes. The effect of this new tax regime on various industries is slightly different. The differentiation's first level will come in depending on whether the industry deals with manufacturing, distributing and retailing or is providing a service.

Here we are going to analyse the impact of GST and we will also put our opinion whenever needed, So let's get started.

Impact of GST on Manufacturers, Distributor, & Retailers

Goods and Services Tax is actually increasing competitiveness and performance in India's manufacturing sector. However, declining exports, as well as high infrastructure spending, are a few of the concerns in this sector. Earlier there were multiple indirect taxes that had increased the administrative costs for manufacturers and distributors, But with GST in action, they are getting relaxation on compliance burden and due to it the sector is expected to grow more robustly.

After the implantation of GST, businesses which were not under any tax regime previously will now have to register. Thus GST is also avoiding the scope of tax evasion.

Impact of GST on Service Providers

As per the report of March 2014, there were 12lac+ service tax assessees in India but only the top 50 paid more than half of the tax collected nationwide. Most of the tax is collected by domains such as IT services, the Insurance industry, telecommunication services, business support services, Banking and Financial services, etc. All these pan-India businesses are already working in a unified market and will see reduced compliance burden after GST. The benefits all come with GST also need an important step from the service provider side now they will have to separately register every place of their business in each state.

Now after explaining the Impact of GST on Manufacturers, Distributor, Retailers and service provider lets take a look at Sector-wise Impact Analysis.

Sector-Wise GST Impact Analysis

GST Impact on Agriculture

As you already know that With around 16% of Indian GDP, the agricultural sector is doing the largest contribution in the overall Indian GDP. But it doesn't mean that everything was profitable in this sector Before the GST one of the major issues of this sector was the transportation of agri-products across state lines all over India. GST with less taxation is helping is but it is still much, thus it is expected through GST to resolve the issue of transportation

GST Impact on Automobiles

There is a huge benefit with GST on Cars. GST actually provided the best benefits to the buyer and almost every part of this sector. The Indian automobile industry is a vast business producing a large number of cars annually. There were several types of taxes applicable to this sector like excise, VAT, sales tax, road tax, motor vehicle tax, registration duty before GST but now everything is adjusted in GST. Buyer has to pay extra cess rate along with applicable GST.

GST Impact on FMCG

The FMCG sector is also getting some benefits due to the new taxation regime, It is experiencing notable savings in logistics and distribution costs. It happens because the GST has eliminated the need for multiple sales depots.

GST Impact on Freelancers

Freelancing in India is still not a vast industry, thus the rules and regulations for this growing industry are still up in the air. GST's online scheme makes most of the thing much easier for freelancers to file their taxes online. In the GST regime, they are taxed as service providers, and the new tax structure brought clarity and accountability in this sector.

GST Impact on E-commerce

The Ecommerce sector is growing rapidly in India and GST is supporting the e-com sector's continued growth In many ways, the long-term effects are going to be particularly interesting because the GST law introduces a Tax Collection at Source (TCS) mechanism. E-commerce companies are not too happy with TCS now however currently the rate of TCS is at 1%.

Recently a new section is included, section 194-O defines the applicability of TDS on E-commerce transactions.

GST Impact on Logistics

India is a vast country and probably the logistics sector forms the backbone of the economy. We can easily assume that a well established and mature logistics industry has the potential to give a boost to the “Make In India” initiative of the Government of India to a desired and suitable position soon.

GST Impact on Pharma

If we observe the performance of pharma and healthcare industries then we can clearly see that the GST is benefiting these industries. The GST created a level playing field for generic drug makers and also boosting medical tourism. Additionally, It simplified the tax structure. However, there is concern relates to the pricing structure only and the sector is hoping for a tax respite, and if it happens then it will make healthcare easier, affordable and in reach of everyone.

GST Impact on Real Estate

It is one of the most pivotal sectors of the Indian economy, Real Estate is playing an important role in employment generation in India. The impact of GST can't be seen soon due to the dependency on the tax rates. However, the real estate sector will see substantial gains from GST implementation, because it brought transparency and accountability in this sector.

GST Impact on Startups

It brings some beneficial changes already for this sector such as increased limits for registration, a DIY compliance model, tax credit on purchases, and a free flow of goods and services. Before the GST, many Indian states had their own different VAT laws which were confusing for companies that have a pan-India presence, especially the e-commerce sector. Most of the issues have been solved under GST.

GST Impact on Telecommunications

We have seen a bit of price cut in this sector too, but due to the regular changes finding the accurate answer is hard. However, in the telecom sector, prices decreased after GST for some time. Manufacturers will save costs through efficient management of inventory and by combining their warehouses. Similarly, it will be much easier for Handset manufacturers to sell their stuff or equipment as the GST system has negated the requirement to set up state-specific entities, and transfer stocks which will result in saving up on logistics costs.

Benefits of GST/SGST/CGST/IGST

GST is a win-win situation for the entire country. It provides benefits to all the

stakeholders of industry, Government and customers. It is expected that it will reduce

cost of goods and services and make them globally competitive. The significant benefits of GST are discussed hereunder:

(a) Creation of unified national market: GST aims to make India a common

market with common tax rates and compliances (procedures) and remove the economic barriers to form an integrated economy in the national level.

(b) Mitigation of ill effects of cascading: GST subsume most of the Central and States indirect taxes into a single tax and allow the credit of tax paid from the output tax for the transaction across the entire value chain process. Eradication of “tax on tax” gives the benefit to the industry.

(c) Boost to ‘Make in India’ initiative: GST will give major boost to the ‘Make in India’ initiative of government of India by making goods and services produced in India competitive in the national as well as international market.

(d) Increase in government revenue: GST is expected to increase the Government revenue by widening the tax base and improving the taxpayer compliances.

The Central Goods and Service Tax Act, 2017 for imposing CGST on intrastate supply of goods and services, extends whole of India including Jammu and Kashmir.

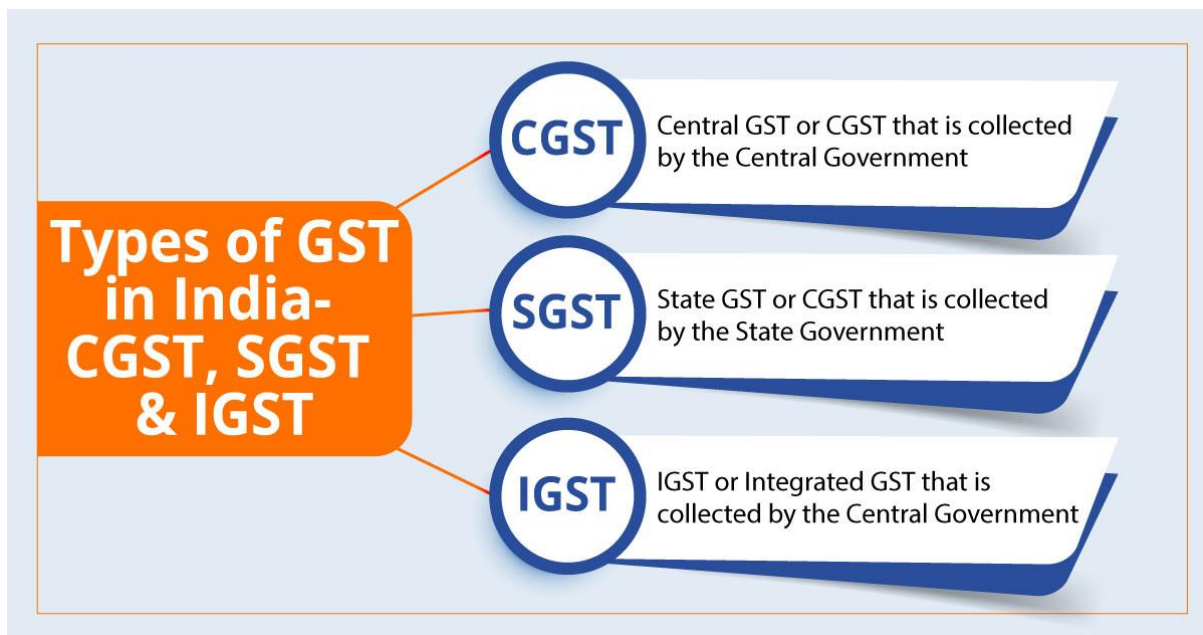
Respective State Goods and Service Tax Act, 2017 for imposing SGST by respective state on intra-state supply of goods and services, extends whole of that state/ Union territory having state legislature (Delhi and Puducherry).

The Union Territory Goods and Services Tax Act, 2017 for levying UTGST in 5 Union Territories without State Legislatures on intra-Territory supply of goods and services. (Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli, Daman and Diu and Chandigarh)

The Integrated Goods and Service Tax Act, 2017 for levying IGST and whole of India including Jammu and Kashmir.

Taxes under GST

Goods and services tax aims at removing the various taxes that are currently levied by the central government and the state government such as Value added tax (VAT), excise duty, sales tax, service tax, special additional duty of customs etc. Since India has a federal structure, both the centre and the state would be given some power and authority to levy and collect taxes under goods and services tax. Three kinds of taxes would be levied and they are as follows-



CGST

It stands for central goods and services tax. As the name suggests the tax would be levied and collected by the centre on the intra-state supply of goods and/or services.

For instance, X, a dealer in Uttar Pradesh sells goods worth Rs. 10,000 to Y in Rajasthan. Thus, CGST would be levied and collected by the centre. Suppose the CGST rate is 8%, thus the dealer would charge Rs. 800 as CGST and this would be collected by the centre.

SGST

It stands for state goods and services tax. As the name suggests the tax would be levied and collected by the state on intra-state supply of goods and/or services.

For instance, X, a dealer in Uttar Pradesh sells goods worth Rs. 10,000 to Y in Rajasthan. Thus, SGST would be levied and collected by the state. Suppose the SGST rate is 7%, thus the dealer would charge Rs. 700 as SGST and this would be collected by the state.

IGST

It stands for integrated goods and services tax. As the name suggests the tax would be obtained by integrating the CGST and SGST. It will be levied on inter-state movement of goods and services by the centre. It would also apply to imports.

For instance, X, a dealer in Uttar Pradesh sells goods worth Rs.10,000 to Y in Uttar Pradesh. Suppose the SGST rate is 7%, and the CGST rate is 8%.

Hence, SGST + CGST + IGST

$$7\% + 8\% = 15\%$$

Thus, the dealer would charge Rs. 1500 as IGST. Out of this amount Rs. 700 would be collected by the state and Rs. 800 would be collected by the centre.

GST Rates for Various Goods

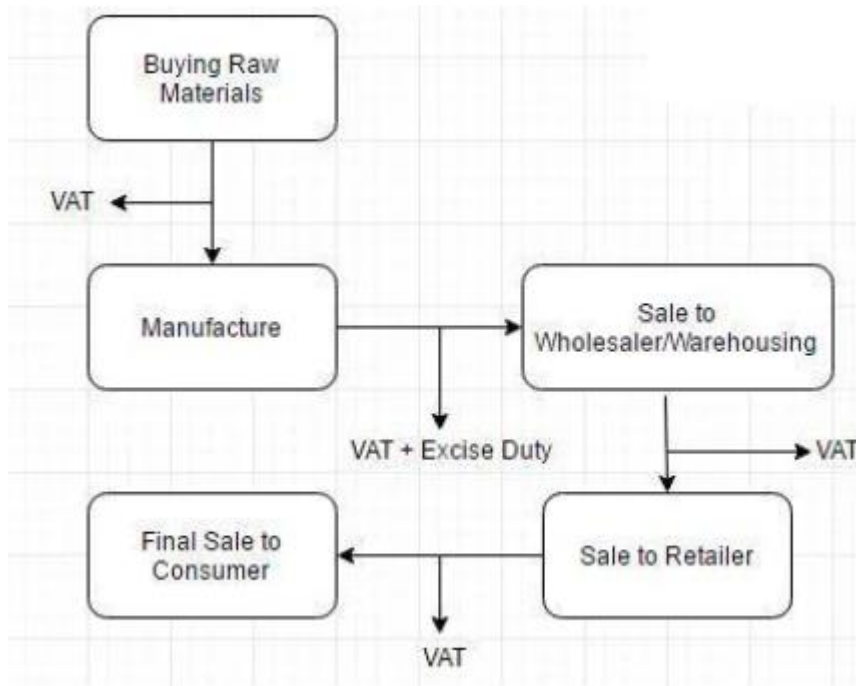
The Goods and Services Tax (GST) Council meeting was held at Srinagar, Jammu & Kashmir on 18th May 2017. The Council has approved the Goods and Services Tax (GST) rates for goods at 5%, 12%, 18% and 28% to be levied on certain goods. Here is a table depicting some of the goods and the rate of tax levied on them. It will replace all indirect taxes levied on goods and services by the Indian Central and State governments. It is aimed at being comprehensive for most goods and services.

No Tax	5%	12%	18%	28%
Fresh vegetables roots and tubers	Ivory	Live horses	Condensed milk	Molasses
Fruits	Coffee and tea	Butter and other fats	Malt	Chocolates
Puffed rice	Cereal	Dry fruits	Refined sugar	Pan masala
Common salt	Cocoa beans	Starches	Jams and jellies	Paints and varnishes
Organic manure	Bakery dough	Sausages, fish etc.	Ice-creams	Make-up products
Municipal waste	Sweet meats	Bio-gas	Slag, dross, ash and residue	toothpaste

GST is known as the Goods and Services Tax. It is an indirect tax which has replaced many indirect taxes in India such as the excise duty, VAT, services tax, etc. The Goods and Service Tax Act was passed in the Parliament on 29th March 2017 and came into effect on 1st July 2017.

In other words, [Goods and Service Tax \(GST\)](#) is levied on the supply of goods and services. Goods and Services Tax Law in India is a **comprehensive, multi-stage, destination-based tax** that is levied on every **value addition**. GST is a single domestic indirect tax law for the entire country.

Before the Goods and Services Tax could be introduced, the structure of indirect tax levy in India was as follows:



Under the GST regime, the tax is levied at every point of sale. In the case of intra-state sales, Central GST and State GST are charged. All the inter-state sales are chargeable to the Integrated GST.

Now, let us understand the definition of Goods and Service Tax, as mentioned above, in detail.

Multi-stage

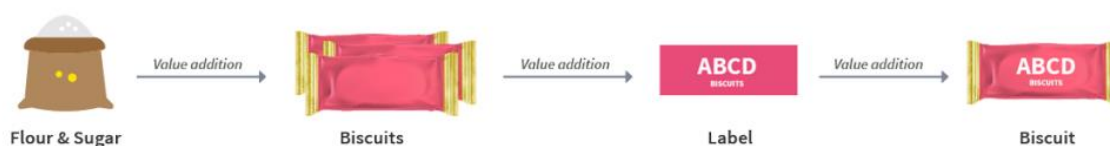
An item goes through multiple change-of-hands along its supply chain: Starting from manufacture until the final sale to the consumer.

Let us consider the following stages:

- Purchase of raw materials
- Production or manufacture
- Warehousing of finished goods
- Selling to wholesalers
- Sale of the product to the retailers
- Selling to the end consumers

The Goods and Services Tax is levied on each of these stages making it a multi-stage tax.

Value Addition



A manufacturer who makes biscuits buys flour, sugar and other material. The value of the inputs increases when the sugar and flour are mixed and baked into biscuits.

The manufacturer then sells these biscuits to the warehousing agent who packs large quantities of biscuits in cartons and labels it. This is another addition of value to the biscuits. After this, the warehousing agent sells it to the retailer.

The retailer packages the biscuits in smaller quantities and invests in the marketing of the biscuits, thus increasing its value. GST is levied on these value additions, i.e. the monetary value added at each stage to achieve the final sale to the end customer.

Destination-Based

Consider goods manufactured in Maharashtra and sold to the final consumer in Karnataka. Since the Goods and Service Tax is levied at the point of consumption, the entire tax revenue will go to Karnataka and not Maharashtra.

What is supply under GST?

Supply includes sale, transfer, exchange, barter, license, rental, lease and disposal. If a person undertakes either of these transactions during the course or furtherance of business for consideration, it will be covered under the meaning of Supply under GST.

supply includes

“all forms of supply of goods and/or services such as 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”

In other words if person provides services or supply of goods for consideration then he is liable to pay GST.

And “**Person**” includes—

1. an individual;
2. a Hindu undivided family;
3. a company;
4. a firm;
5. a Limited Liability Partnership;
6. an association of persons or a body of individuals, whether incorporated or not, in India or outside India;
7. any corporation established by or under any Central, State or Provincial Act or a Government company as defined in section 2(45) of the Companies Act, 2013 (18 of 2013);
8. any body corporate incorporated by or under the laws of a country outside India;
9. a co-operative society registered under any law relating to cooperative societies;
10. a local authority;
11. government;
12. society as defined under the Societies Registration Act, 1860 (21 of 1860);
13. trust; and
14. every artificial juridical person, not falling within any of the preceding sub-clauses;

Interestingly

Secondly

importation of service, whether or not for a consideration and whether or not in the course or furtherance of business,

means like reverse charge in service tax if any person receive service from abroad then he will be liable to pay GST under reverse charge whether used for business or not.

Thirdly

a supply specified in Schedule I, made or agreed to be made without a consideration.

Following list of supply is liable to GST even provides without consideration.

SCHEDULE I

MATTERS TO BE TREATED AS SUPPLY WITHOUT CONSIDERATION

1. Permanent transfer/disposal of business assets.
2. Temporary application of business assets to a private or non-business use.
3. Services put to a private or non-business use.
4. Assets retained after deregistration.
5. Supply of goods and / or services by a taxable person to another taxable or nontaxable person in the course or furtherance of business.

Provided that the supply of goods by a registered taxable person to a job-worker in terms of section 43A shall not be treated as supply of goods.

For clarification the following is list of matters which are treated as Supply of tax purpose.

SCHEDULE II

MATTERS TO BE TREATED AS SUPPLY OF GOODS OR SERVICES

1. Transfer

- Any transfer of the title in goods is a supply of goods.
- Any transfer of goods or of right in goods or of undivided share in goods without the transfer of title thereof, is a supply of services.
- Any transfer of title in goods under an agreement which stipulates that property in goods will pass at a future date upon payment of full consideration as agreed, is a supply of goods.

2. Land and Building

- Any lease, tenancy, easement, licence to occupy land is a supply of services.
- Any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly, is a supply of services.

3. Treatment or process

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

4. Transfer of business assets

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

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

3. Where any goods, forming part of the business assets of a taxable person, are sold by any other person who has the power to do so to recover any debt owed by the taxable person, the goods shall be deemed to be supplied by the taxable person in the course or furtherance of his business.

4. Where any person ceases to be a taxable person, any goods forming part of the assets of any business carried on by him shall be deemed to be supplied by him in the course or furtherance of his business immediately before he ceases to be a taxable person, unless—

1. the business is transferred as a going concern to another person; or
2. the business is carried on by a personal representative who is deemed to be a taxable person.
5. The following shall be treated as “supply of service”

a. renting of immovable property;

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

Explanation.- For the purposes of this clause-

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

1. an architect registered with the Council of Architecture constituted under the Architects Act, 1972; or
 2. a chartered engineer registered with the Institution of Engineers (India); or
 3. a licensed surveyor of the respective local body of the city or town or village or development or planning authority; the expression “construction” includes additions, alterations, replacements or remodeling of any existing civil structure
1. temporary transfer or permitting the use or enjoyment of any intellectual property right;
 2. development, design, programming, customisation, adaptation, up gradation, enhancement, implementation of information technology software;
 3. agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act;
 4. works contract including transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;
 5. transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration; and
 6. supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration.
 6. The following shall be treated as supply of goods

supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.

“2A. Where a person acting as an agent who, for an agreed commission or brokerage, either supplies or receives any goods and/or services on behalf of any principal, the transaction between such principal and agent shall be deemed to be a supply.

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

1. a supply of goods and not as a supply of services; or
2. a supply of services and not as a supply of goods; or
3. neither a supply of goods nor a supply of services.”

Where any person who receive commission/brokerage etc for agent service and provide services on behalf of his principal then transaction between principal and agent will treated as “Supply”.

But according to section 3 Central or State Government will notify the transaction which are not treated as “Supply”

Structure of GST

1. GST is levied on supply of goods and services across India (including Jammu and Kashmir). It is a single tax on the supply of goods and services, right from the manufacturer to the consumer. Under GST credit of taxes paid at previous stages is available as set-off from the output tax.

2. GST is destination based consumption tax. Benefit of tax (STCG/ UTGST) will accrue to the consuming state.

3. Centre and states will impose tax on goods and services simultaneously. Centre now can impose tax on sale of goods within State and States can impose tax on services.

(a) Intra-State supply of goods and services

z CGST-Payable to Central Government

z SGST/ UTGST-Payable to State Government/ Union Territory (as applicable) where they are consumed

(b) Inter-States Supply of goods and services

z IGST - Payable to Central Government

4. Centre will levy and administer CGST and IGST while respective States/ UT will levy and administer SGST/UTGST.

5. Import will be treated as inter-States supply and IGST will be chargeable along with basic Customs duty.

6. However, in GST Export will be treated as Zero rated supplies and no IGST is payable.

7. The rates of GST are 0.5%, 3%, 5%, 12%, 18% and 28%. In addition compensation cess will be payable on pan masala, coal, aerated water and motorcars (Sin cess). There is no education cess or Swach Bharat cess or KrishiKalyan cess on GST.

8. GST will be calculated on value of supply of goods and services, which is transaction value. (subject to some exceptions)

9. Under GST, every suppliers who have made taxable supply shall required to get himself registered under GST Law.

10. A registered person is entitled to take credit (deduction) of input tax paid from the output tax (if any) subject to following restriction:

(a) Utilisation of IGST : first utilized for the payment of IGST then the balance may be utilized towards payment of CGST and SGST/UTGST

(b) Utilisation of CGST: first utilized for the payment of CGST then the balance may be utilized towards payment of IGST.

(c) Utilisation of SGST/UTGST: first utilized for the payment of SGST/UTGST then the balance may be utilized towards payment of IGST.

11. Under GST regime there is a seamless (without any obstruction) credit flow in case of inter-state supplies, which was not possible in pre GST period. No credit was available for CST paid by the buyer. Under GST regime the seamless credit will flow as follows:

(a) The inter-state supplier in exporting state is allowed to set off the available credit in IGST, CGST and SGST/UTGST against the IGST payable on inter-state supply made by him.

(b) The buyer of importing state in inter-state supply can avail the credit of IGST paid on purchase from the output tax payable.

(c) The exporting state transfers to the centre the credit of SGST/ UTGST utilised for the payment of IGST.

(d) The Centre transfers to the importing state the credit of IGST used in payment of SGST/UTGST.

12. A common portal or platform is needed which could act as a clearing house and verify the claims and inform the respective government to transfer the funds. This is possible with the help of a strong IT infrastructure. Accordingly Government has established common GST Electronic Portal (www.gst.gov.in), a website managed by Goods and Services Network (GSTN) for the tax payer and common IT infrastructure for Central and States. Primarily, GSTN provides three services to taxpayers.

(a) Facilitating Registration.

(b) Forwarding the returns to Central and States authorities.

(c) Computation and settlement of IGST

(d) Matching of tax payment details with banking network.

(e) Providing analysis of taxpayers' profile

The Taxable event in GST – “Supply”

Taxable event is that event, happening of which attracts liability to tax. Taxable event is a very important event in any law as the levy and collection of tax is based on the happening of the taxable event. Although, the taxable event happens to be at a particular point of time, the levy and collection of such tax may be postponed for administrative convenience, to a later date.

The Article 366 (12A) of the Constitutional (101st Amendment) Act, 2016 defines “Goods and Services Tax” as any tax on supply of goods, or services or both, except for taxes on the supply of the alcoholic liquor for human consumption.

The taxable event in GST is supply of goods or services or both. Therefore, supply will hold the greatest significance and shall be an important event in determining the taxability of all transaction whether commercial or otherwise under the GST regime.

The term, “supply” has been inclusively defined in the Act. Supply includes all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business. Supply also includes: import of services for a consideration whether or not in course of furtherance of business, the activities specified in schedule I (without consideration) and the activities as referred in schedule II. Though these terms are not defined in the Act, dictionary meaning of the same are elaborated below:

Sale	Transferring the property in goods from one to another, upon valuable consideration.
Transfer	Any transfer of goods or right in goods or of undivided share in goods without transfer of title thereof.
Barter	To exchange one commodity for another without use of money.
Exchange	To swap, to part with, give or transfer for an equivalent with the use of money.
Licence	Permission granted by competent authority to exercise certain privileges without such authorization the activity would have constituted as an illegal act.

Rental	Periodical payment for the use of another property.
Lease	Contractual agreement by which one party conveys an estate in property to another party, for a limited period, subject to various conditions, in exchange for something of value, but still remain ownership.
Disposal	To pass or into the control of someone else; to alienate, bestow, or part with.

The meaning and scope of supply under GST can be understood in terms of following five parameters, which can be adopted to characterize a transaction as supply:

1. Supply of goods or services. Supply of anything other than goods or services

does not attract GST

2. Supply should be made for a consideration

3. Supply should be made in the course or furtherance of business

4. Supply should be made by a taxable person

5. Supply should be a taxable supply.

While these five parameters describe the concept of supply, there are a few exceptions to the requirement of supply being made for a consideration, in the course or furtherance of business and made by a taxable person.

1. Supply of Goods or Services or Both

Section 2(52) of CGST Act 2017 defines “goods” means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply.

Section 2(102) of CGST Act 2017 defines “services” means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.

Schedule II (read with section 7) to the CGST Act, 2017 lists a few activities which are to be treated as supply of goods or supply of services. For instance, any transfer of title in goods would be a supply of goods, whereas any transfer of right in goods without transfer of title would be considered as services.

The Government may notify the transactions that are to be treated as -

- Supply of goods and not as a supply of services; or
- Supply of services and not as a supply of goods.

Further Schedule III (read with section 7) to the CGST Act, 2017 specifies activities which shall be treated as neither supply of goods nor supply of services or outside the scope of GST. This includes:

- Services by an employee to the employer in the course of or in relation to his employment.
- Services by any court or tribunal (time being in force).
- Services by MPs, MLAs, Panchayats, Municipalities and member of other local authorities.
- The duties performed by any person who had any post in pursuance of the provisions of the constitution in that capacity.
- Services of funeral, burial, crematorium or mortuary including transportation of the deceased.

- Sale of land (subject to clause (b) of paragraph 5 of schedule II) and sale of building where the entire consideration has been received after completion certificate is issued or after its first occupation.
- Actionable claims are included in the definition of goods, however, Schedule III provides that actionable claims other than lottery, betting and gambling shall be neither goods nor services.
- The activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, shall be treated neither as a supply of goods nor a supply of services. Accordingly, it has been notified that the Central Government or State Government or any local authority in which they are engaged as public authority, by way of any activity in relation to a function entrusted to a Panchayat under article 243G of the Constitution is neither a supply of goods nor a supply of service.

2. Supply for Consideration

Section 2(31) of CGST Act 2017 defines “consideration” in relation to the supply of goods or services or both includes—

(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

(b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government:

Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply.

However, there are exceptions to the requirement of ‘Consideration’ as a precondition for a supply to be called a supply as per GST. As per schedule I to CGST

Act, 2017, activities as mentioned below shall be treated as supply even if made without consideration:

- Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.
- Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business: Provided that gifts not exceeding fifty thousand rupees in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.

□ Supply of goods—

(a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or

(b) by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.

- 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.

3. Supply in the Course or Furtherance of Business

GST is essentially a tax only on commercial transactions. Hence, only those supplies that are in the course or furtherance of business qualify as supply under GST. Hence, any supplies made by an individual in his personal capacity do not come under the ambit of GST unless they fall within the definition of business as defined in the Act.

Section 2(17) of CGST Act 2017 defines “business” includes—

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

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

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

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

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

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

(g) services supplied by a person as the holder of an office which has been accepted

by him in the course or furtherance of his trade, profession or vocation;

(h) services provided by a race club by way of totalisator or a licence to book maker in such club; and

(i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities.

No definition or test has been specified to find out whether the activity is in the course or furtherance of business. However, the following business test is normally applied to arrive at a guiding factor about whether it is in the course or furtherance of business or not:

i. Whether the activity is seriously and earnestly pursued?

ii. Whether the activity is pursued with reasonable or recognizable continuity?

iii. Whether the activity is conducted in a regular manner based on sound and recognized business principles?

iv. Whether the activity is predominantly concerned with the making of taxable supply for consideration/ profit motive?

However, there is one exception to this ‘Course or Furtherance of Business’ rule

i.e., import of services for a consideration. Thus, Supply includes import of

services for a consideration whether or not in the course or furtherance of business. This implies that import of services even for personal consumption would be considered as supply and consequently, would be liable to tax. Imports of service shall be taxable on reverse charge basis, i.e, in the hands of the recipient of service. The threshold limit clause shall not apply here.

4. Supply by a Taxable Person

Section 2(107) of CGST Act 2017 defines “taxable person” means a person who is registered or liable to be registered under section 22 or section 24. A supply to attract GST should be made by a taxable person. Hence, a supply between two non-taxable persons does not constitute supply under GST. Even an unregistered person who is liable to be registered is a taxable person. Similarly, a person not liable to be registered but has taken voluntary registration and got himself registered is also a taxable person. However, there is exception to this rule, supply from a non-taxable person to a registered person in case of RCM will attract GST.

Notification no.5/2017- Central Tax dated 19-06-2017, exempts a person who is engaged in making only supplies of taxable goods or services or both on which reverse charge applies, from obtaining registration under GST. Hence, to conclude, a non-taxable person can also make a taxable supply in above scenario (subject to section 9(3) of CGST Act).

It should be noted that GST in India is State-centric. Hence, a person making supplies from different States needs to take separate registration in each State. A person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as distinct persons for the purposes of GST. Hence, a supply between these entities constitutes supply under GST.

5. Taxable Supply

Section 2(108) of CGST Act 2017 defines “taxable supply” means a supply of goods or services or both which is leviable to tax under this Act

For a supply to attract GST, the supply must be taxable supply. Taxable Supply can be either Inter State Supply or Intra State Supply.

Inter State Supply

Inter- State supply of goods means a supply of goods where the location of the supplier and place of supply are in different States or Union territories, then IGST has to paid. Imports, Supplies from and to SEZs are treated as deemed Inter-State supplies.

Intra State Supply

Intra State supply of goods means supply of goods where the location of the supplier and the place of supply are in the same State or Union territory, then CGST and SGST/UTGST has to be paid.

Various types of supplies which are not liable to tax are :

Exempt supply

Section 2(47) of CGST Act 2017 defines “exempt supply” means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply.

Thus, it can be construed that an Exempted supply includes three types of supply:

- Supply attracting Nil Tax rate
- Wholly Exempt under Section 11 of the CGST Act or section 6 of the IGST act.
- Non-taxable Supply

It is pertinent to note that :

- Definition of Aggregate Turnover includes Exempt Supply.
- Input Tax Credit is not available in case you have an Exempt outward Supply.

Notification no.02/2017 – Central Tax (Rate) dated 28-06-2017 as amended are exempted goods and its supply is Exempt Supply. Notification no.12/2017 –Central Tax (Rate) dated 28-06-2017 as amended are exempted services and its supply is exempted supply.

Example: To list a few – Milk, Fruits, Vegetables, Pure Services provided to

Government, Services by way of health care services etc.

- Non-taxable supply

Section 2(78) of CGST Act 2017 defines “non-taxable supply” means a supply of goods or services or both which is not leviable to tax under this Act or under the Integrated Goods and Services Tax Act.

Example : Alcoholic liquor for human consumption, Petroleum products etc.

- Nil rated supplies

Such Supply of goods or services which attracts nil rate of tax. It is Pertinent to note that, there is not a single good specified in the tariff schedule of GST at Nil rated. However, there is one entry in List of Services.

As per notification no.11/2017 – Central Tax (Rate) dated 28-06-2017, there is only one entry (heading 9972 is also nil entry) notified nil rated (heading 9986).

Example : Services notified nil rated are:

(i) Support services to agriculture, forestry, fishing, animal husbandry.

(ii) Services by way of pre-conditioning, pre-cooling, ripening, waxing, retail packing, labelling of fruits and vegetables which do not change or alter the essential characteristics of the said fruits or vegetables.

(iii) Carrying out an intermediate production process as job work in relation to cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products or agricultural produce.

Zero-rated supplies

“zero-rated supply” shall have the meaning assigned to it in section 16 of IGST Act.

As per Section 16. (1) “zero rated supply” means any of the following supplies of

goods or services or both, namely:—

(a) export of goods or services or both; or

(b) supply of goods or services or both to a Special Economic Zone developer

or a Special Economic Zone unit.

The main point to note is that Input Tax credit is available in case of zero –rated Supply even if the supplies are exempt. It means that if exempt supply made in India, Input Tax Credit not available but same exempt supply exported then Input tax credit available.

Example: Consultancy Services by Indian Consulting firm to overseas entity, payment for which is received in foreign currency, Sale of goods from a supplier in India to a person in Germany etc.

Composite Supply under GST

Composite supply is defined under **CGST Act** as “composite supply” means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, 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;

Illustration.— 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 a principal supply.

A composite supply has to fulfill the following conditions to be called as composite supply.

1. Supply to be made by a Taxable Person : The term “taxable person” is defined as a person who is registered or liable to be registered under section 22 or section 24. Meaning thereby composite supply can be effected by a person who is registered or liable to be registered under GST laws. An unregistered person cannot effect a composite supply.

2. Two or more taxable supplies: There should be two or more taxable supplies of goods or services or combination of goods and services. The supplies of goods or services should also be taxable supplies. Combination of one taxable supply and one exempted supply would not suffice the condition of a composite supply.

3. Supplies should be naturally bundled : The term “naturally bundled” is not defined in the CGST Act. However two supplies shall be considered naturally bundled if one is a principal supply and other supply which is ancillary make the principal supply more effective, more convenient, more comfortable, more useful and more enjoyable. E.g. food by railway on board to passengers make the journey of passengers more comfortable and enjoyable.

4. In conjunction with each other : The supplies should be provided simultaneously at the same time or at the time of principal supply being continue or just after the main supply. E.g. Packing material and disposables with door step food delivery. Another is installation of TV Set just after delivery of same at the premises of consumer.

5. In ordinary course of business : The goods or services or both provided as a package or bundle should be provided in ordinary course of business. Meaning thereby it should be the practice of majority of traders/service providers to provide different elements of supplies as a package or bundle. Most of the consumers/receivers of supply expect to receive those packages/bundles in conjunction. Composite supply should be advertised as a whole and there should be a single price of the whole package. There should a principle supply and other supply should be ancillary to main supply and if any one of the supply is removed the other supplies lost their usefulness. There is no clear cut formula whether the composite supply is provided in ordinary course of business. One has to see each and every case of composite supply whether it is in the ordinary course of business or not on the basis of some of the indicators cited above including other industry specific requirements.

E.g. Breakfast provided by hotels with the service of lodging and boarding is naturally bundled as it is frequent practice adopted by hotel industry and most of the consumer expect hotel to provide breakfast during the time of checkin.

6. Principle Supply : A principle supply is defined in CGST Act as “principal supply” means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary. Meaning Principal supply is that supply for which supplier and receipt come together and that supply which is the actual intention of consumer to get from the supplier. E.g. Mr. ‘A’ go to auto-mobile shop for purchasing an auto part. However supplier also installed it at the same time and charge a single price for that auto part including installation. In this case the actual intention of the consumer is to buy the auto part. The installation is ancillary to principal supply which is purchase of auto part. Therefore predominant nature of supply is purchase of goods.

A composite supply has to comply with the above conditions to get a composite supply character. In short composite supply is the bundle of two or more taxable supplies which are provided by the traders or service providers to their consumers as a normal trade practice normally for a single price and consumers also become habitual of getting those multiple supplies together.

7. Rate of Tax on Composite Supply : The rate of tax on composite supply is applicable at the rate which is applicable to principal supply of the composite supply. Eg. Meal is sold by supplier with disposables. In this case meal is the principal supply and disposables are ancillary to meal. Rate of tax shall be that which is applicable to meal.

Mixed Supply under GST

The mixed supply is defined in the Act as “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.

A mixed supply has to comply with the following condition to be called as mixed supply.

- 1. Two or more individual supplies :** There should be two or more individual supplies whether these are taxable supplies or exempted supplies or any combination thereof. Unlike in case of composite supply there is no need that all the supplies of bundle should be a taxable supply. The supplies could be that of goods or services or both or any combination of these two.
- 2. Provided in conjunction of each other :** Like in case of composite supply, mixed supply should also be provided at the same time or as a bundle or package of multiple supplies.
- 3. Single price :** There should be a single price for multiple supplies forming a combination.
- 4. Does not constitute a composite supply :** A supply could only become a mixed supply when it fail to get the character of a composite supply. All the necessary conditions of a composite supply are not present in the combination. Meaning thereby the combination offered for a single price should not be naturally bundled and should not be provided in ordinary course of business. The combination has to fail these two tests for calling a mixed supply.

In short the mixed supply is a combination of multiple supplies which are independent from each other. The combination is not sold by the trade in normal trade practice. The constituent supply of combination can be sold independently. The consumer do not generally expect the combination to be provided in conjunction with each other. E.g. Toilet cleaner sold with toilet brush for a single price. Another one is Diwali gift packs containing sweets, chocolates, namkeen and juices etc.

5. Rate of Tax applicable to Mixed Supply : The rate of tax applicable to mixed supply is the highest rate applicable to any of the constituent supply of the combination.

Example-1: Fruits and chocolates are sold as combination for single price. Fruits are taxable at Nil rate while chocolates are taxable at 18%. Whole of the combo shall be taxable at 18% despite fruits are Nil rated.

Example-2: 5 kg pack of Branded Rice and 5 kg pack of washing powder are sold as a combo for a single price. Branded rice is taxable at 5% while washing powder is taxable at 18%. Whole the combo is taxable at 18% which is the highest rate.

Composition Levy under GST

Composition levy is kind of GST for small taxpayers who are not able to do complicated compliances of GST laws as applicable to regular taxpayers. The compliance level for those small taxpayers is very minimal and applicable tax rate for composition levy is uniform across all type of goods or services. Infact composition levy is a scheme provided by Govt. to small taxpayers at their option. Therefore it is at the option of the small taxpayer whether he wants to avail the scheme or not. Moreover such taxpayer can avail the scheme for a particular financial year and also can opt out from the scheme at the beginning of upcoming financial year. Before opting in for composition levy by any small taxpayer, he must know the following.

Eligibility of composition levy :

Type of taxpayer	Aggregate Turnover limit	Rate of tax applicable	Applicable section
Manufacturer other than manufacturers of i) Ice cream and other edible ice, whether or not containing cocoa ii) Pan Masala iii) Tobacco and manufactured tobacco substitutes	1.5 crore (w.e.f. 01-04-2019) In case of special category states it is 75 Lacs i.e. (i) Arunachal Pradesh, (ii) Manipur, (iii) Meghalaya, (iv) Mizoram, (v) Nagaland, (vi) Sikkim, (vii) Tripura, (viii) Uttarakhand:	0.5 % CGST 0.5% SGST/UTGST On the turnover in the State/Union territory	Section 10(1)(a)
Restaurants serving Food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption)	1.5 crore (w.e.f. 01-04-2019) In case of special category states it is 75 Lacs	2.5 % CGST 2.5 % SGST On the turnover in the State/ Union territory	Section 10(1)(b)
Traders	1.5 crore (w.e.f. 01-04-2019) In case of special category states it is 75 Lacs	0.5 % CGST 0.5% SGST/UTGST On the turnover in the State/ Union territory	Section 10(1)(c)
Service Providers or mix suppliers providing both goods and services	50 Lacs	3% CGST 3% SGST On Turnover in the	Section 10(2A)

		State/Union territory	
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The manufacturers, restaurants and traders can also provide services upto the limit of 10% of turnover or Rs. 5 lacs whichever is higher.

Example :

1. Mr. A is a manufacturer of shoes and his turnover from supply of shoes in preceding financial year is Rs. 1.25 crore. Mr. A also provide services of shoe designs to other shoe manufacturers and his turnover such services is Rs. 9 Lac. Therefore total turnover from supply of shoes and supply of service is Rs. 1.34 crore. Mr. A can opt for composition scheme in section 10(1)(a) and shall pay tax @ .5% CGST and .5% SGST on all his turnover of goods and services as his turnover of supply of services is less than 10% of aggregate turnover.

2. Mr. B is trader of garments and his turnover is 25 lac rupees in preceding financial year. He also provide services of commission agent and his receiving of commission are Rs. 4.8 lac rupees in preceding financial year. Mr. B can opt composition levy u/s 10(1)(c) @ 0.5% CGST and 0.5% SGST as his supply of services are within 5 lac rupees.

Other Conditions to be fulfilled :

1. He is not engaged in the supply of services other than supplies of restaurant services as mentioned above. Although he can provide services upto 10% of turnover or 5 Lac whichever is higher.

2. He is not engaged in making any supply of goods or services which are not leviable to tax under this Act. E.g. Alcoholic liquor for human consumption, petrol, high speed diesel, natural gas and aviation turbine fuel.

3. He is not engaged in making any inter-State outward supplies of goods or services. A composition taxpayer can supply within the state only. However he can purchase outside his State.

4. He is not engaged in making any supply of goods or services through an electronic commerce operator who collects TCS like Flipkart, Amazon etc.

5. He is not a manufacturer of such goods as may be notified by the Government. Notified goods are Ice cream and other edible ice, whether or not containing cocoa, Pan Masala, Tobacco and manufactured tobacco substitutes.

6. He is neither a casual taxable person nor a non-resident taxable person

7. Where more than one registered person are having the same **Permanent Account Number issued under the Income-tax Act, 1961**, the registered person shall not be eligible to opt for the scheme unless all such registered persons opt to pay tax under composition levy.

8. The option availed composition scheme shall lapse with effect from the day on which his aggregate turnover during a financial year exceeds the specified limit of 1.5 crore or 50 lacs as applicable.

9. Composition taxpayer shall not be entitle to credit of Input Tax paid on his purchases or inward supplies.

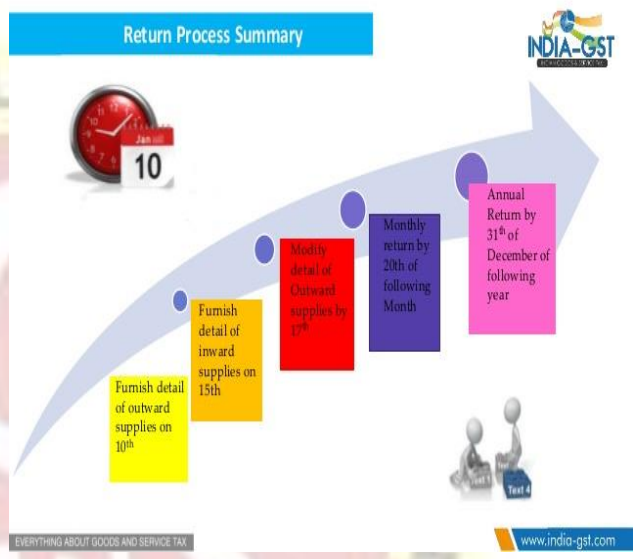
10. Composition taxpayer shall not collect tax from recipients.

11. He shall pay tax under reverse charge mechanism where applicable.

12. He shall mention the words — “composition taxable person, not eligible to collect tax on supplies” at the top of the “bill of supply” issued by him

13. He shall mention the words — “composition taxable person” on every notice or signboard displayed at a prominent place at his principal place of business and at every additional place or places of business

UNIT- III GST Taxation/ Assessment proceedings

<p>A GST return is a document containing details of all income/sales and/or expense/purchase which a taxpayer (every GSTIN) is required to file with the tax administrative authorities.</p> <p>This is used by tax authorities to calculate net tax liability. Under GST, a registered dealer has to file GST returns that broadly include:</p>	 <p>The diagram, titled 'Return Process Summary', illustrates the timeline for filing GST returns. It features a large blue arrow pointing right, with a clock icon showing 'Jan 10' at the top left. The process steps are: 'Furnish detail of outward supplies on 10th' (yellow box), 'Furnish detail of inward supplies on 15th' (yellow box), 'Modify detail of Outward supplies by 17th' (red box), 'Monthly return by 20th of following Month' (purple box), and 'Annual Return by 31st of December of following year' (pink box). The diagram also includes the 'INDIA-GST' logo, a small figure of a person, and the website 'www.india-gst.com'.</p>
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GST Return

- Purchases
- Sales
- Output GST (On sales)
- Input tax credit (GST paid on purchases)

To file GST returns or for GST filing, that allows import of data from various ERP systems such as Tally, Busy, custom excel, to name a few. Moreover, there is option to use desktop app for Tally users to directly upload data and filing.

In the GST regime, any regular business having more than Rs.5 crore as annual aggregate turnover has to file two monthly returns and one annual return. This amounts to 26 returns in a year.

The number of GSTR filings vary for quarterly GSTR-1 filers under QRMP scheme. The number of GSTR filings online for them is 9 in a year, including the GSTR-3B and annual return.

There are separate returns required to be filed by special cases such as composition dealers whose number of GSTR filings is 5 in a year.

GST filings as per the CGST Act subject to changes by CBIC Notifications

Return Form	Description	Frequency	Due Date
GSTR-1	Details of outward supplies of taxable goods and/or services affected.	Monthly	11th* of the next month with effect from October 2018 until September 2020. *Previously, the due date was 10th of the next month.
		Quarterly (If opted under the QRMP scheme)	13th of the month succeeding the quarter. Was end of the month succeeding the quarter until December 2020)
GSTR-2 Suspended from September 2017 onwards	Details of inward supplies of taxable goods and/or services effected claiming the input tax credit.	Monthly	15th of the next month.
GSTR-3 Suspended from September 2017 onwards	Monthly return on the basis of finalisation of details of outward supplies and inward supplies along with the payment of tax.	Monthly	20th of the next month.
GSTR-3B	Simple return in which summary of outward supplies along with input tax credit is declared and payment of tax is affected by the taxpayer.	Monthly	20th of the next month from the month of January 2021 onwards^ Staggered^^ from the month of January 2020 onwards upto December 2020.* *Previously 20th of the next month for all taxpayers.
		Quarterly	22nd or 24th of the month next to the quarter***
^20th of next month for taxpayers with an aggregate turnover in the previous financial year more than Rs 5 crore or otherwise eligible but still			

	<p>opting out of the QRMP scheme.</p> <p>^^ 1. 20th of next month for taxpayers with an aggregate turnover in the previous financial year more than Rs 5 crore.</p> <p>2. For the taxpayers with aggregate turnover equal to or below Rs 5 crore, 22nd of next month for taxpayers in category X states/UTs and 24th of next month for taxpayers in category Y states/UTs</p> <p>***For the taxpayers with aggregate turnover equal to or below Rs 5 crore, eligible and remain opted into the QRMP scheme, 22nd of month next to the quarter for taxpayers in category X states/UTs and 24th of month next to the quarter for taxpayers in category Y states/UTs</p> <ul style="list-style-type: none"> • Category X: Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana or Andhra Pradesh or the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands and Lakshadweep. • Category Y: Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha or the Union Territories of Jammu and Kashmir, Ladakh, Chandigarh and New Delhi. 		
CMP-08	Statement-cum-challan to make a tax payment by a taxpayer registered under the composition scheme under section 10 of the CGST Act (supplier of goods) and CGST (Rate) notification no. 02/2019 dated 7th March 2020 (Supplier of services)	Quarterly	18th of the month succeeding the quarter.
GSTR-4	Return for a taxpayer registered under the composition scheme under section 10 of the CGST Act (supplier of goods) and CGST (Rate) notification no. 02/2019 dated 7th March 2020 (Supplier of services).	Annually	30th of the month succeeding a financial year.
GSTR-5	Return for a non-resident foreign taxable person.	Monthly	20th of the next month.

GSTR-6	Return for an input service distributor to distribute the eligible input tax credit to its branches.	Monthly	13th of the next month.
GSTR-7	Return for government authorities deducting tax at source (TDS).	Monthly	10th of the next month.
GSTR-8	Details of supplies effected through e-commerce operators and the amount of tax collected at source by them.	Monthly	10th of the next month.
GSTR-9	Annual return for a normal taxpayer.	Annually	31st December of next financial year.
GSTR-9A (Suspended)	Annual return optional for filing by a taxpayer registered under the composition levy anytime during the year.	Annually until FY 2017-18 and FY 2018-19	31st December of next financial year, only up to FY 2018-19.
GSTR-9C	Certified reconciliation statement	Annually	31st December of next financial year.
GSTR-10	Final return to be filed by a taxpayer whose GST registration is cancelled.	Once, when GST registration is cancelled or surrendered.	Within three months of the date of cancellation or date of cancellation order, whichever is later.
GSTR-11	Details of inward supplies to be furnished by a person having UIN and claiming a refund	Monthly	28th of the month following the month for which statement is filed.

* Subject to changes by Notifications/ Orders

** Statement of self-assessed tax by composition dealers – same as the erstwhile form GSTR-4, which is now made an annual return with effect from FY 2019-2020 onwards.

Refunds under GST

Timely refund mechanism is essential in tax administration, as it facilitates trade through release of blocked funds for working capital, expansion and modernization of existing business. The provisions pertaining to refund contained in the GST law aim to streamline and

standardise the refund procedures under GST regime. Thus, under the GST regime there will be a standardised form for making any claim for refunds.

The claim and sanctioning procedure will be completely online and time bound which is a marked departure from the existing time consuming and cumbersome procedure.

It has been decided, however, that since the online refund module is not available immediately, the refund process would be handled manually and Circular No. 17/17/2017-GST dated 15.11.2017 and Circular no. 24/24/2017-GST dated 21.12.2017 prescribing the detailed procedure have been issued.

SITUATIONS LEADING TO REFUND CLAIMS

The relevant date provision embodied in Section 54 of the CGST Act, 2017, provision contained in Section 77 of the CGST Act, 2017 and the requirement of submission of relevant documents as listed in Rule 89(2) of CGST Rules, 2017 is an indicator of the various situations that may necessitate a refund claim. A claim for refund may arise on account of

1. Export of Goods or services
2. Supplies to SEZs units and developers
3. Deemed Export supplies
4. Refund of taxes on purchase made by UN or embassies etc
5. Refund arising on account of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any court
6. Refund of accumulated Input Tax Credit on account of inverted duty structure
7. Finalisation of provisional assessment
8. Refund of pre-deposit
9. Excess payment due to mistake
10. Refunds to International tourists of GST paid on goods in India and carried abroad at the time of their departure from India
11. Refund on account of issuance of refund vouchers for taxes paid on advances against which goods or services have not been supplied
12. Refund of CGST & SGST paid by treating the supply as intra-State supply which is subsequently held as inter-State supply and vice versa. Thus practically every situation is covered. The GST law requires that every claim for refund is to be filed within 2 years from the relevant date.

INPUT TAX CREDIT

1 ITC is core provision of GST Input Tax Credit (ITC) is the core concept of GST as GST is destination based tax. ITC avoids cascading effect of taxes and ensures that tax is collected in the State in which goods or services or both are consumed. "Input tax credit" means credit of 'input tax' - section 2(56) of CGST Act.

Burden of proof on taxable person availing input tax credit - Where any person claims that he is eligible for input tax credit under this Act, the burden of proving such claim shall lie on such person - section 155 of CGST Act.

Input Tax

Section 2(62) of CGST Act defines 'input tax' as follows—

“Input tax” in relation to a registered person, means the Central tax (CGST), State tax (SGST), Integrated tax (IGST) or Union territory tax (UTGST) charged on any supply of goods or services or both made to him and includes--

(a) the integrated goods and services tax charged on import of goods

(b) the tax payable under the provisions of sub-sections (3) and (4) of section 9

[reverse charge of CGST]

(c) the tax payable under the provisions of sub-sections (3) and (4) of section 5 of the Integrated Goods and Services Tax Act [reverse charge of IGST]

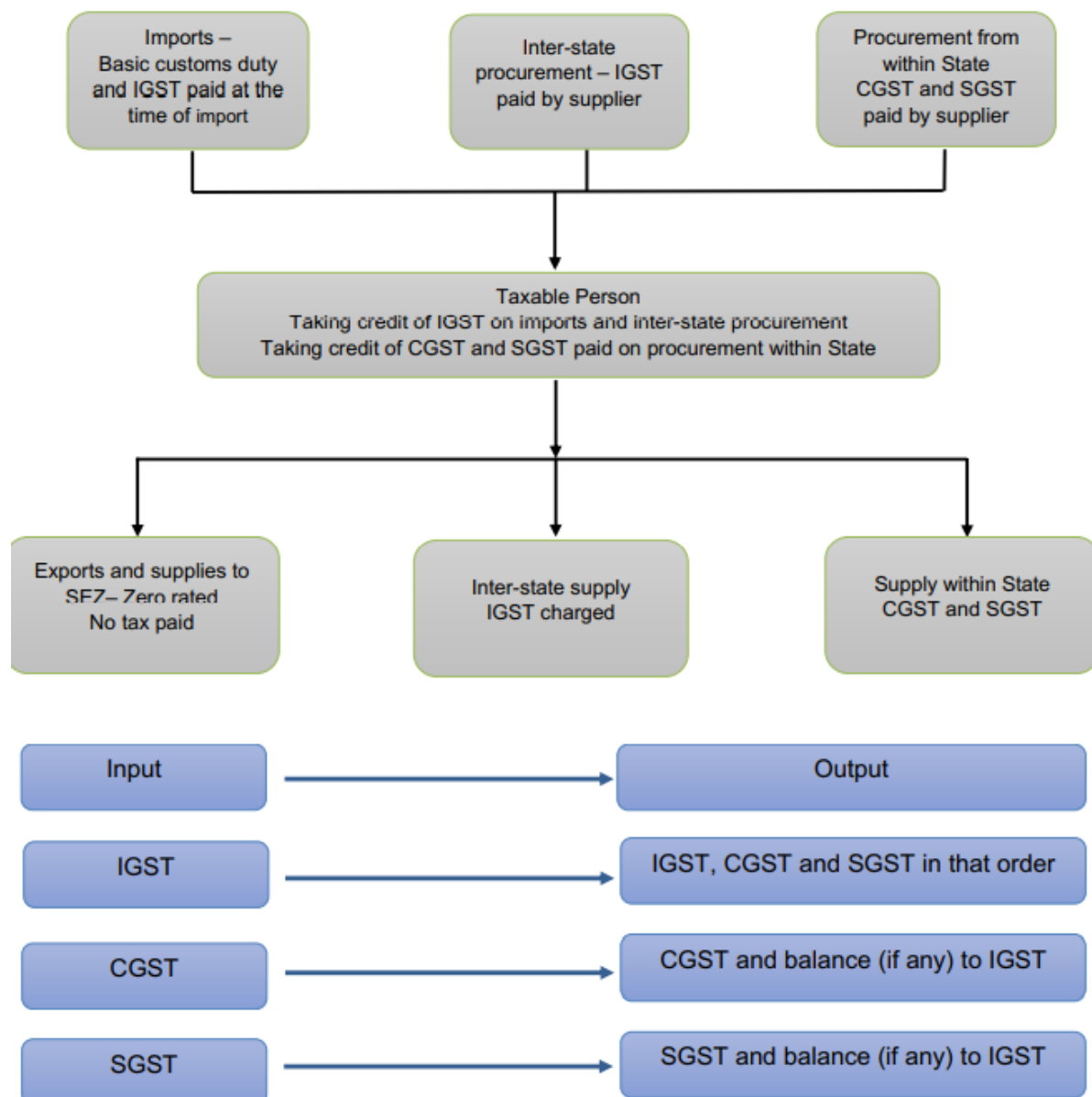
(d) the tax payable under the provisions of sub-section (3) and sub-section (4) of section 9 of the respective State Goods and Services Tax Act [reverse charge of SGST] or

(e) the tax payable under the provisions of sub-section (3) and sub-section (4) of section 7 of the Union Territory Goods and Services Tax Act [reverse charge of UTGST],but does not include the tax paid under the composition levy.

Input Tax Credit is eligible only when it is credited to electronic credit ledger of taxable person.



Flow of Input Tax Credit



Manner of taking input tax credit

Every registered taxable person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49 of CGST Act, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person - section 16(1) of CGST Act. Electronic Credit Ledger means the electronic credit ledger referred to in section 49(2) of CGST Act - section 2(46) of CGST Act.

“Electronic Credit Ledger” is the input tax credit ledger in electronic form maintained at the common portal for each registered taxable person. This credit can be utilized for GST liability as specified in section 49(4) of CGST Act.

“Input” means any goods other than capital goods, used or intended to be used by a supplier in the course or furtherance of business - section 2(59) of CGST Act.

“Input Service” means any service used or intended to be used by a supplier in the course or furtherance of business - section 2(60) of CGST Act.

“Outward supply” in relation to a person, means supply of goods or services, whether by sale, transfer, barter, exchange, licence, rental, lease or disposal or any other mode, made or agreed to be made by such person in the course or furtherance of business - section 2(83) of CGST Act.

Documentary requirements and conditions for claiming input tax creditThe input tax credit shall be availed by a registered person, including the Input Service Distributor, on the basis of any of the following documents - Rule 36 of CGST and SGST Rules, 2017 :

- (a) an invoice issued by the supplier of goods or services or both in accordance with the provisions of section 31 [Invoice of supplier of goods or services or both]
- (b) an invoice issued in accordance with the provisions of section 31(3)(f), subject to payment of tax [tax paid on reverse charge basis]
- (c) a debit note issued by a supplier in accordance with the provisions of section 34.
- (d) a bill of entry or similar document prescribed under Customs Act or Rules for assessment of IGST
- (e) an invoice or credit note issued by an Input Service Distributor in accordance with rule 54(1) of CGST Rules, 2017.

Input Tax Credit only if invoice complete in all respects - Input tax credit shall be availed by a registered person only if all the applicable particulars as prescribed in

Invoice Rules are contained in the said document, and the relevant information, as contained in the said document, is furnished in form GSTR-2 by such person - Rule 36(2) of CGST and SGST Rules, 2017.

9.2-2 Input tax credit cannot be taken after one year from date of invoice or filing of annual return

A taxable person shall not be entitled to take input tax credit in respect of any supply of goods and/or services to him after the expiry of one year from the date of issue of tax invoice relating to such supply - section 18(2) of CGST Act.

Further, a taxable person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both, after the filing of the return under section 39 of CGST Act for the month of September following the end

Para 9.2 Input tax credit (ITC) 132of financial year to which such invoice or invoice relating to debit note pertains or filing of the relevant annual return, whichever is earlier - section 16(4) of CGST Act. Really, in view of section 16(4), in case of invoices receive after October, the taxable person gets less than one year to take input tax credit.

No Input tax credit if GST was paid by supplier on advance paid to himNormally, ITC is taken on basis of ‘Electronic Credit Ledger’. However, if advance payment was made before receipt of goods and services, input tax credit cannot be taken as goods and services are not received.

At the time of payment of GST on advance, the supplier of goods and services cannot issue tax invoice. He has to issue only 'receipt voucher'.

Requirements for availing Input Tax Credit

As per section 16(2) of CGST Act, registered taxable person shall not be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless following conditions are satisfied :

- (a) he is in possession of a tax invoice or debit note issued by a supplier registered under GST Act or such other taxpaying document as may be prescribed,
- (b) he has received the goods or services or both,
- (c) subject to section 41 of CGST Act, the tax charged in respect of such supply has been actually paid to the credit of the appropriate Government, either in cash or through utilization of input tax credit admissible in respect of the said supply [section 41 of CGST Act allows taking input tax credit in electronic credit ledger on self assessment basis], and
- (d) he has furnished the return under section 39 [every taxable person is required to file electronic return every month as per section 39 of CGST Act].

Inputs or capital goods received in instalments- Where the goods against an invoice are received in lots or instalments, the registered taxable person shall be entitled to the credit upon receipt of the last lot or instalment - first proviso to section 16(2) of CGST Act.

Delivery to transporter by supplier is sufficient to take input tax credit - For the purpose of section 16(2)(b) of CGST Act, it shall be deemed that the taxable person has received the goods where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise - Explanation to section 16(2)(b) of CGST Act.

Section 39(1) of Sale of Goods Act states that delivery of goods to carrier is prima facie delivery to buyer.

As per section 23(2) of Sale of Goods Act, if, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee, for the purpose of transmission to the buyer, and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract. It does not make difference whether the bailee or buyer was named by buyer or not.

In *Manwar Tent Factory v. UOI* AIR 1990 SC 1735, it was held that when contract stipulates for delivery of goods F.O.R. basis at place of despatch, risk passes from consignor to consignee as soon as goods are loaded at the place of despatch.

Thus, transporter is agent of buyer for collection of goods. Hence, in my view, delivery to transporter is delivery to agent and ITC can be taken even if goods do not physically reach the place of taxable person. Of course the supplier has to upload the invoice in his GSTR-1 and the recipient has to accept it and include it in his GSTR-2.

Input tax credit only after supplier makes payment of GST - The receiver (of goods and services) can take provisional credit on basis of return filed by supplier. However, he will be eligible to take final Input Tax Credit only after the supplier of such goods and services has paid the tax.

Taking input tax credit in respect of inputs sent for job work - Input tax credit is available in respect of goods sent for job work and brought back for further use.

Provisions are contained in another chapter under job work. Reversal of input tax credit if payment not made to supplier within 180 days. Where a recipient fails to pay to the supplier of goods or services or both (other than the supplies on which tax is payable on reverse charge basis), the amount towards the value of supply along with tax payable thereon within a period of 180 days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed - second proviso to section 16(2) of CGST Act.

If partial payment is made, the reversal will be proportionate to the amount not paid to the supplier. If the recipient later makes payment to supplier, he can take credit of input tax - third proviso to section 16(2) of CGST Act.

Really, the recipient can take input tax credit only if tax has been actually paid by supplier. Then how Government is concerned about payment of invoice amount to supplier? Why Government is acting as recovery agent?

It seems that the intention is to avoid bogus transfers of input tax credit e.g. if a person has excess input tax credit, he can pass on this credit to others. However, the remedy thought of seems to be worse than disease as many genuine transactions will get affected. Often in case of large works contracts, some retention money is kept which is released after warranty period.

Further, some deductions from invoice for various reasons is common. In such case, this provision will create great nuisance to taxable persons

REVERSE CHARGE MECHANISM under GST

Generally, 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. Reverse charge means the liability to pay tax is on the recipient of supply of goods or services instead of the supplier of such goods or services in respect of notified categories of supply.

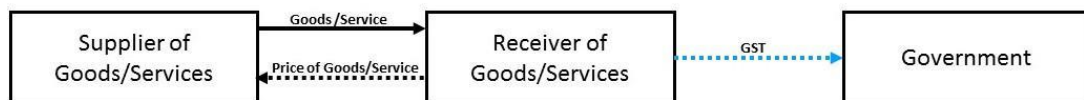
There are two type of reverse charge scenarios provided in law. First is dependent on the nature of supply and/or nature of supplier. This scenario is covered by section 9 (3) of the CGST/WBGST Act, 2017 and section 5 (3) of the IGST Act. Second scenario is covered by section 9 (4) of the CGST/WBGST Act and section 5 (4) of the IGST Act where taxable supplies by any unregistered person to a registered person is covered.

As per the provisions of section 9(3) of CGST/WBGST Act, 2017/section 5(3) of IGST Act, 2017, the Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both. Similarly, section 9(4) of CGST/WBGST Act, 2017/section 5(4) of IGST Act, 2017 provides that the tax in respect of the supply of taxable

NORMAL GST PAYMENT PROCESS



GST PAYMENT IN CASE OF REVERSE CHARGE



goods or services or both by a supplier, who is not registered, to a registered person shall be paid by such person on reverse charge basis as the recipient and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both. Accordingly, whenever a registered person procures supplies from an unregistered supplier, he needs to pay GST on reverse charge basis. However, supplies where the aggregate value of such supplies of goods or services or both received by a registered person from any or all the unregistered suppliers is less than five thousand rupees in a day are exempted.

Registration

A person who is required to pay tax under reverse charge has to compulsorily register under GST and the threshold limit of Rs. 20 lakhs (Rs. 10 lakhs for special category states except J & K) is not applicable to him.

ITC

A supplier cannot take ITC of GST paid on goods or services used to make supplies on which the recipient is liable to pay tax.

Time of Supply

The time of supply is the point when the supply is liable to GST. One of the factor relevant for determining time of supply is the person who is liable to pay tax. In reverse charge, the recipient is liable to pay GST. Thus, time of supply for supplies under reverse charge is different from the supplies which are under forward charge.

In case of supply of goods, time of supply is earliest of: -

- (a) date of receipt of goods; or
- (b) date of payment as per books of account or date of debit in bank account, whichever is earlier; or
- (c) the date immediately following thirty days from the date of issue of invoice or similar other documents.

In case of supply of services, time of supply is earliest of: -

- (a) date of payment as per books of account or date of debit in bank account, whichever is earlier; or

(b) the date immediately following sixty days from the date of issue of invoice or similar other documents. Where it is not possible to determine time of supply using above methods, the time of supply would be the date of entry in the books of account of the recipient.

Compliances in respect of supplies under reverse charge mechanism:

1. As per section 31 of the CGST/WBGST Act, 2017 read with Rule 46 of the CGST/WBGST Rules, 2017, every tax invoice has to mention whether the tax in respect of supply in the invoice is payable on reverse charge. Similarly, this also needs to be mentioned in receipt voucher as well as refund voucher, if tax is payable on reverse charge.
2. Maintenance of accounts by registered persons: Every registered person is required to keep and maintain records of all supplies attracting payment of tax on reverse charge.
3. Any amount payable under reverse charge shall be paid by debiting the electronic cash ledger. In other words, reverse charge liability cannot be discharged by using input tax credit. However, after discharging reverse charge liability, credit of the same can be taken by the recipient, if he is otherwise eligible.
4. Invoice level information in respect of all supplies attracting reverse charge, rate wise, are to be furnished separately in the table 4B of GSTR-1.
5. Advance paid for reverse charge supplies is also leviable to GST. The person making advance payment has to pay tax on reverse charge basis.

Supplies of goods under reverse charge mechanism:

S. No.	Description of supply of goods	Supplier of goods	Recipient of goods
1	Cashew nuts, not shelled or peeled	Agriculturist	Any registered person
2	Bidi wrapper leaves (tendu)	Agriculturist	Any registered person
3	Tobacco leaves	Agriculturist	Any registered person
4	Supply of lottery	State Government, Union Territory or any local authority	Lottery distributor or selling agent
5	Silk yarn	Any person who manufactures silk yarn from raw silk or silk worm cocoons for supply of silk yarn	Any registered person

No.	Description of supply or service	service	Recipient of service
1	GTA Services	Goods Transport Agency (GTA)	Any factory, society, co-operative society, registered person, body corporate, partnership firm, casual taxable person; located in the taxable territory
2	Legal Services by advocate	An individual advocate, including a senior Advocate or a firm of advocates	Any business entity located in the taxable territory
3	Services supplied by an arbitral tribunal to a business entity	An arbitral tribunal	Any business entity located in the taxable territory
4	Services provided by way of sponsorship to any body corporate or partnership firm	Any person	Any body corporate or partnership firm located in the taxable territory
5	Services supplied by the Central Government, State Government, Union territory or local authority to a business entity excluding: - (1) renting of immovable property, and (2) services specified below: - (i) services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Central Government, State Government or Union territory or local authority; (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; (iii) transport of goods or passengers	Central Government, State Government, Union territory or local authority	Any business entity located in the taxable territory
6	Services supplied by a director of a company or a body	A director of a company or a	The company or a body Corporate located in the

	corporate to the said company or the body corporate	body corporate	taxable territory
7	Services supplied by an insurance agent to any person carrying on insurance business	An insurance agent	Any person carrying on insurance business, located in the taxable territory
8	Services supplied by a recovery agent to a banking company or a financial institution or a non-banking financial company	A recovery agent	A banking company or a financial institution or a nonbanking financial company, located in the taxable territory
9	Supply of services by an author, music composer, photographer, artist or the like by way of transfer or permitting the use or enjoyment of a copyright covered under section 13(1)(a) of the Copyright Act, 1957 relating to original literary, dramatic, musical or artistic works to a publisher, music company, producer or the like	Author or music composer, photographer, artist, or the like	Publisher, music company, Producer or the like, located in the taxable territory

Transitional arrangements for ITC

Elaborate provisions have been made to carry forward the ITC earned under the existing law. Such credit should be permissible under the GST law. However, the taxable person opting for composition scheme would not be eligible for carry forward of the existing ITC. ITC of various taxes under the existing laws (CENVAT credit, VAT etc.) would be carried forward as under:

(a) Closing balance of the credit in the last returns:

The closing balance of the CENVAT credit /VAT in the last returns filed under the existing law can be taken as credit in electronic credit ledger. Such credit would be available only when returns for the previous last six months have been filed under the existing law. In order to claim this credit, declaration in form GST TRAN 1 is required to be furnished on the common portal within ninety days from the appointed day i.e. 1st July, 2017 or within such extended time

(b) Un-availed credit on capital goods

The balance instalment of un-availed credit on capital goods credit can also be taken by filing the requisite declaration in the GST TRAN 1.

(c) Credit on duty paid stock:

A registered taxable person, other than the manufacturer or service provider, may have duty paid goods in his stock on the appointed day. GST would be payable on all supplies of goods or services made after the appointed day. It is not the intention of the Government to collect tax twice on the same goods. Hence, in such cases, it has been provided that the credit of the duty/ tax paid earlier would be admissible as credit. Such credit can be taken as under: (i) Credit shall be taken on the basis of invoice evidencing payment of duty of excise or VAT (ii) Such invoices should be less than one-year old (iii) Declare the stock of duty paid goods within the prescribed time on the common portal

(d) Credit on duty paid stock when Registered Person does not possess the document evidencing payment of excise duty/VAT For traders who do not have excise or VAT invoice,

there is a scheme to allow credit to them on the duty paid stock. The features of this scheme are as under:

(i) The scheme is operative only for six months from the appointed day. It is not available to manufacturer or supplier of service. It is available to traders only.

(ii) Credit @ 60% on such goods which attract central tax @ 9% or more and @ 40% for other goods of GST paid on the stock cleared after the appointed day would be allowed. However, such goods should not be unconditionally exempted goods or taxed at nil rate under the existing law. It has also been provided that where integrated tax is paid on such goods, the amount of credit shall be allowed at @ 30% and 20% respectively of the said tax.

(iii) Credit would be allowed after the GST is paid on such goods subject to the condition that the benefit of such credit is passed on to the customer by way of reduced prices.

(iv) The statement of supply of such goods in each of the six tax periods has to be submitted.

(v) Stocks stored should be easily identifiable.

(e) Credit relating to exempted goods under the existing law which are now taxable

Input Tax Credit of CENVAT/VAT in respect of input, semi-finished and finished goods in stock attributable to exempted goods or services which are now taxable can also be taken in the same manner

(f) Input/input services in transit

There might be a scenario where input or input services are received on or after the appointed day but the duty or tax on the same was paid by the supplier under the existing law. Registered person (RP) may take credit of eligible duties and taxes, provided the in-vvoice has been recorded in the books within 30 days from the appointed day. The period can be extended by the Commissioner GST by another 30 days. A statement of such invoices have to be furnished. ISD can also distribute such credit.

(g) Tax paid under the existing law under composition scheme.

Those taxpayers who paid tax at fixed rate or fixed amount in lieu of the tax payable under the existing law but are working under normal scheme under GST can claim credit on their input stock, semi-finished and finished stock on the appointed date, subject to the following conditions: (i) Such input stock used for taxable supply under this Act (ii) Registered Person is not covered under section 10 (composition scheme) of this Act (iii) Registered Person is eligible for ITC under this Act (iv) Registered Person is in possession of the invoice or other duty payment documents (v) Such invoices are not more than twelve months old on the appointed day

(h) ITC in case of Centralised Registration under service tax.

Such Registered Person can take credit of the amount of CENVAT carry forward-ed in return furnished under the existing law, if the original/revised return under the existing law has been filed within three months. Such credit may be transferred to any of the Registered Persons having the same PAN for which the centralised registration was obtained

(i) Reclaim the reversed Input Service credit CENVAT credit reversed on account of non-payment of consideration within three months can be reclaimed if payment is made to the supplier of service within 3 months from 1st July, 2017

(j) Where any goods or capital goods belonging to the principal are lying at the premises of the agent on the appointed day This provision is specific to SGST law. In such cases, agent shall be entitled to take credit, subject to the following conditions:

- (i) The agent is a registered taxable person
- (ii) Both the principal and the agent declare the details of stock
- (iii) The invoices are not older than twelve months
- (iv) The principal has either reversed or not been availed on the input tax credit

[Transition Provision in GST.pdf;jsessionid=3814E701625A0E7A09F947D72D3750D8 \(cbic.gov.in\)](https://www.cbic.gov.in/Transition_Provision_in_GST.pdf;jsessionid=3814E701625A0E7A09F947D72D3750D8)

Administrative Structure of the GST

The structure of the GST Council is determined by Article 279 (1) of the amended Constitution of India. This Article states that the GST Council should be constituted by the President of India within a period of 60 days of the inception of Article 279A. The Article states that GST Council should be joint forum of the Central Government as well as the State Governments. It would consist of the following members –

- The Chairperson of the council would be the Union Finance Minister of the country. Presently, Mr. Arun Jaitley is the Union Finance Minister of India and as such he is also the Chairperson of the GST Council
- The Union Minister of State would be a member of the GST Council. He/she would be in charge of Revenue of Finance
- The members of the GST Council would be the minister who is in charge of finance or taxation or any other minister as nominated by the respective State Governments. Each State Government would nominate one minister to act as a member of the GST Council

Duties of the GST Council

Besides governing GST implementation in the country, the GST Council has two major duties to dispose of. These include making recommendations and holding GST Council meetings. Let's understand these duties in details –

GST Council recommendations

According to the provisions laid down under Article 279A (4), the GST Council has the duty to make recommendations about GST to the Union Government as well as the State Governments. The council would decide which goods and services would be charged to GST and which would be exempted from it. Thereafter, the GST Council has the duty of creating

laws and principles about the place of supply, threshold limits, special rates of GST for certain States of India, the applicable GST rates on various goods and services and special rates of GST during a natural calamity or a disaster so that additional resources can be raised for meeting the financial losses suffered, etc.

GST Council meetings

Another important duty of GST Council is to meet and discuss about the [GST rules and laws](#) which would be beneficial for dealers. Ever since the GST Council has been formed, various meetings have taken place. In the last GST Council meeting, the council decided that GST should be implemented on [e-way bills](#) which require goods valuing more than INR 50,000 being registered before they are moved. The GST Council also extended the deadline of filing the GSTR – 1. Anti-profiteering screening committees were also set up in the latest meeting of the GST Council. The aim of setting up these committees was to strengthen the National Anti-Profiteering Authority under the laws of GST. Besides formulating laws on GST, the GST Council also took decisions on the following aspects –

- For Indian States, except the special category States, the threshold limit or [exemption of GST](#) would be set at INR 40 lakhs
- In case of special category States, the threshold limit for exemption of GST is set at INR 10 lakhs
- In case of composition schemes, the threshold limit for GST exemption is set at INR 1.5 cr for Indian States. However, for North Eastern States and for Himachal Pradesh, the threshold limit of GST exemption is set at INR 50 lakhs
- Goods like tobacco, pan masala, ice cream and other types of edible ice manufacturers would not be eligible to avail composition levy. However, in case of restaurant services, the composition levy would be allowed on these goods and manufacturing activities.

Similarly, in the 34th GST Council meeting, some of the decisions taken by the council included the following –

- The GST rate on non-affordable houses was lowered 5%. For affordable houses, the GST rate was lowered to 1%. This lowered GST rate would be applicable on under-construction properties
- Realty estate developers can choose older GST rate of 12% on non-affordable houses. In case of affordable houses, the GST rate of 8% can be chosen till May 10, 2019
- If the old GST rate is chosen by any builder, the builder would not be able to claim input tax credit.

Besides these two duties, the GST Council also makes rules regarding GST registration, valuation, payment of GST, input tax credit, GST return, composition, transitional provisions, invoice and claiming refund, etc.

Officers under this Act CGST 2017

¹ The Government shall, by notification, ²appoint the following classes of officers for the purposes of this Act, namely:—^{3 4}

- (a) Principal Chief Commissioners of Central Tax or Principal Directors General of Central Tax,
- (b) Chief Commissioners of Central Tax or Directors General of Central Tax,
- (c) Principal Commissioners of Central Tax or Principal Additional Directors General of Central Tax,
- (d) Commissioners of Central Tax or ⁵Additional Directors General of Central Tax,
- (e) Additional Commissioners of Central Tax or Additional Directors of Central Tax,
- (f) Joint Commissioners of Central Tax or Joint Directors of Central Tax,
- (g) Deputy Commissioners of Central Tax or Deputy Directors of Central Tax,
- (h) Assistant Commissioners of Central Tax or Assistant Directors of Central Tax, and
- (i) any other class of officers as it may deem fit:

Provided that the officers appointed under the Central Excise Act, 1944 shall be deemed to be the officers appointed under the provisions of this Act. Appointment of officers.

Officers under this Act

The Government shall, by notification, appoint the following classes of officers for the purposes of this Act, namely:—

- (a) Commissioner of State tax,
- (b) Special Commissioner of State tax,
- (c) Additional Commissioners of State tax,
- (d) Deputy Commissioners of State tax,
- (e) State Tax Officers,
- (f) Assistant State Tax Officers,
- (g) State Tax Inspectors, and
- (h) any other class of officers as it may deem fit:

Provided that, the officers appointed under the Goa Value Added Tax Act, 2005 shall be deemed to be the officers appointed under the provisions of this Act, and shall be re-designated for the purposes of this Act as under.

- (a) Commissioner of Commercial Taxes— Commissioner of State Tax,
- (b) Additional Commissioners of Commercial Taxes -Additional Commissioners of State Tax,
- (c) Assistant Commissioners of Commercial Taxes — Deputy Commissioners of State Tax,
- (d) Commercial Tax Officers — State Tax Officers,
- (e) Assistant Commercial Tax Officers — Assistant State Tax Officers,
- (f) Commercial Tax Inspectors — State Tax Inspectors.

Appointment of officers.—

- (1) The Government may, in addition to the officers as may be notified under section 3, appoint such persons as it may think fit to be the officers under this Act.
- (2) The Commissioner shall have jurisdiction over the whole of the State, the Special commissioner and an Additional Commissioner in respect of all or any of the functions assigned to them, shall have jurisdiction over the whole of the State or where the State Government so directs, over any local area thereof, and all other officers shall, subject to such conditions as may be specified, have jurisdiction over the whole of the State or over such local areas as the Commissioner may, by order, specify.

Powers of officers.—

- (1) Subject to such conditions and limitations as the Commissioner may impose, an officer of State tax may exercise the powers and discharge the duties conferred or imposed on him under this Act.
- (2) An officer of State tax may exercise the powers and discharge the duties conferred or imposed under this Act on any other officer of State tax who is subordinate to him.
- (3) The Commissioner may, subject to such conditions and limitations as may be specified in this behalf by him, delegate his powers to any other officer who is subordinate to him. (4) Notwithstanding anything contained in this section, an Appellate Authority shall not exercise the powers and discharge the duties conferred or imposed on any other officer of State tax. 6. Authorisation of officers of central tax as proper officer in certain circumstances.—

- (1) Without prejudice to the provisions of this Act, the officers appointed under the Central Goods and Services Tax Act are authorised to be the proper officers for the purposes of this Act, subject to such conditions as the Government shall, on the recommendations of the Council, by notification, specify.
- (2) Subject to the conditions specified in the notification issued under sub-section (1),—

(a) where any proper officer issues an order under this Act, he shall also issue an order under the Central Goods and Services Tax Act, as authorised by the said Act under intimation to the jurisdictional officer of central tax;

(b) where a proper officer under the Central Goods and Services Tax Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under this Act on the same subject matter.

(3) Any proceedings for rectification, appeal and revision, wherever applicable, of any order passed by an officer appointed under this Act, shall not lie before an officer appointed under the Central Goods and Services Tax Act

Relevance of Cross Empowerments

The Central Board of Indirect Taxes and Customs (CBIC) has issued a letter dated June 22, 2020 addressed to Principal Director General, DGCI, providing clarification on whether intelligence-based enforcement actions initiated by the Central Tax officers against those taxpayers which are assigned to the State Tax administration gets covered under section 6(1) of the CGST Act and the corresponding provisions of the SGST/UTGST Acts or whether a specific notification is required to be issued for cross empowerment on the same lines as [notification No. 39/2017-CT dated October 13, 2017](#), authorizing the State GST Officers for the purpose of refunds under section 54 and 55 of the CGST Act.

The letter states that in the light of relevant legal provisions under the CGST Act 2017 the issue was examined and it was observed that Section 6 of the CGST Act provides for cross empowerment of State Tax officers and Central Tax officers. “Thus in terms of sub-section (1) of section 6 of the CGST Act and sub-section (1) of Section 6 of respective State GST Acts respective State Tax officer and the Central Tax officers respectively are authorized to be the proper officers for the purposes of respective Acts and no separate notification is required for exercising the said powers in this case by the Central Tax Officers under the provisions of the State GST Act. It is noteworthy in this context that the registered persons in GST are registered under both the CGST Act and the respective SGST/UTGST Act”.

The letter further clarified that a notification under section 6 (1) of the CGST Act would be part of subordinate legislation which instead of empowering the officer under the Act, can only be used to impose conditions on the powers given to the officers by the section. In the absence of any such conditions, the power of Cross empowerment under section 6(1) of the CGST Act is absolute and not conditional.

UNIT-IV - GST Audit

Audit and Assessment under GST

The revenue authorities are in the forefront to complete the historical audits/assessment under the erstwhile tax laws for the period up to June 2017. The CBIC has released GST audit plan for the year 2019-20 vide F. No. 381/49/2019 on 25.06.2019. The audit plan released by the CBIC takes the modified form of the EA-2000, which was issued for audits envisaged under the erstwhile Central Excise and Service tax laws. Which would mean that the, assesses should be geared up for the assessment/audit under the Goods and Service Tax Laws.

Meaning of the term ‘Assessment’ under GST

The term ‘Assessment’ under the tax statute would generally mean determining the tax liability and the procedure for collecting or recovering the same. The tax laws promulgated by the Indian Union (For Instance, Central Excise Act, 1944, Finance Act, 1994 etc.) and also the State Governments (For Instance, Karnataka Value Added Tax Act, 2003, Karnataka tax on Entry of Goods Act, 1979 etc.) had moved to ‘Self-Assessment’ based tax compliance, which would mean that the tax payer would assume the driver seat and determine the value of goods/service and pay the applicable taxes (with certain exception being manufactured tobacco products like ‘Cigarettes’, wherein the Central Excise authorities continues to strictly supervise the movement of goods).

The Goods and Service Tax Law being no exception, has provided the registered taxable person to self-assess the taxes payable and furnish a return for each tax period as specified under Section 39 read with Section 59 of Central Goods and Service Tax Act, 2017 (‘CGST Act, 2017’).

However, Self-Assessment, at times may lead to in-appropriate interpretation of statutes, leading to depositing lesser taxes or claiming irregular/incorrect input tax credits, refunds, thus paving way for the revenue authorities to intervene.

Section 2(11) of the CGST Act, 2017 defines the term “Assessment” to mean determination of tax liability under this Act and includes self-assessment, re-assessment, provisional assessment, summary assessment and best judgment assessment.

Assessment under the GST Laws

The ensuing paras discuss on the various means available for the tax authorities to conduct Assessment under the CGST Act, 2017 i.e.,

Section 60 – Provisional Assessment;

Section 62 – Assessment of non-filers of returns;

Section 63 – Assessment of unregistered persons;

Section 64 – Summary Assessment;

Provisional GST Assessment

The provisional assessment is carried out when the taxable person is unable to determine the value of goods or services or both or determine the rate of tax applicable thereto. The taxable person may then request the proper officer in writing giving reasons for payment of tax on a provisional basis and the proper officer shall pass an order, within a period not later than ninety days from the date of receipt of such request, allowing payment of tax on provisional basis at such rate or on such value as may be specified by him.

The provisional assessment is subject to executing 'BOND WITH SURETY' as determined by the proper officer. The proper officer shall pass then final assessment within 6 months. The Joint/Additional Commissioner may, on sufficient cause being shown and for reasons to be recorded in writing, extend date for finalising the assessment for the further period not exceeding six months and by the Commissioner for such further period not exceeding four years.

The taxable person would be liable to pay interest after the final assessment, in the event the tax earlier paid is less, and would be eligible for refund with interest prescribed under Section 56 of CGST Act, 2017, in case of excess payment.

GST Assessment of non-filers of returns

Every registered person is bound to comply with the provisions of the law by filing regular returns, whether or not any supplies of goods or services or both have been made during such tax period as envisaged in Section 39 of the CGST Act, 2017. Non-compliance with the same, would entail issuance of notice under section 46 of the CGST Act, 2017.

Any further default post service of the notice, would empower the proper officer to proceed to assess the tax liability of the said person to the best of his judgment taking into account all the relevant material available or which is gathered and issue an assessment order within a period of five years from the date specified under section 44 for furnishing of the annual return for the financial year to which the tax not paid relates.

GST Assessment of unregistered persons

Every person indulged in supply of goods or services or both shall obtain registration under the provision of the law. Where a taxable person fails to obtain registration even though he is liable to do so or whose registration has been cancelled under section 29(2) of CGST Act, 2017 but who was liable to pay tax, the proper officer may proceed to assess the tax liability of such taxable person to the best of his judgment for the relevant tax periods and issue an assessment order within a period of five years from the date specified under section 44 for furnishing of the annual return for the financial year to which the tax not paid relates.

It is pertinent to note here that, though best judgment assessment involves certain amount of guess work, however, the authorities are duty bound to make an honest and fair estimate of the income and should not act arbitrarily, there is always a certain degree of guess work in best judgment assessment. – Kachwala Gems v. JCIT (2007) 158 Taxman 71 (SC).

The proper officer may, on any evidence showing a tax liability of a person coming to his notice, with the previous permission of Additional/Joint Commissioner, proceed to assess the tax liability of such person to protect the interest of revenue. Further, if the taxable person to whom the tax liability is imposed is not ascertainable, then the person in charge shall be liable to pay the assessed tax or any other dues.

Furthermore, as per Section 160 and 161 of CGST Act, 2017, it is ought to be noted that the Assessment or re-assessment cannot be challenged/invalidated on minor grounds. Errors apparent from the records can be rectified.

Audit under the GST laws

Section 2 (13) of the CGST Act, 2017 defines the term ‘Audit’ to mean, the examination of records, returns and other documents maintained or furnished by the registered person under this Act or the rules made thereunder or under any other law for the time being in force to verify the correctness of turnover declared, taxes paid, refund claimed and input tax credit availed, and to assess his compliance with the provisions of this Act or the rules made thereunder.

The ensuing paras discuss on the various means available for the tax authorities to conduct Audits under the CGST Act, 2017 i.e.

Section 65 – GST Audit by the department;

Section 66 – Special audit

GST Audit by the department

The Commissioner or any officer authorised by him, by way of a general or a specific order, may undertake audit of any registered person for such period, at such frequency and in such manner as may be prescribed. The tax authorities may conduct audit at the place of business of the taxable person and/or at their office.

The registered person shall be informed, by way of a notice, sufficiently in advance, not less than fifteen working days, prior to the conduct of audit. The audit shall be completed within a period of three months from the date of commencement of audit (i.e. the date from which the records and other documents, called for by the tax authorities, are made available by the registered person or the actual institution of audit at the place of business, whichever is later). The Commissioner, for reason to be recorded in writing may extend the time period for a further period not exceeding six months.

The proper officer shall, within 30 days of completion of audit, make available the findings to the registered person. The findings may further lead to initiating action under section 73 or 74 of the CGST Act, 2017.

Special GST audit

The special audit may be ordered, if at any stage of scrutiny, enquiry, investigation or any other proceedings before him, any officer not below the rank of Assistant Commissioner, having regard to the nature and complexity of the case and the interest of revenue, is of the opinion that the value has not been correctly declared or the credit availed is not within the normal limits, he may, with the prior approval of the Commissioner, direct such registered person by a communication in writing to get his records including books of account examined and audited by a chartered accountant or a cost accountant as may be nominated by the Commissioner.

The special audit is in addition to any other audit and the cost of the audit shall be determined and paid by the Commissioner.

The results of the special audit in terms of detection of tax not paid or short paid or erroneously refunded, or input tax credit erroneously availed, or input tax credit wrongly availed or utilized, may lead to the proper officer to initiate action under section 73 or section 74 CGST Act, 2017.

GST Audit by C&AG

The moot question that is still lingering over the minds of the assesses is, whether the C&AG is also empowered to conduct GST audit. C&AG is an authority appointed under Article 148 of Constitution of India. Further, Article 149 of Constitution of India empowers C&AG to conduct audits of Government and semi-Government undertakings.

The Hon'ble Delhi High Court's in its decision in the case of Mega Cabs Pvt. Ltd., Vs. UOI &Ors 2016 (43) S.T.R. 67, held that audits by C&AG of tax paying assessee as per Rule 5A(2) of Service Tax Rules, 1994 are ultra vires the constitution. However, said decision has been stayed by the Hon'ble Apex Court.

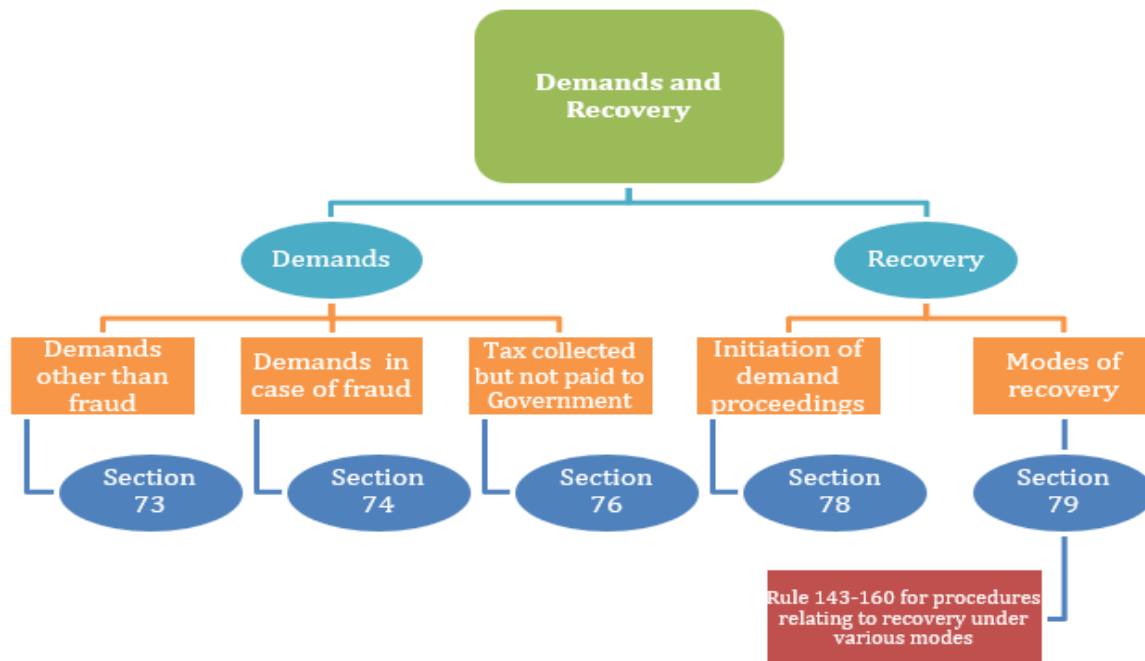
Further, in case of Association of Unified Tele Services Providers & Others Vs. UOI 2014 (9) SCR 780 Hon'ble Apex court held that, wherever government monies are involved, audits by C&AG is within the purview of Article 149 of the Constitution of India and cannot be construed as ultra vires the Constitution. Having said this, revenue in form of tax is something that the tax payers is duty bound to deposit with the government at right intervals. Hence, it would be of no surprise that C&AG knocks the doors of assesses for audit of GST records.

Demands and Recovery

GST is levied on any taxable outward supplies by a person. The complete responsibility of calculation, chargeability, and payment of tax has been assigned to the person making outward supplies. It is a self-assessment tax without any interference from the department. However, it may happen that a person has short paid or not paid taxes or claimed excess or wrongful input tax credit not necessarily with the intention of fraud but otherwise.

Whenever the GST authorities come across such information on tax evasion, it may initiate demand proceedings under the law. The department shall give the person an opportunity to justify its contention or accept the evasion and pay taxes along with interests and penalties.

Even after the demand order is issued the person in default does not pay the due amount. In these cases, the department has to go one step further and start recovery proceedings by attaching bank accounts, inventory, immovable assets, etc.



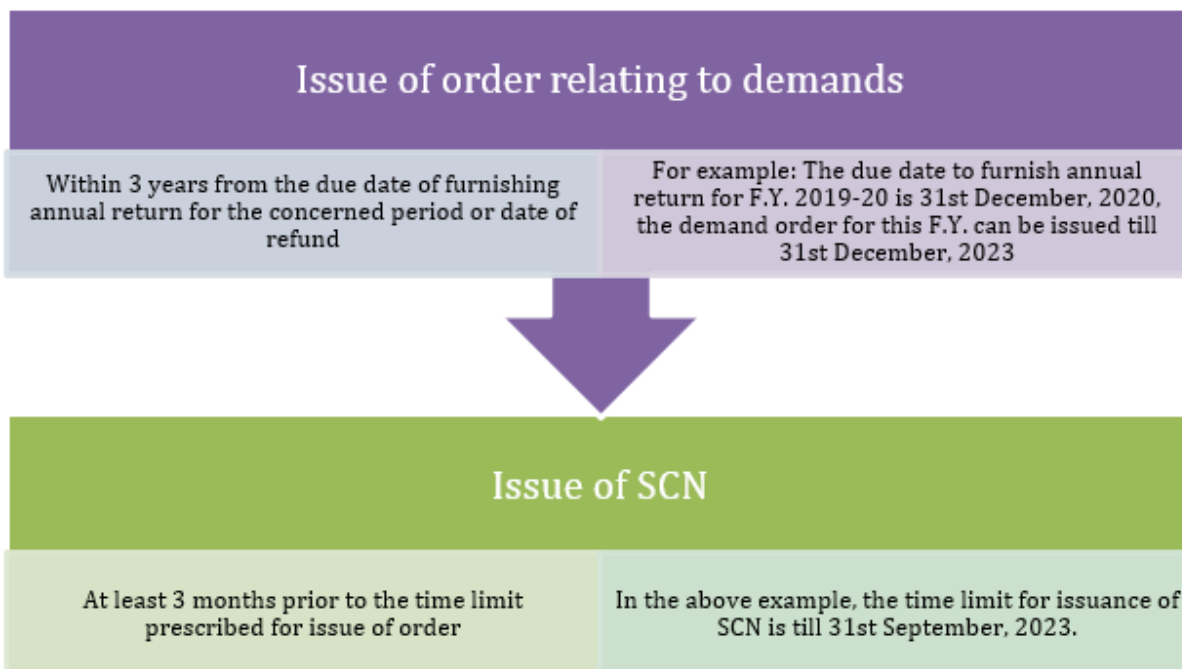
Demand Order In Genuine Cases (Sec 73)

GST being a new tax, it may happen that any person has made the erroneous claim of blocked ITC or considered a taxable supply an exempt supply or paid tax at a lesser rate due to no knowledge of the change in tax rates. These are few scenarios where a person generally makes mistakes under a genuine belief and without any reason of fraud, wilful misstatement or suppression of facts to evade tax.

In cases where it appears to the Proper Officer that any person has:

- Not paid tax
- Short paid any tax
- Erroneously received refund
- Input Tax Credit (ITC) wrongly availed or utilized

In all such cases, the officer shall issue a show-cause notice (SCN) on the person as to provide reasons why tax should not be paid by him along with interest applicable under section 50(1). The process and time limit of issuing demand notice and order can be better understood below:



- Notice for other tax periods: If an SCN has been issued for a particular period, then there is no requirement to issue separate notices for another tax period not covered in the SCN provided a statement containing the relevant details is furnished to the person and the grounds of belief are same as of tax periods covered in SCN.
- What shall be the penalty: The penalty provision under various situations can be better understood by the below table:

LET YOUR LIGHT SHINE

Sr. No.	Particulars	Penalty amount
a.	If a person deposits the amount of tax along with interest before service of notice and informs the proper officer in writing of such payment	No penalty shall be levied and no demand notice shall be issued
b.	In the above case, if the amount deposited is short of the actually payable	Demand notice shall be issued for the balance payable amount
c.	If any person pays the tax along with interest within 30 days of issue of demand notice	No penalty
d.	If a person pays amount payable after a period of 30 days from the issue of notice	10% of the tax amount due or Rs. 10,000/- whichever is higher
e.	If a person has collected tax but not paid within 30 days	10% of the tax amount due or Rs. 10,000/- whichever is higher

The Board has **vide Circular No. 76/50/2018-GST dated 31st December 2018** has clarified that there shall be no penalty under section 73(11) as discussed in point 'e' on delayed filing of GSTR 3B. However, a general penalty under section 125 shall be levied since the tax has been paid late.

Demand In Case Of Fraudulent Tax Evasion (Sec 74)

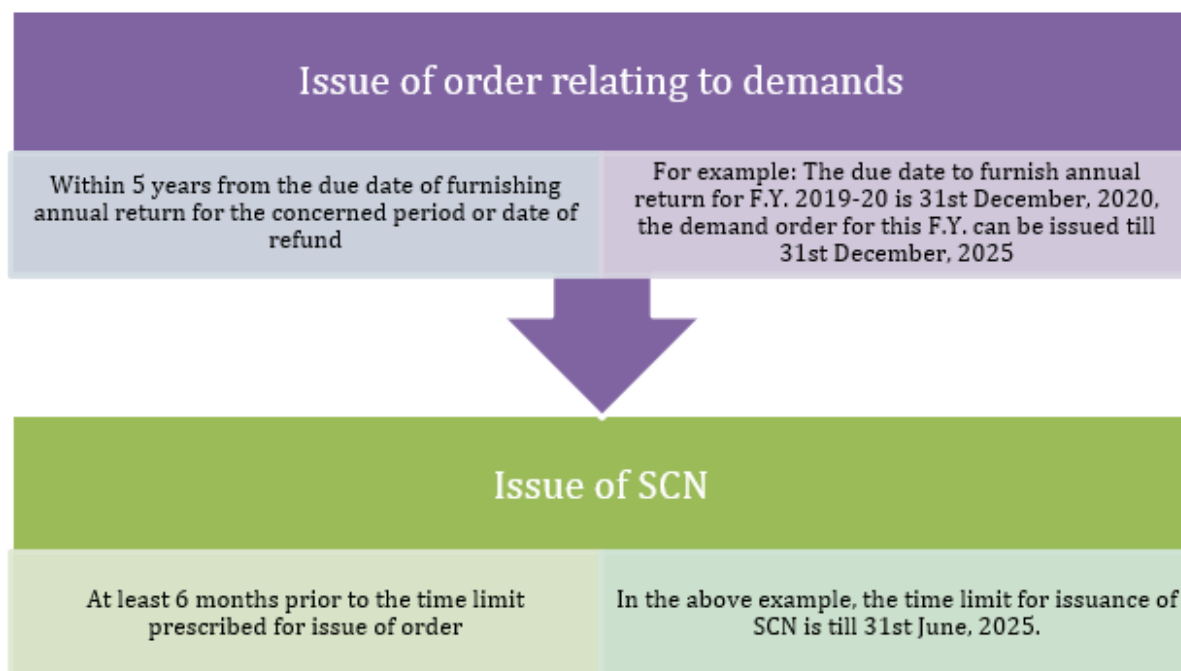
Where a person indulges in any transaction with intent to cause tax evasion, then an extended time limit is provided to the authorities for initiating demand proceedings and higher penalties against such persons are specified under the GST law

If it appears to the Proper officer that any person by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax has –

- Not paid tax
- Short paid any tax
- Erroneously received refund

→ Input Tax Credit (ITC) wrongly availed or utilized

Then, the proper officer shall issue demand notice requiring a person to show cause as to why he should not pay the amount specified in the notice along with interest payable applicable under section 50(1). The process and time limit of issuing demand notice and order in this situation are as follows:



- **Notice for other tax periods:** Similar to the provision in section 73, an officer can start demand proceedings by furnishing a statement of tax particulars for earlier tax periods without the issuance of a separate SCN.
- **What shall be the penalty:** The penalties in cases of fraud, wilful misstatement, and suppression of facts can be levied up to 100% of the tax amount. The various scenarios are as follows:

Particulars	Penalty amount
If a person deposits an amount of tax along with interest before service of notice and informs the proper officer in writing of such payment	15% of tax payable
In the above case, if the amount deposited is short of the actually payable	Demand notice shall be issued for the balance payable amount along with penalty on same
If any person pays the tax along with interest within 30 days of issue of demand notice	25% of tax payable

Particulars	Penalty amount
If any person pays the tax along with interest within 30 days of communication of demand order	50% of tax payable
In all other cases	100% of the tax amount due or Rs. 10,000/- whichever is higher

For the purpose of sections 73 and 74, all the proceedings (except for Section 132 i.e. punishment by way of arrest and fine in specific cases) shall be concluded on payment of requisite penalty amount along with tax and interest.

General Provisions Relating Determination Of Tax (Sec 75)

- Where the service of notice or issuance of order is stayed by an order of a court or Appellate Tribunal, the period of such stay shall be excluded from the time period of 3 and 5 years
- Where any Appellate Authority or Appellate Tribunal or court decides that charges of fraud or any wilful-misstatement or suppression of facts to evade tax are not sustainable, then tax shall be determined deeming the notice is issued under section 73
- If an appeal is filed by the revenue to the Appellate Tribunal or the High Court or the Supreme Court against such decision of the Appellate Authority or the Appellate Tribunal or the High Court and the said appeal is pending then the period of the decision by the authorities and decision of appeal shall be excluded in the calculation of time period for issue of demand order under section 73 and section 74.
- Any order to be issued based on the direction of the Appellate Authority or Appellate Tribunal or a court shall be issued within 2 years from the date of communication of such direction
- An opportunity of hearing shall be granted whenever requested in writing. The hearings can be adjourned a maximum of 3 times during the proceedings on the basis of sufficient cause shown.
- The order issued by the proper officer shall have relevant facts and the basis of decision. Also, the amount of tax, interest, and penalty demanded in the order shall not be more than the amount demanded in notice.
- Where the Appellate Authority or Appellate Tribunal or court modifies the amount of tax determined by the proper officer, the amount of interest and penalty shall stand modified accordingly.
- The interest shall be payable under section 50(1) on the tax amount even if not specified in the demand order.
- Where any penalty is imposed under section 73 or 74, no penalty shall be levied under other sections of the act for the same act or omission.

Demand In Case Taxes Collected But Not Paid To Government (Sec 76)

- A demand notice shall be issued to a person who has collected tax but not paid to the government.
- The amount shall be determined after considering the representation made by the person. The amount payable shall include interest on tax to be calculated from the date of collection till the date it is paid to the government.

- In case any amount is already deposited by the assessee, such amount shall be adjusted against the amount payable and balance if any shall be credited to either fund or to person from whom tax is collected.
- An opportunity of hearing shall be provided to the person if a request is made in writing.
- The order shall be passed within 1 year from the date of issue of notice. Any period of stay by the authorities shall be excluded in the calculation of 1 year. The order shall set out the relevant facts and the basis of his decision.
- The person, who has borne the incidence of the amount, may apply for the refund of the same in accordance with the provisions of section 54.

Initiation Of Recovery Proceedings Under GST (Sec 78)

Any amount that is payable pursuant by an order shall be paid within 3 months from the date of order. If the amount payable is not paid within the required period of time then recovery proceedings shall be initiated against such person under the GST law. The officer can reduce the time period of 3 months for payment of tax for specific cases if he considers it necessary in the interest of revenue. The reasons for the reduction of the time period shall be recorded in writing and communicated to the person from whom amount is payable.

Modes Of Recovery

Where any amount payable by a person to the Government is not paid, then the proper officer shall proceed to recover the amount by one or more of the following modes –

- **Recovery by deduction from any money owed (Rule 143):** The proper officer may proceed himself or order any other specified officer to deduct the amount from any amount that is due to such person (For example refund due to a person)
- **Recovery by the sale of goods under the control of proper officer (Rule 144):** The proper officer may detain and proceed to sell of goods belonging to the person in default if the amount payable remains unpaid. Procedure to be followed for selling goods belonging to the person in default are as below:
 - The officer shall prepare an inventory and estimate the market value of such goods and will sell only so much as to recover the amount payable along with the cost of selling and administrative expenses. → The said goods shall be sold through a process of auction, including e-auction and shall be transferred to the person making the highest bid. → The proper officer may specify the amount of pre-bid deposit to be furnished to make the bidders eligible to participate in the auction, which may be returned to the unsuccessful bidders, forfeited in case the successful bidder fails to make the payment of the full amount, as the case may be.
- **Recovery from a third- person (Rule 145):** The proper officer shall issue a notice requiring any person from whose amount is due or any other person who holds money for or on account to the person in default to pay the payable amount within the time [19.Appeals-and-Revision.pdf \(idtc-icai.s3.amazonaws.com\)](https://www.idtc-icai.s3.amazonaws.com/19.Appeals-and-Revision.pdf) specified in the notice. The time limit can be revoked, amended, or extended by the officer on a case to case basis. The person can prove to the officer that there is no money due by him to the person in default or that he does not hold any money on or behalf of the person in default.

If a person who to who notice is issued fails to make the payment, then the said person shall be deemed to be a '**Defaulter in respect of such payable amount**'.

Any person discharging any liability to the person in default after service on him of the notice shall be personally liable to the Government to the extent of the liability discharged or to the extent of the liability of the person in default for tax, interest, and penalty, whichever is less.

The notices can be issued to post offices, banks, and insurance companies, vendors, and other third parties as well in respect of a person. If the amount payable is paid by the third person and communicated in writing, then he shall be discharged of all his liability.

- **Recovery through execution of a decree, etc. (Rule 146):** Where any amount is payable to the person in default through execution of a decree of a Civil court the authorities can execute a decree of a Civil Court for payment of tax and credit the net proceeds for settlement of the amount recoverable. The payment made by such persons shall be deemed to have made payment under the authority of the person in default and shall constitute a good and sufficient discharge of the liability of such person to the person in default.
- **Recovery by the sale of movable or immovable property (Rule 147):** The officer may seize or issue orders of distrainor attachment of any movable or immovable property belonging to or under the control of such person until the payable amount is paid. If the amount remains unpaid then the officer may proceed to recover the amount by following procedures:

→ If the amount is not paid within a period of 30 days from the date of order of payment, the officer may sell such properties through auction or e-auction. → The sale proceeds out of the auction shall be utilized towards administrative cost of recovery proceedings of selling the property, the amount to be recovered, and balance if any shall be refunded to the defaulter. → Shares or negotiable instruments can be sold through brokers instead of the auction process and the broker shall deposit the amount with the Government after deducting his commission. → The property shall be transferred to the person making the highest bid and the successful bidder has to make payment of bid within a specified period of time.

- **Prohibition against bidding or purchase by the officer (Rule 148):** No officer who is a part of demand and recovery proceedings shall take part in the bidding process either directly or indirectly.
- **No sale on holidays (Rule 149):** The sale of property shall not take place on Sunday or public holidays notified by the Government or other notified holidays notified for that particular place.
- **Attachment of debts and shares, etc. (Rule 151)-:** The officer shall in respect of the person in default prohibit:

→ In the case of a debt, the creditor from recovering the debt → The debtor from making payment thereof until the receipt of a further order from the proper officer → Transfer of shares and receipt of dividend → Transfer of movable property from any other person to the person in default A copy of prohibition shall be sent to such persons and a copy shall be affixed to a prominent place of business.

- **Attachment of property (Rule 152):** Where the property to be attached is in the custody of any court or Public Officer, the proper officer shall send the order of attachment to such court or officer, requesting that such property, and any interest or dividend becoming payable thereon, may be held till the recovery of the amount payable.
- **Attachment of interest in Partnership (Rule 153):** Where the property to be attached consists of interest of the defaulter, being a partner, in the partnership property, the officer may order payment of the due amount in the partnership firm to

the Government and may sale partnership interest to existing partners or other persons under-recovery proceedings.

- **Recovery through land revenue authority (Rule 155):** The officer shall send a Certificate to the Collector or Deputy Commissioner of the district to recover from the person concerned the amount specified in the certificate as if it were an arrear of land revenue.
- **Recovery through court (Rule 156):** If a fine is to be received by the defaulter person under the Code of Criminal Procedure, 1973, the proper officer shall make an application before the appropriate Magistrate to recover from the person concerned, the amount specified thereunder as if it were a fine imposed by him.
- **Recovery from a surety (Rule 157):** Where any person has become surety for the amount due by the defaulter, he may be proceeded against such surety to recover the amount as if he were the defaulter.

Extension Of Time Limit For Payment (Sec 80)

The commissioner may extend the time limit of payment of taxes (except liability self-assessed in any return) or allow any person to pay the amount in installments along with interest thereon under section 50(1).

- **Payment of tax and other amounts in installments (Rule 158):** On receipt of the application by a taxable person seeking an extension of time for the payment of taxes or any amount due under the Act or for allowing payment of such taxes or amount in installments, the commissioner shall

→ Call for a report about the financial ability of the taxable person → Allow further time or to pay the amount in installments to a maximum monthly installment of 24 months → The above facility shall not be granted to any person who has already defaulted in any other recovery proceedings, has not been allowed this facility in preceding financial year or the amount of tax involved is less than 25,000/-.

If anyone installment has defaulted on its due date, then the entire balance amount shall become payable on the said date of default and shall be liable for recovery.

Appeals and Revision

1. Appeal to the Appellate Authority

(1) An appeal to the Appellate Authority under sub-section (1) of section 107 of the Act shall be filed in FORM GST APL-01, along with the supporting documents, either electronically or otherwise as may be notified by the Commissioner, and a provisional acknowledgement shall be issued to the appellant immediately.

(2) The grounds of appeal and the form of verification as contained in FORM GST APL-01 shall be signed in the manner specified in rule Registration.19.

(3) A certified copy of the decision or order appealed against shall be submitted within seven days of filing the appeal under sub-rule (1) and a final acknowledgement, indicating appeal number shall be issued thereafter in FORM GST APL-02 by the Appellate Authority or an officer authorised by him in this behalf:

Provided that where the certified copy of the decision or order is submitted within seven days from the date of filing the FORM GST APL-01, the date of filing of the appeal shall be the date of issue of provisional acknowledgement and where the said copy is submitted after seven days, the date of filing of the appeal shall be the date of submission of such copy.

Explanation. – The appeal shall be treated as filed only when the final acknowledgement, indicating the appeal number is issued.

2. Application to the Appellate Authority

(1) An application to the Appellate Authority under sub-section (2) of section 107 of the Act shall be made in FORM GST APL-03, along with supporting documents, either electronically or otherwise as may be notified by the Commissioner.

(2) A certified copy of the decision or order appealed against shall be submitted within seven days of filing the application under sub-rule (1) and an appeal number shall be generated by the Appellate Authority or an officer authorised by him in this behalf.

3. Appeal to the Appellate Tribunal

(1) An appeal to the Appellate Tribunal under sub-section (1) of section 112 of the Act shall be filed along with the supporting documents either electronically or otherwise as may be notified by the Registrar, in FORM GST APL-05, on the common portal and a provisional acknowledgement shall be issued to the appellant immediately.

(2) A memorandum of cross-objections to the Appellate Tribunal under sub-section (5) of section 112 of the Act shall be filed either electronically or otherwise as may be notified by the Registrar, in FORM GST APL06.2

(3) The appeal and the memorandum of cross objections shall be signed in the manner specified in rule Registration.19.

A certified copy of the decision or order appealed against along with fees as specified in sub-rule (5) shall be submitted to the Registrar within seven days of filing of the appeal under sub-rule (1) and a final acknowledgement, indicating the appeal number shall be issued thereafter in FORM GST APL-02 by the Registrar:

Provided that where the certified copy of the decision or order is submitted within seven days from the date of filing the FORM GST APL-05, the date of filing of the appeal shall be the date of issue of provisional acknowledgement and where the said copy is submitted after seven days, the date of filing of the appeal shall be the date of submission of such copy.

Explanation. – The appeal shall be treated as filed only when the final acknowledgement indicating the appeal number is issued.

(5) The fees for filing of appeal or restoration of appeal shall be one thousand rupees for every one lakh rupees of tax or input tax credit involved or the difference in tax or input tax credit involved or the amount of fine, fee or penalty determined in the order appealed against, subject to maximum of twenty five thousand rupees.

(6) There shall be no fee for application made before the Appellate Tribunal for rectification of errors referred to in sub-section (10) of section 112.

4. Application to the Appellate Tribunal

(1) An application to the Appellate Tribunal under sub-section (3) of section 112 of the Act shall be made electronically or otherwise, in FORM GST APL-07, along with supporting documents on the common portal.

(2) A certified copy of the decision or order appealed against shall be submitted within seven days of filing the application under sub-rule (1) and an appeal number shall be generated by the Registrar.

5. Production of additional evidence before the Appellate Authority or the Appellate Tribunal

(1) The appellant shall not be allowed to produce before the Appellate Authority or the Appellate Tribunal any evidence, whether oral or documentary, other than the evidence produced by him during the course of the proceedings before the adjudicating authority or, as the case may be, the Appellate Authority except in the following circumstances, namely –

(a) where the adjudicating authority or, as the case may be, the Appellate Authority has refused to admit evidence which ought to have been admitted; or

(b) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the adjudicating authority or, as the case may be, the Appellate Authority; or

(c) where the appellant was prevented by sufficient cause from producing before the adjudicating authority or, as the case may be, the Appellate Authority any evidence which is relevant to any ground of appeal; or

(d) where the adjudicating authority or, as the case may be, the Appellate Authority has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

(2) No evidence shall be admitted under sub-rule (1) unless the Appellate Authority or the Appellate Tribunal records in writing the reasons for its admission.

(3) The Appellate Authority or the Appellate Tribunal shall not take any evidence produced under sub-rule

(1) unless the adjudicating authority or an officer authorised in this behalf by the said authority has been allowed a reasonable opportunity -

(a) to examine the evidence or document or to cross-examine any witness produced by the appellant; or

(b) to produce any evidence or any witness in rebuttal of the evidence produced by the appellant under sub-rule (1).

(4) Nothing contained in this rule shall affect the power of the Appellate Authority or the Appellate Tribunal to direct the production of any document, or the examination of any witness, to enable it to dispose of the appeal.

6. Order of Appellate Authority or Appellate Tribunal

(1) The Appellate Authority shall, along with its order under sub-section (11) of section 107 of the Act, issue a summary of the order in FORM GST APL-04 clearly indicating the final amount of demand confirmed.

(2) The jurisdictional officer shall issue a statement in FORM GST APL-04 clearly indicating the final amount of demand confirmed by the Appellate Tribunal.

7. Appeal to the High Court

(1) An appeal to the High Court under sub-section (1) of section 117 of the Act shall be filed in FORM GST

APL-08.

(2) The grounds of appeal and the form of verification as contained in FORM GST APL-08 shall be signed in the manner specified in rule Registration.19.

8. Demand confirmed by the Court

The jurisdictional officer shall issue a statement in FORM GST APL-04 clearly indicating the final amount of demand confirmed by the High Court or, as the case may be, Supreme Court.

9. Disqualification for misconduct of an authorised representative

Where an authorised representative, other than those referred to in clause (b) or clause (c) of sub-section (2) of section 116 of the Act is found, upon an enquiry into the matter, guilty of misconduct in connection with any proceedings under the Act, the Commissioner may, after providing him an opportunity of being heard, disqualify him from appearing as an authorised representative

[19.Appeals-and-Revision.pdf \(idtc-icai.s3.amazonaws.com\)](https://www.idtc-icai.s3.amazonaws.com/19.Appeals-and-Revision.pdf)

[appeals-mechanism-epliers.pdf \(cbic-gst.gov.in\)](https://cbic-gst.gov.in/appeals-mechanism-epliers.pdf)

Advance ruling Offences and Penalties

Offences And Penalties which every business owner should be aware of.

21 set offenses have been identified under the GST regime. There is one more offense which can be penalised that of availing composition scheme, even if the person is not liable for doing so.

1. A supplier supplies goods or services without any proper invoice or has issued a false invoice.
2. He affects the issuance of an invoice without supplying the goods or services as per provisions of GST.
3. He uses the GSTIN of any other person instead of his own.
4. He submits false information during registration.
5. He gives wrong information while filing returns or files false returns.
6. He gives wrong information or false information during assessment proceedings.
7. He fails to submit GST with the Government that was deducted by him, within a period of 3 months from the date of such deduction.

8. If TDS is deducted in contravention of provisions of GST, he is still liable to pay the same within three months from the date of such deduction. If such falsely deducted TDS is not submitted within the prescribed time, then it is an offense.
9. He claims and obtains a refund of CGST or SGST by fraud.
10. He claims Input Tax Credit without the actual receipt of goods or services.
11. He understates his sales during the period to evade tax.
12. He transports or effects movement of goods without proper documentation.
13. He supplies goods that will be confiscated by law.
14. He destroys or tampers with, the goods that have been confiscated.
15. He does not register himself even though he is liable to do so.
16. He does not deduct TDS wherever applicable or deducts lesser than prescribed amount.
17. He does not collect TCS wherever applicable or collects lesser than prescribed amount.
18. He does not distribute credit properly or distribute against the provisions of law being an Input Service Distributor.
19. He obstructs the officer in the performance of his duties.
20. He does not maintain proper books of accounts as required mandatorily by law
21. He intentionally destroys any evidence.

As seen from the above, the Government has clearly spelled out the offenses that are covered under GST. When a company commits any of the above offense, the officer-in-charge, as well as the company will be held liable for such an offense. When the offense is committed by an HUF, LLP or a Trust, then the Karta, partners and managing trustee will be held responsible for such offense.

Penalties Under GST In Case Of Fraud

For those who have committed fraudulent activities **intentionally** w.r.t. the provisions of GST, then he/she shall be liable to pay **100%** penalty, i.e. an amount equivalent to the amount of tax evaded or short deducted, subject to a **minimum** of Rs. 10,000/-. Where there is no fraudulent intent, i.e. the tax evasion is unintentional, then the penalty shall be 10% in this case, subject to a minimum of Rs. 10,000/-.

Where a person, **not being a taxable person**:

- Abates in committing fraud
- Acquires goods or services knowingly that these are against the provisions of GST
- Fails to issue genuine invoice
- Fails to maintain or vouch for the books of accounts
- Fails to appear before the relevant authority upon a summon issued to his name,

Then he shall also be liable to pay a penalty of Rs. 25,000/-.

If fraud is ascertained, then apart from the above amounts, the following shall also apply:

1. When the amount of tax involved is up to 50 lakhs, the person has to serve a jail term of 1 year along with paying the penalty.
2. When the amount ranges between 50 lakhs to 100 lakhs, then jail term shall be three years plus penalty
3. When the amount exceeds 100 lakhs, then jail term shall be up to 5 years plus penalty.

The respective authority shall issue a Show Cause Notice to the taxable person and offer him a reasonable time for being heard. The authority shall have to justify the imposition of such penalty as well as the nature of the offense committed. Where a taxable person intentionally

discloses an offense committed by him, it is within the powers of the respective authority to reduce the amount of penalty to be imposed.

Prosecution Under GST

Where a person commits the following offenses with a deliberate intention to cause fraud, then criminal proceedings shall be held against him.

- Claiming refund of CGST/SGST by fraud
- Submission of fake documents or returns
- Issuing any invoice without making a supply of goods or services
- Abetting in the fraud under GST

Inspection, Search/Seizure under GST

Where the Joint Commissioner CGST/SGST has sufficient reason to believe that a taxable person is deliberately suppressing transaction to evade taxes or has claimed excessive Input Tax Credit, then he can order an officer of GST to inspect the locations of such person.

Similarly, the Joint Commissioner can order for search and seizure within the premises of a taxable person when he has sufficient reason to believe that there are goods, which should be confiscated or some important documents are being hidden somewhere.

National Anti-Profiteering Authority

Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit should be passed on to the recipient by way of commensurate reduction in prices. However, it has been the experience of many countries that when GST was introduced there has been a marked increase in inflation and the prices of the commodities. This happened in spite of the availability of the tax credit right from the production stage to the final consumption stage which should have actually reduced the final prices. This was happening because the suppliers were not passing on the commensurate benefits to the consumer and thereby indulging in illegal profiteering. National Anti-profiteering Authority (NAA) is therefore being constituted by the Central Government to examine whether additional input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in prices to the recipients.

The National Anti-profiteering Authority (NAA) is the statutory mechanism under GST law to check the unfair profiteering activities by the registered suppliers under GST law. The Authority's core function is to ensure that the commensurate benefits of the reduction in GST rates on goods and services done by the GST Council and of the Input tax credit are passed on to the recipients by way of commensurate reduction in the prices by the suppliers.

The formation of NAA comes in the background of rate-reduction of large number of items by GST Council in its 22nd meeting at Guwahati. At the meeting, the Council reduced rates of more than 200 items including goods and services. This has made tremendous price reduction effect and the consumers will be benefited only if the registered suppliers under GST law are reducing the prices of respective items immediately.

The Authority's main function is to ensure that the registered suppliers under GST law are not profiteering by charging higher prices from recipients in the name of GST. The legal mandate of NAA is to examine and check such profiteering activities and recommend punitive actions including cancellation of Registration. The chairman, NAA along with 4 Technical members and with help of the Standing Committee, Screening Committee in every State and the Directorate General of Anti-Profitteering in the Central Board of Indirect taxes & Customs (CBIC), will work together on the anti-profitteering front.

We hope to bring transparency in our decisions and be more proactive in persuading the industry and the registered suppliers under GST law in passing on benefits to the consumers.

[National Anti-profitteering Authority \(naa.gov.in\)](http://naa.gov.in)

GST Practitioners

Section 48 of the CGST Act provides for authorisation of an eligible person to act as approved GST practitioners. A registered person may authorise an approved GST practitioner to furnish information, on his behalf, to the government. The manner of approval of goods and services tax practitioners, their eligibility conditions, duties and obligations, manner of removal and other conditions relevant for their functioning have been prescribed in rule 24 and 25 of the Return Rules. Standardised formats from GST PCT- 1 to GST PCT-5 have been prescribed for making application for enrolment as GST practitioner, certificate of enrolment, show cause notice for disqualification, order of rejection of application of enrolment, list of approved GST practitioners, authorisation letter and withdrawal of authorisation. A goods and services tax practitioner enrolled in any other State or Union Territory shall be treated as enrolled in the State/ Union territory

Eligibility Criteria for becoming GST practitioner:

Rule 24 of the Return rules, provides the eligibility conditions to get enrolled as GST Practitioner for any person who

- (i) Is a citizen of India;
- (ii) Is a person of sound mind;
- (iii) Is not adjudged as insolvent;
- (iv) Has not been convicted by a competent court for an offence with imprisonment not less than two years, In addition, the person should also satisfy any of the following conditions: -
 - (a) He is a retired officer of the Commercial Tax Department of any State Government or of the CBEC and had worked in a post not lower in rank than that of a Group-B gazetted officer for minimum period of two years; or
 - (b) He has been enrolled as a sales tax practitioner or tax return preparer under the existing law for a period of not less than five years;
 - (c) He has passed:
 - (i) A graduate or postgraduate degree or its equivalent examination having a degree in Commerce, Law, Banking including Higher Auditing, or Business Administration or Business Management from any Indian University established by any law for the time being in force; or

(ii) A degree examination of any Foreign University recognized by any Indian University as equivalent to the degree examination mentioned in sub clause (i); or

(iii) Any other examination notified by the Government, on the recommendation of the Council, for this purpose; or

(iv) Any degree examination of an Indian University or of any Foreign University recognized by any Indian University as equivalent of the degree examination or

(v) Has passed any of the following examinations, namely. –

(a) Final examination of the Institute of Chartered Accountants of India; or

(b) Final examination of the Institute of Cost Accountants of India; or

(c) Final examination of the Institute of Company Secretaries of India. A person desirous of becoming GST Practitioner has to submit an application in the form GST PCT-1. The application shall be scrutinised and GST practitioner certificate shall be granted in the form GST PCT-2. In case, the application is rejected, proper reasons shall have to be mentioned in the form GST PCT-4. The enrolment once done remains valid till it is cancelled.

But no person enrolled as a goods and services tax practitioner shall be eligible to remain enrolled unless he passes such examination conducted at such periods and by such authority as may be notified by the Commissioner on the recommendations of the Council. Any person who has been enrolled as goods and services tax practitioner by virtue of he being enrolled as a sales tax practitioner or tax return preparer under the existing law shall remain enrolled only for a period of one year from the appointed date i.e. 1st July, 2017 unless he passes the said examination within the said period of one year.

Activities by GST practitioner:

A goods and services tax practitioner can undertake any or all of the following activities on behalf of a registered person:

(a) Furnish details of outward and inward supplies;

(b) Furnish monthly, quarterly, annual or final return;

(c) Make deposit for credit into the electronic cash ledger;

(d) File a claim for refund; and

(e) File an application for amendment or cancellation of registration.

But it has been provided that a confirmation form registered person shall be sought where an application relating to a claim for refund or an application for amendment or cancellation of registration has been submitted by the goods and services tax practitioner. In addition, a GST practitioner shall also be allowed to appear as authorised representative before any officer of department, Appellate Authority or Appellate Tribunal, on behalf of such registered person who has authorised him to be his GST practitioner.

Conditions for GST Practitioner

Any registered person may give consent and authorise a GST practitioner in the form GST PCT -5 by listing the authorised activities in which he intends to authorise the GST practitioner. The registered person authorising a GST Practitioner shall have to authorise in standard form Part A of form GST PCT5 and the GST practitioner will have to accept the authorisation in Part B of the form GST PCT-5. The GST practitioner shall be allowed to undertake only such tasks as indicated in the authorisation form GST PCT -5. The registered person may, at any time, withdraw such authorisation in the prescribed form GST PCT -5

UNIT-V Customs duty

‘Customs Duty’ refers to the tax imposed on the goods when they are transported across the international borders. The objective behind levying customs duty is to safeguard each nation’s economy, jobs, environment, residents, etc., by regulating the movement of goods, especially prohibited and restrictive goods, in and out of any country.

Every good has a predefined rate of duty that is determined based on various factors, including where such good was acquired, where such goods were made, and what these goods is made of. Also, anything that you bring into India for the first time should be declared as per the customs rules. For instance, you need to declare the items purchased in a foreign country and any gifts which you acquire outside India.

Customs duty is on imports into India and export out of India. Section 12 of Customs Act, often called charging section, provides that duties of customs shall be levied at such rates as may be specified under ‘The Customs Tariff Act, 1975’, or any other law for the time being in force, on goods imported into, or exported from, India.

During the ancient period whenever a trader entered into the boundaries of a country for selling his merchandise, he offered some gifts to the King/Administrator of that country. Later on this practice got converted into the Custom Duty. These days import and export duties are an important source of revenue for all the countries of the world. The first codified Act on custom duties, enforced in India was ‘Sea Customs Act, 1878’. Then came ‘Indian Tariff Act, 1984’.

Then came into force ‘The Land Customs Act, 1924’ and ‘The Aircraft Act, 1934’ and then by the Customs Act, The Indian Tariff Act, 1984 was replaced by ‘The Indian Tariff Act, 1934’ and then by ‘The Customs Tariff Act, 1975’ which is in force since over whole of India. The Customs Act, 1962 and the Customs Tariff Act, 1975 have been amended from time to time.

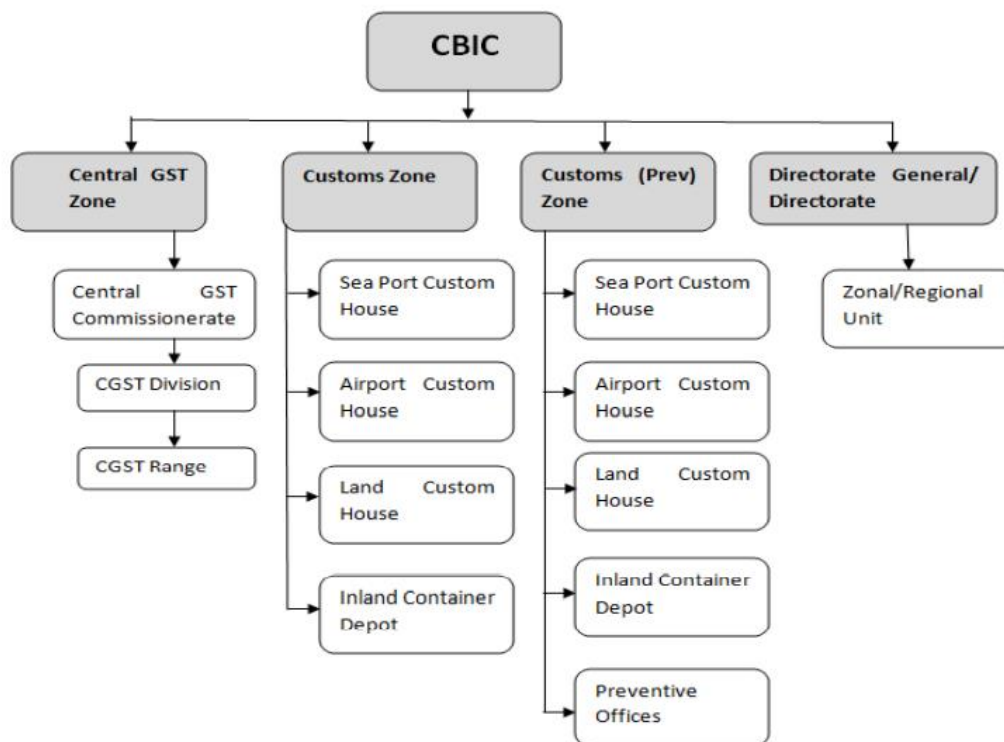
Levy and collection of Duty	
Section 3	: Duty specified in the Fourth Schedule to be levied
Section 3A	: Power of Central Government to charge excise duty on the basis of capacity of production in respect of notified goods

Section 3B	:	Emergency power of Central Government to increase duty of excise.
Section 3C	:	Power of Central Government to amend Fourth Schedule
Section 4	:	Valuation of Excisable goods for purposes of charging of duty of excise
Section 4A	:	Valuation of excisable goods with reference to retail sale price.
Section 5	:	Remission of duty on goods found deficient in quantity.-
Section 5A	:	Power to grant exemption from duty of excise
Section 5B	:	an assessee has paid duty of excise on a final products
Section 6	:	Registration of certain persons.
Section 8	:	Restriction on possession of excisable goods.-
Section 9	:	Offences and penalties.-
Section 9A	:	Section 9A. Certain offences to be non-cognizable.-
Section 9AA	:	Offences by companies.-
Section 9B	:	Powers of Court to publish name, place of business, etc., of persons convicted under the Act.-
Section 9C	:	Presumption of culpable mental state.-
Section 9D	:	Relevancy of statements under certain circumstances.-
Section 9E	:	Application of section 562 of the Code of Criminal Procedure, 1898 , and of the Probation of Offende
Section 10	:	Power of Courts to order forfeiture
Section 11	:	Recovery of sums due to Government
Section 11A	:	Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded

Section 11AA	:	Interest on delayed payment of duty
Section 11AB	:	Interest on delayed payment of duty - Omitted
Section 11AC	:	Penalty for short-levy or non-levy of duty in certain cases
Section 11B	:	Claim for refund of duty
Section 11BB	:	Interest on delayed refunds
Section 11C	:	Power not to recover duty of excise not levied or short-levied as a result of general practice
Section 11D	:	Duties of excise collected from the buyer to be deposited with the Central Government
Section 11DD	:	Interest on late payment of amount as determined under section 11D
Section 11DDA	:	Provisional attachment to protect revenue in certain cases.
Section 11E	:	Liability under Act to be first charge
Section 12	:	Application of the provisions of Act No.52 of 1962 to Central Excise Duties.-

[02 - Chapter 01 - Levy of and Exemptions from Customs Duty - StuDocu](#)

Organisations of Custom Departments



OFFICERS OF CUSTOMS

Classes of officers of customs.— There shall be the following classes of officers of customs, namely:-

- a. Chief Commissioners of Customs;
- b. Commissioners of Customs;
- c. Commissioners of Customs (Appeals);
- (cc) Joint Commissioners of Customs;
- d. Deputy Commissioners of Customs;
- e. Assistant Commissioners of Customs or Deputy Commissioner of Customs;
- f. such other class of officers of customs as may be appointed for the purposes of this Act.

Appointment of officers of customs. —

7. The Board may appoint such persons as it thinks fit to be officers of customs.
8. Without prejudice to the provisions of sub-section (1), Board may authorise a Chief Commissioner of Custom or a Joint or Assistant Commissioner of Customs or Deputy Commissioner of Customs to appoint officers of customs below the rank of Assistant Commissioner of Customs or Deputy Commissioner of Customs.

Powers of officers of customs. -

- a. Subject to such conditions and limitations as the Board may impose, an officer of customs may exercise the powers and discharge the duties conferred or imposed on him under this Act.
- b. An officer of customs may exercise the powers and discharge the duties conferred or imposed under this Act on any other officer of customs who is subordinate to him.
- c. Notwithstanding anything contained in this section, a Commissioner (Appeals) shall not exercise the powers and discharge the duties conferred or imposed on an officer of customs other than those specified in Chapter XV and section 108.

Entrustment of functions of Board and customs officers on certain other officers. - The Central Government may, by notification in the Official Gazette, entrust either conditionally or unconditionally to any officer of the Central or the State Government or a local authority any functions of the Board or any officer of customs under this Act.

Infringement of the Law

India is a signatory to the WTO Treaty on Trade Related Aspects of Intellectual Property Rights (TRIPS), which was brought into force on 1st January, 1995. Articles 51 to 60 of TRIPS Agreement [Annex 1C of the Marrakesh Agreement Establishing the World Trade Organization] relate to border measures (i.e. measures required to be taken for providing protection against infringement of IPRs at the border).

Under Articles 51 to 60 of the TRIPS Agreement, a WTO member country is obliged to enact laws to fulfill obligations relating to border measures by incorporating the following provisions, so far as enforcement of IPRs at Border is concerned:

- **Suspension of Release:** A provision, which allows a right holder to lodge an application with Customs to suspend release of suspected counterfeit goods.
- **Application:** Describes the conditions for making an application, Prima facie evidence of infringement and a sufficiently detailed description of the goods.
- **Security or Equivalent Assurance:** Security to prevent abuse of the system by person making the allegation of infringement.
- **Notice of Suspension:** Prompt notification by Customs to the rights holder of suspension.
- **Duration of Suspension:** 10 working days after the applicant has been served notice of the suspension; time period for Right Holder to commence legal proceedings.
- **Indemnification of the Importer and of the Owner of the Goods:** The applicant is liable to pay compensation to the importer, the consignee and owner, compensation in case of wrongful detention of goods.
- **Right of Inspection and Information:** The right holder is given sufficient information and the right to inspect detained goods, in order to substantiate the claim.
- **Ex Officio Action:** Optional provision, which allows Customs to act upon their own initiative, without an application being required, in order to suspend clearance of goods. {Ex Officio may have two distinct meanings:
 - (1). Customs intercepting a shipment on their own information, after the right holder has already completed the recordal of their IPR.
 - (2). Customs intercepting a shipment on their own information, even if the right holder has not completed recordal.
- **Remedies:** Order destruction of infringing goods. Re-exportation not allowed.
- **De Minimis Imports:** Small non-commercial consignments may be excluded.

While the mandatory obligations under Articles 51 to 60 of the TRIPS agreement dealing with border measures are restricted to Copyright and Trade Marks infringement only, the IPR (imported goods) enforcement Rules,2007 deal with Enforcement of Intellectual Property Rights: Role of Customs Authorities

Patents, Designs and Geographical Indications violations as well, in conformity with the practice prevailing in some other countries, notably EU countries. While it may not be difficult for Customs officers to determine Copyright and Trade Marks infringements at the border based on available data/inputs, it may not be so in the case of the other three IPR rights violations, unless the offences have already been established by a judicial pronouncement in India and the Customs is called upon or required to merely implement such order. In other words, extreme caution is required at the time of determination of infringement of these three

intellectual property rights.

The Copyright Act, 1957; the Trade Marks Act, 1999; the Patents Act, 1970; the Designs Act, 2000; and the Geographical Indications of Goods (Registration and Protection) Act, 1999 have provisions prohibiting import of goods infringing Intellectual Property Rights under the respective Acts. The powers to take action against such infringing goods at Border i.e. at the time of import and export by the Customs Authorities are contained in Sections 11, 111, and 113 of the Customs Act, 1962.

While IPR laws provide for civil and criminal action by right holder in cases of infringement of his/her IPR, the Customs authority powers to take action against infringing goods are limited to action against infringing goods at the time of import and export and that to subject to procedure laid in IPR Enforcement Rules, 2007 issued under Customs Act, 1962.

Legal provisions under Customs Act, 1962.

A. Section 11 of the Customs Act, 1962

The Section 11 of the Customs Act, 1962 enables Customs authority to prohibit either absolutely or subject to such conditions (to be fulfilled before or after clearance) as may be specified in the notification, the import or export of goods of any specified description. This can be done by issuing notification under sub-section (1) of Section 11 for the purposes specified in sub-section (2) of Section 11. The relevant clauses under sub-section (2) are (n), and (u). These clauses read as under:-

“ (n) the protection of patents, trade marks, copyrights, designs and geographical indications;

(u) the prevention of the contravention of any law for the time being in force “

B. Prohibition on Import of Infringing Goods

The Government, initially vide notification No. 49/2007-Customs dated 8-5-2007 prohibited import of goods infringing intellectual property rights of the right Enforcement of Intellectual Property Rights: Role of Customs Authorities holders under The Copyright Act, 1957, the Trade Marks Act,1999, the Patents Act, 1970, the Designs Act, 2000 and the Geographical Indications of Goods

(Registration and Protection) Act, 1999. Later, this notification No. 49/2007-Customs(NT), dated 8.5.2007 has been superseded by notification No. 51/2010-Customs (NT), dated 30.6.2010.

2. Under the notification No. 51/2010-Customs, dated 30.6.2010, the following

goods have been prohibited:-

(i) goods having applied thereto a false trade mark as specified in section 102 of the Trade Marks Act, 1999 (47 of 1999);

(ii) goods having applied there to a false trade description within the meaning of clause (i) of sub-section (1) of section 2 of the Trade Marks Act, 1999(47 of 1999), otherwise than in relation to any of the matters specified in subclauses (ii) and (iii) of clause (za) of that sub-section;

(iii) goods made or produced beyond the limits of India and having applied thereto a design in which copyright exists under the Designs Act, 2000(16 of 2000), in respect of the class to which the goods belong or any fraudulent or obvious imitation of such design except when the application of such design has been made with the licence or written consent of the registered

proprietor of the design or where such importation or use is allowed under the Designs Act, 2000 (16 of 2000);

(iv) the product made or produced beyond the limits of India for which a patent is in force under the Patents Act, 1970 (39 of 1970), except in cases where the consent from the patentee in India has been obtained provided that such prohibition is not applicable to the cases where such importation is allowed under the Patents Act, 1970(39 of 1970);

(v) the product obtained directly by the process made or produced beyond the limits of India where patent for such process is in force under the Patents Act, 1970 (39 of 1970), except in cases where the consent from the patentee in India has been obtained provided that such prohibition is not applicable to the case where such importation is allowed under the Patents Act, 1970 (39 of 1970);

(vi) goods having applied thereto a false Geographical Indication within the meaning of section 38 of the Geographical Indications of Goods (Registration and Protection) Act, 1999 (48 of 1999);

(vii) goods which are prohibited to be imported by issuance of an order issued by the Registrar of Copyrights under section 53 of the Copyright Act, 1957 (14 of 1957). Enforcement of Intellectual Property Rights: Role of Customs Authorities

C. Section 111 of the Customs Act, 1962

Since import of infringing goods, which has been prohibited under notification No. 51/2010-Customs (NT), dated 30.6.2010, therefore, such imported goods are liable for confiscation under clause (d) of Section 111 of Customs Act, 1962. The provision of section 111(d) reads as under:-

” 111. Confiscation of improperly imported goods etc. - The following goods brought from a place outside India shall be liable to confiscation

(d) Any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;

D. Prohibition on export of infringing goods Similarly, vide notification No. 50/2007–Customs (NT), dated 8.5.2007, the Government has prohibited export of following infringing goods, namely:-

(i) any goods which are required by a notification under section 139 of the Trade Marks Act, 1999 (47 of 1999), to have applied to them an indication of the country or place in which they were made or produced or of the name and address of the manufacturer or the person for

whom the goods were manufactured, but which have not applied to them such indication in the manner specified in the notification;

(ii) any goods which are required to be stamped under section 81 of the Trade Marks Act, 1999 (47 of 1999) but which have not been stamped in the manner specified in the Trade Marks Rules, 2002.

E. Section 113 of Customs Act, 1962

“ Confiscation of goods attempted to be improperly exported, etc. - The following export goods shall be liable to confiscation:

(d) Any goods attempted to be exported or brought within the limits of any customs area for the purpose of being exported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;

....”Enforcement of Intellectual Property Rights: Role of Customs Authorities Prepared by NACEN, Kanpur Page 18

F. Penalty on Importer/Exporter of Infringing Goods Further, not only the infringing goods are liable for absolute confiscation, the penal action may also be taken against the importer/exporter under Section 112 /114 of the Customs Act, 1962.

G. Parallel Imports

The term “Parallel import” in trade parlance is import of original/genuine products (not counterfeit or pirated) which are sold/ acquired legally abroad and imported into the country, by persons other than the intellectual property right holder without permission/authorisation of the IPR holder.

The question as to whether parallel imports is prohibited or freely allowed was clarified by Board vide Circular No. 13/2012-Customs, dated 8.5.2012 in consultation with the Administrative Ministries of IPR Acts and has been. While clarifying the issue, the Board’s circular stated that the prohibition of imported goods for the purpose of protecting intellectual property rights as specified under Notification No.51/2010-Customs (N.T.), does not relate to all infringements under the parent Acts but only to those imports that infringe the specific provisions of various parent Acts governing IPR, mentioned in the notification No.51/2010-Customs (N.T.).

To illustrate, in case of the Trade Marks Act, 1999, prohibitions against infringement of trade marks on import of goods intended for sale or use in India, that attract the provisions IPR (Imported Goods) Enforcement Rules, 2007, have been given in para (i) and (ii) of aforesaid notification, viz.:

(i) imported goods having applied thereto a false trade mark, as specified in section 102 of the Trade Marks Act, 1999 [for para (i)]

(ii) imported goods having applied thereto any „false trade description“ within the meaning of definition provided in clause (i), in relation to any of the matters connected to description, statement or other indication direct or indirect of the product but not including those specified sub- clauses (ii)

and (iii) of clause (za), of sub-section (1) of section 2 of the Trade Marks Act, 1999 [for para (ii)].

Thus, the prohibition under the para (i) and (ii) of aforesaid Notification No.51/2010-Customs (NT) would be applicable only when the imported goods fall within the purview of the above referred provisions of Trade Marks Act, 1999. Enforcement of Intellectual Property Rights: Role of Customs Authorities

After examining the issue of legality of parallel import or otherwise, the CBEC clarified as under:-

For patent:

Section 107A (b) of the Patents Act, 1970 provides that importation of patented products by any person from a person who is duly authorised under the law to produce and sell or distribute the product shall not be considered as an infringement of patent rights. Hence, in so far as Patents are concerned, Section 107A (b) provides for parallel imports.

Trade Mark

Section 30(3)(b) of the Trade Marks Act, 1999 provides that where the goods bearing a registered Trade Mark are lawfully acquired, further sale or other dealing in such goods by purchaser or by a person claiming to represent him is not considered an infringement by reason only of the goods having been put on the market under the registered Trade Mark by the proprietor or with his consent. However, such goods should not have been materially altered or impaired after they were put in the market.

Industrial designs:

Parallel imports are not allowed as indicated by Section 22 (1)(b) of the Designs Act, 2000.

Geographical Indications:

There are no identical or similar provisions as in Section 107A (b) of Patents Act, 1970 on parallel imports under the Geographical Indications of Goods (Registration and Protection) Act, 1999. The said Act does not address the issue of parallel import at all. Hence, parallel imports are not covered under this Act.

Copy Right:

since the clarification is awaited from the nodal authority i.e., Department of Higher Education, the field formations may follow the extant provisions of the Copyright Act, 1957 until further instructions are issued in this regard.

SECTION 136. Offences by officers of customs. – (1) If any officer of customs enters into or acquiesces in any agreement to do, abstains from doing, permits, conceals or connive at any act or thing, whereby any fraudulent export is effected or any duty of customs leviable on any goods, or any prohibition for the time being in force under this Act or any other law for the time being in force with respect to any goods is or may be evaded, he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

(2) If any officer of customs, -

(a) requires any person to be searched for goods liable to confiscation or any document relating thereto, without having reason to believe that he has such goods or document secreted about his person; or

(b) arrests any person without having reason to believe that he has been guilty of an offence punishable under section 135; or

(c) searches or authorises any other officer of customs to search any place without having reason to believe that any goods, documents or things of the nature referred to in section 105 are secreted in that place, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

(3) If any officer of customs, except in the discharge in good faith of his duty as such officer or in compliance with any requisition made under any law for the time being in force,

discloses any particulars learnt by him in his official capacity in respect of any goods, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

SECTION 137. Cognizance of offences. – (1) No court shall take cognizance of any offence under section 132, section 133, section 134 or section 135 or section 135A, except with the previous sanction of the Commissioner of Customs.

(2) No court shall take cognizance of any offence under section 136, -

(a) where the offence is alleged to have been committed by an officer of customs not lower in rank than Assistant Commissioner of Customs, except with the previous sanction of the Central Government;

(b) where the offence is alleged to have been committed by an officer of customs lower in rank than Assistant Commissioner of Customs except with the previous sanction of the Commissioner of Customs.

(3) Any offence under this Chapter may, either before or after the institution of prosecution, be compounded by the Chief Commissioner of Customs on payment, by the person accused of the offence to the Central Government, of such compounding amount and in such manner of compounding as may be specified by rules.

Provided that nothing contained in this sub-section shall apply to-

(a) a person who has been allowed to compound once in respect of any offence under sections 135 and 135A;

(b) a person who has been accused of committing an offence under this Act which is also an offence under any of the following Acts, namely:—

(i) the Narcotic Drugs and Psychotropic Substances Act, 1985(61 of 1985);

(ii) the Chemical Weapons Convention Act, 2000 (34 of 2000);

(iii) the Arms Act, 1959 (54 of 1959);

(iv) the Wild Life (Protection) Act, 1972 (53 of 1972);

(c) a person involved in smuggling of goods falling under any of the following, namely:—

(i) goods specified in the list of Special Chemicals, Organisms, Materials, Equipment and Technology in Appendix 3 to Schedule 2 (Export Policy) of ITC (HS) Classification of Export and Import Items of the Foreign Trade Policy, as amended from time to time, issued under section 5 of the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992);

(ii) goods which are specified as prohibited items for import and export in the ITC (HS) Classification of Export and Import Items of the Foreign Trade Policy, as amended from time to time, issued under section 5 of the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992);

(iii) any other goods or documents, which are likely to affect friendly relations with a foreign State or are derogatory to national honour;

(d) a person who has been allowed to compound once in respect of any offence under this Chapter for goods of value exceeding rupees one crore;

(e) a person who has been convicted under this Act on or after the 30th day of December, 2005.

SECTION 138. Offences to be tried summarily. – Notwithstanding anything contained in the Code of Criminal

Procedure, 1898 (5 of 1898), an offence under this Chapter other than an offence punishable under clause (i) of subsection (1) of section 135 or under sub-section (2) of that section may be tried summarily by a Magistrate.

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

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

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

SECTION 113. Confiscation of goods attempted to be improperly exported, etc. – The following export goods shall

be liable to confiscation:-

(a) any goods attempted to be exported by sea or air from any place other than a customs port or a customs

airport appointed for the loading of such goods;

(b) any goods attempted to be exported by land or inland water through any route other than a route specified in a notification issued under clause (c) of section 7 for the export of such goods;

(c) any goods brought near the land frontier or the coast of India or near any bay, gulf, creek or tidal river for the purpose of being exported from a place other than a land customs station or a customs port appointed for the loading of such goods;

(d) any goods attempted to be exported or brought within the limits of any customs area for the purpose of being exported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;

(e) any goods found concealed in a package which is brought within the limits of a customs area for the purpose of exportation;

(f) any goods which are loaded or attempted to be loaded in contravention of the provisions of section 33 or section 34;

(g) any goods loaded or attempted to be loaded on any conveyance, or water-borne, or attempted to be waterborne for being loaded on any vessel, the eventual destination of which is a place outside India, without the permission of the proper officer;

(h) any goods which are not included or are in excess of those included in the entry made under this Act, or in the

case of baggage in the declaration made under section 77;

- (i) any goods entered for exportation which do not correspond in respect of value or in any material particular with the entry made under this Act or in the case of baggage with the declaration made under section 77;
- (ii) any goods entered for exportation under claim for drawback which do not correspond in any material particular with any information furnished by the exporter or manufacturer under this Act in relation to the fixation of rate of drawback under section 75;
- (j) any goods on which import duty has not been paid and which are entered for exportation under a claim for drawback under section 74;
- (k) any goods cleared for exportation which are not loaded for exportation on account of any willful act, negligence or default of the exporter, his agent or employee, or which after having been loaded for exportation are unloaded without the permission of the proper officer;
- (l) any specified goods in relation to which any provisions of Chapter IVB or of any rule made under this Act for carrying out the purposes of that Chapter have been contravened.

Penalties

SECTION 114. Penalty for attempt to export goods improperly, etc. – Any person who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 113, or abets the doing or omission of such an act, shall be liable, -

- (i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding three times the value of the goods as declared by the exporter or the value as determined under this Act, whichever is the greater;
- (ii) in the case of dutiable goods, other than prohibited goods, to a penalty not exceeding the duty sought to be evaded or five thousand rupees, whichever is the greater;
- (iii) in the case of any other goods, to a penalty not exceeding the value of the goods, as declared by the exporter or the value as determined under this Act, whichever is the greater.

SECTION 114A. Penalty for short-levy or non-levy of duty in certain cases. - Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (8) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined

Provided that where such duty or interest, as the case may be, as determined under sub-section (8) of section 28, and the interest payable thereon under section 28AA, is paid within thirty days from the date of the communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent of the duty or interest, as the case may be, so determined

SECTION 114AA. Penalty for use of false and incorrect material. - If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.

SECTION 116. Penalty for not accounting for goods. – If any goods loaded in a conveyance for importation into India, or any goods transhipped under the provisions of this Act or coastal goods carried in a conveyance, are not unloaded at their place of destination in India, or if the quantity unloaded is short of the quantity to be unloaded at that destination, and if the failure to unload or the deficiency is not accounted for to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs, the person-in-charge of the conveyance shall be liable, -

(a) in the case of goods loaded in a conveyance for importation into India or goods transhipped under the provisions of this Act, to a penalty not exceeding twice the amount of duty that would have been chargeable on the goods not unloaded or the deficient goods, as the case may be, had such goods been imported;

(b) in the case of coastal goods, to a penalty not exceeding twice the amount of export duty that would have been chargeable on the goods not unloaded or the deficient goods, as the case may be, had such goods been exported.

SECTION 117. Penalties for contravention, etc., not expressly mentioned. – Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding one lakh rupees.

Exemptions

SECTION 135. Evasion of duty or prohibitions. – “(1) Without prejudice to any action that may be taken under this Act, if any person —

(a) is in relation to any goods in any way knowingly concerned in misdeclaration of value or in any

fraudulent evasion or attempt at evasion of any duty chargeable thereon or of any prohibition for the

time being imposed under this Act or any other law for the time being in force with respect to such

goods; or

(b) acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring,

keeping, concealing, selling or purchasing or in any other manner dealing with any goods which he

knows or has reason to believe are liable to confiscation under Section 111 or Section 113, as the

case may be; or

(c) attempts to export any goods which he knows or has reason to believe are liable to confiscation

under Section 113; or

(d) fraudulently avails of or attempts to avail of drawback or any exemption from duty provided under

this Act in connection with export of goods,

he shall be punishable, —

(i) in the case of an offence relating to, —

(A) any goods the market price of which exceeds one crore of rupees; or

(B) the evasion or attempted evasion of duty exceeding thirty lakh of rupees; or

(C) such categories of prohibited goods as the Central Government may, by notification in the

Official Gazette, specify; or

(D) fraudulently availing of or attempting to avail of drawback or any exemption from duty referred to in clause (d), if the amount of drawback or exemption from duty exceeds thirty lakh of rupees, with imprisonment for a term which may extend to seven years and with fine:

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, such imprisonment shall not be for less than one year;

(ii) in any other case, with imprisonment for a term which may extend to three years, or with fine, or with both.

(2) If any person convicted of an offence under this section or under sub-section (1) of section 136 is again convicted of an offence under this section, then, he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to seven years and with fine:

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment

of the court such imprisonment shall not be for less than one year. (3) For the purposes of sub-sections (1) and (2), the following shall not be considered as special and adequate reasons for awarding a sentence of imprisonment for a term of less than one year, namely :-

(i) the fact that the accused has been convicted for the first time for an offence under this Act;

(ii) the fact that in any proceeding under this Act, other than a prosecution, the accused has been ordered to pay a penalty or the goods which are the subject matter of such proceedings have been ordered to be confiscated or any other action has been taken against him for the same act which constitutes the offence;

(iii) the fact that the accused was not the principal offender and was acting merely as a carrier of goods or otherwise was a secondary party to the commission of the offence;

(iv) the age of the accused.

Duty Free Zone

Details Free Trade and Warehousing Zones (FTWZs) SEZs in India				
Sl. No.	Name of the developer	Location	Area Hectares	SEZ status
1	Arshiya International Limited	Taluka Panvel, District Raigad, Maharashtra	57.898	Notified/Operational
2	J. Matadee Free Trade Zone Private Limited	Sriperumbudur Taluk, Kancheepuram District, Tamil Nadu	40	Notified/Operational
3	Arshiya Northern FTWZ Limited	Moujpur, Bulandshar, Uttar Pradesh	51.4394	Notified/Operational
4	Arshiya International Ltd.	Taluka & District Nagpur, Maharashtra	43.26	Notified
5	Lepakshi Knowledge Hub Private Limited	Chillamaturu Mandal, Ananthapur District, Andhra Pradesh	40	Formal Approval
6	ISPRL FTWZ Padur (Indian Strategic Petroleum Reserves Ltd.)	Padur, Karnataka	41.20	Formal Approval
7	Cochin Port Trust	Thoppumpady Ramesaram Village, Cochin, Kerala	40.85	Formal Approval

Export Incentive Scheme

Export incentives are certain benefits exporters receive from the government as acknowledgement for bringing in foreign exchange and as compensation for the costs they incur on sending goods and services out of the country. Export incentives can take the form of:

- Subsidies that lower export prices
- Tax concessions such as duty exemptions (which enable duty-free import of inputs for export production) and duty remissions (which enable post-export replenishment of duty on inputs used in export product)
- Credit facilities such as low-cost loans
- Financial guarantees such as provisions covering bad loans

In India, export incentives are in line with the government's flagship "Make in India" and "Atmanirbhar Bharat" (Self-sufficient India) programmes. The former aims to *transform* India into a manufacturing major while the latter advocates *self-sufficiency*. These incentives are highlighted in a document called the foreign trade policy, which is a set of guidelines and strategies for the import and export of goods and services. The policy is formulated for a period of five years. The current one is valid till March 31. A new one will come into effect from April 1.

In India, the foreign trade policy and many of the export incentives it highlights are formulated and implemented by the Directorate General of Foreign Trade (DGFT) under the Ministry of Commerce and Industry. Then there is the Central Board of Indirect Taxes and Customs (CBIC), which devises policy regarding the levy and collection of customs duty, central excise duties and Goods and Services Tax (GST). One of its arms, the Directorate General of Export Promotion (DGEP), deals with "refund issues arising out of export", "looks into policy issues relating to export promotion schemes", and recommends changes/improvements in customs-related procedures and policies. Furthermore, some financial incentives are implemented by the Reserve Bank of India, the country's central bank.

A country's export incentives might be considered as unfair trade practice by another country. When disputes arise between countries over the level of government involvement in foreign trade, these are settled by the World Trade Organisation (WTO). As a rule, the WTO discourages (even prohibits) government incentives barring those implemented by least-developed countries.

Export incentives – Types and Benefits

I. Export promotion schemes

RoDTEP: The Remission of Duty or Taxes on Export Products (RoDTEP) scheme reimburses exporters for embedded central, state and local taxes and duties that were previously not rebated. Refunds are credited to an exporter's ledger account with customs and can be used to pay customs duty on imports or transferred to other importers. Exporters who wish to avail of the rebate must declare their intention in the shipping bill. The scheme came into effect on January 1, 2021, and replaces the Merchandise Exports from India Scheme (MEIS), whose provisions were declared illegal by the WTO for not complying with its rules on export subsidies. However, exports to Special Economic Zones (SEZ), Export Oriented Unit (EOUs) and jobbing units (which process raw material or semi-finished goods) as well as exports made against Advance Authorisation (more on this later) are ineligible for benefits under RoDTEP. Rates for the scheme and the conditions under which it can be availed are yet to be notified. Taxes/duties covered include:

Central/state taxes on fuel used to transport export products

State electricity duty levied on manufacturing goods for export

Coal cess

Mandi tax, which is a market fee on the sale/purchase of farm produce and is charged by wholesale market bodies called Agricultural Produce Market Committees (APMCs)

Toll tax

Stamp duty on import-export documentation

Service Exports from India Scheme (SEIS): Under this scheme, exporters of eligible services receive incentives in the form of duty credit scrips at a rate of 3%-7% of the net foreign exchange earned. These scrips can be used to pay customs duty on the import of inputs and central excise duties on local procurement of inputs. They are also transferable (can be passed

on to another trader). To make an SEIS claim, an exporter must have an active Importer-Exporter Code (IEC) and minimum net foreign exchange earnings of \$15,000. An application can be filed online with the DGFT.

Merchandise Exports from India Scheme (MEIS): Under this scheme, exporters of notified goods to notified markets receive transferable duty credit scrips on the realised Free On Board (FOB) value of the export in free foreign exchange at rates of 2% to 7%. The scrips can be used to pay customs/central excise duties on inputs. E-commerce exports made via courier and international post are also eligible for rewards. The MEIS has been withdrawn as of January 1 because it violated WTO rules. It has been replaced by the RoDTEP scheme. For exports made between September 1, 2020, and December 31, 2020, the government has capped rewards at Rs 2 crore per exporter. Furthermore, no MEIS claim will be entertained for IECs obtained on/after September 1, 2020.

Export Promotion Capital Goods (EPCG) Scheme: This scheme, according to the DGFT, aims “to facilitate import of capital goods [goods used to produce other goods] for producing quality goods and services and enhance India’s manufacturing competitiveness”. Under EPCG, capital goods for pre-production, production and post-production can be imported at 0% customs duty – the scheme is also called Zero Duty EPCG. The duty exemption also extends to integrated GST (IGST) and compensation cess. The scheme comes with an export obligation – the goods/services exported must be worth six times the value of duty saved and fulfilled within six years of the exporter’s EPCG licence being issued. Domestic procurement of capital goods is allowed with a 25% less export obligation. This scheme is largely beneficial to exporters of engineering and electronic products, basic chemicals and pharmaceuticals, apparel and textiles, plastics, handicrafts, chemicals and allied products, leather and leather products. Service providers eligible for benefits include hotels, tour operators, taxi firms, logistics companies and construction firms.

Evolution of Export Promotion Schemes in India

II. Duty exemption/remission schemes

Advance Authorisation (AA): It allows duty-free import of raw material/inputs physically incorporated in products made for export, provided a minimum 15% value addition is made to the final product. The scheme covers any fuel, catalyst, packaging material used in production. The quantity of inputs varies from product to product (check DGFT’s Standard Input-Output Norms or SION; self-declaration by exporter is allowed for products not covered by SION). An allowance for some wastage during production is made. The inputs must be imported within 12 months of the date the advance authorisation is issued and the final product must be exported within 18 months. You can apply for an AA licence on the DGFT website.

Advance Authorisation for Annual Requirement: Under AA, exporters can also apply for advance authorisation on an annual requirement basis. However, only exporters with a “status holder” certificate (more on this later) or with past export performance are eligible. Only SION-notified products are covered.

Duty-Free Import Authorisation (DFIA): Like AA, this scheme allows duty-free import of inputs. Unlike AA, however, imports under DFIA can be made only after the export is completed, the scheme applies only to products covered by SION, it comes with a 20% value-addition requirement, and it is exempt only from payment of basic customs duty. A DFIA licence is valid for 12 months and is transferable. An application for one can be made with the concerned regional authority of a port within 12 months of the date of export.

Duty Drawback (DBK): This scheme, implemented by the Department of Revenue, reimburses exporters on customs and central excise duties paid on inputs. Refunds can be

claimed under an All India Rate (AIR) or Brand Rate (for products that don't have an AIR or where the AIR is deemed insufficient). Refunds are credited into the exporter's bank account within two months of the shipment date.

Rebate of State and Central Levies and Taxes (RoSCTL) Scheme: Under it, exporters of ready-made apparel and made-up goods (curtains, bed linen, carpets, etc) are eligible for transferable and sellable duty credit scrips on the basis of the export FOB value. The maximum rebate rate is 6.05% for apparels and 8.2% for made-ups. To claim a rebate, an exporter must fill up an online ANF 4R form and submit it to the DGFT with a digital signature. The scheme is set to be merged with the RoDTEP scheme that covers all sectors. The RoSCTL scheme covers the following central and state taxes/duties:

Central excise duty and value-added tax on fuel used for transportation

Electricity duty

Mandi tax

Stamp duty on export documentation

CGST/SGST on production inputs, transport inputs, coal

III. EOU/EHTP/STP/BTP schemes

Under the Export Oriented Unit (EOU), Electronics Hardware Technology Park (EHTP), Software Technology Park (STP) and Bio-Technology Park (BTP) schemes, enterprises aiming to export 100% of their inventory (goods and services) may be set up. These units will enjoy certain tax and compliance waivers and concessions, including duty-free import or domestic procurement of goods required for their operations and for setting up a central facility.

Other export initiatives in India

Other export incentives

GST benefits: Exporters are entitled to the following refunds and benefits under the GST regime:

IGST refund – All exports are subject to IGST, which can be reclaimed by filing for a refund with the customs department.

LUT Bond Scheme – Exporters can export goods/services without paying GST by furnishing a Letter of Undertaking (LUT) bond. An exporter with a GST registration can log in to their profile on the GST website to furnish the document. This scheme saves traders the trouble of claiming and pursuing a refund.

1% GST benefit for merchant exporters – Merchant exporters are entitled to procure goods meant for export from a domestic supplier at a 0.1% concessional GST rate.

Status Holder Certificate: The DGFT offers exporters deemed to have contributed to India's foreign trade star ratings as a one-, two-, three-, four- and five-star export house. Ratings depend on export performance in the current and past three financial years. The certificate is valid for five years or till March 31, 2021 (when the current foreign trade policy lapses). Status holders receive non-financial privileges such as faster customs clearance, preference in import duty payment, exemptions from furnishing bank guarantee, from compulsory negotiation of documents from banks and from guaranteed remittance (GR) procedures. (GR is an RBI foreign exchange control mechanism).

Market Access Initiative (MAI): This scheme aims to explore new markets and support export promotion activities there. Activities include market studies, publicity campaigns, brand promotion, setting up showrooms/warehouses, participation in international trade fairs, reimbursement of air fare for participation in international events, refund of registration charges paid to the importing country in the case of pharmaceuticals, biotechnology, chemicals, farm and food products. Benefits under MAI are allocated through the Export Promotion Councils.

Towns of Export Excellence: Not a scheme that benefits exporters directly, this initiative instead recognises towns exporting goods worth Rs 750 crore and more as towns of export excellence. It provides financial assistance under MAI guidelines to recognised associations within these towns to fulfil their export potential.

Deemed Export Benefit Scheme: This DGFT-implemented scheme extends the benefits enjoyed by exporters to suppliers of domestically produced goods (services not included) who contribute indirectly to exports or contribute to government-specified infrastructure projects. In a deemed export transaction, the goods don't leave the country and are paid for in Indian or foreign currency. The following goods qualify as deemed exports:

Goods supplied against Advance Authorisation, Advance Authorisation for Annual Requirement and DFIA

Goods supplied to EOU/STP/EHTP/BTP units

Capital goods supplied to an EPCG licence holder

Goods supplied for UN projects, nuclear power projects and projects funded by bilateral/multilateral agencies

As such, deemed exports are eligible for Advance Authorisation, DFIA and Duty Drawback benefits as well as exemption or full refund of terminal excise duty. Unlike exports, deemed exports incur GST, though a full refund of this tax can be claimed.

Gold Card Scheme: Under this RBI scheme, banks offer exporters bearing good track records a Gold Card that comes with a three-year credit limit with automatic renewal, an additional 20% credit limit to meet sudden expenses, reduced banking service charges, relaxed security and collateral norms, and preference in granting of Packing Credit in Foreign Currency (PCFC), which is a type of pre-shipment finance.

Interest Equalisation Scheme (IES): Another RBI scheme, IES extends pre- and post-shipment export credit (credit extended before and after shipment of the goods) at a 5% interest rate for MSME manufacturers and 3% for all other exporters.

Nirvik Scheme: This is an insurance scheme implemented by the Export Credit Guarantee Corporation of India (ECGC). It provides a cover of up to 90% of the principal and interest, reduced premiums for small exporters and an easier claim settlement process. It includes pre- and post-shipment export credit.

Transport and Marketing Assistance (TMA): Specific to agricultural exports (including marine and plantation goods), this DGFT scheme reimburses exporters a certain portion of their freight cost. The aim is to make Indian agricultural products more competitive. Refunds are provided through a direct bank transfer.

Production-Linked Incentive (PLI) scheme: One of the latest initiatives from the government, the PLI scheme attempts to boost domestic manufacturing and improve competitiveness in 10 high-potential sectors. It offers a 4%-6% incentive on incremental sales of goods manufactured in India for five years subsequent to the base year (2019-2020). The sectors covered are:

Electronic/technology products

Automobiles and components

Pharmaceuticals

Telecom and networking products

Textile products

Food products

Solar photo-voltaic modules

White goods (ACs& LED)

Advance chemistry

Speciality steel

Despite all these incentives, exports are a challenging business in India, especially in the current global climate of widespread supply chain disruptions on account of Covid-19. Furthermore, payouts under several schemes have been drastically reduced in the past year. So has government expenditure on schemes. According to the Commerce Ministry's Demands for Grants 2021-2022, Central government expenditure on the Duty Drawback Scheme as per Budget 2021-22 is projected at Rs 377 crore, down from Rs 497 crore in the previous Budget. Similarly, expenditure on the Market Access Initiative is pegged at Rs 200 crore under Budget 2021-22, which is higher than the Rs 180 crore earmarked in the previous Budget but still lower than the Rs 325 crore actually spent in 2019-20. In such a scenario, exporters are now banking on the new foreign trade policy to open up more avenues of foreign trade for them.



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