

## UNIT- V

### Appeals and Revisions Under GST:

#### Appeals -Appeal to High Court:

n GST looking to complexity, ambiguity, technical problems in portals, different of opinions between GST Officers and tax payers, huge notifications, frequent amendments in GST law, next coming years the court will be over burdened with huge GST Appeals. Today already there are huge pending appeals in various courts for old tax regimes like service, tax, excise and VAT.

So now all taxpayers, GST consultants, accountants, advocates must be aware with all the provisions of appeals and revision under GST. This article has been prepared to give the details of legal provisions regarding this topic in easy language and in table form. I hope after reading this entire article, all the readers will be having more clarity for this topic.

Before I start this topic, I would like to say Show Cause Notice is the beginning point of any litigations. Question of filling appeal under GST is raised only after adjudication of Show Cause Notice. Therefore, if you want to know about the appeal in gst, we should start learning first about SCN and its adjudication. So I start this article with concept of Show Cause Notice.

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**Show Cause Notice in GST**

Show cause notice under GST can be issued under Section 73 or Section 74 of CGST Act, 2017.

Show cause shall be issued under following circumstances

- Tax not paid
- Tax Short Paid
- ITC wrongly availed/utilised
- Erroneous refund

**Note:** Here only circumstances covered under Section 73/74 of CGST Act 2017 only covered. Kindly note that SCN can be issued in many other circumstances also. e.g rejection of registration application.

Time limit to issue Show Cause Notice

**In the case other than fraud or any willful-misstatement or suppression of facts to evade tax-** (Section 73 of CGST Act 2017)

Within 33 months from the due date of filing of annual return of the Financial Year to which such tax amount relates

OR

Within 33 months from the date of erroneous refund if matter relates to refund

**In the case of fraud or any willful-misstatement or suppression of facts to evade tax-** (Section 74 of CGST Act, 2017)

Within 4.5 years from the due date of filing of annual return of the Financial Year to which such tax amount relates

Who can issue Show Cause Notice in GST?

Who can issue SCN in GST? Answer of this question depends upon the monetary limit in SCN

Circular 31/05/2018 dated 09.02.2018

Monetary Limit for SCN in GST	Authority who can issue SCN in GST
CGST Up to Rs 10 lakhs Or IGST Up to Rs 20 lakhs Or CGST+SGST up to Rs 20 lakhs	Superintendent of Central Tax
CGST above Rs 10 lakhs but up to Rs 1cr Or IGST above Rs 20 lakhs but up to Rs 2 cr Or CGST+SGST above Rs 20 lakhs but up to Rs 2 cr	Deputy or Assistant Commissioner of Central Tax
CGST above Rs 1 cr Or IGST above Rs 2 cr Or CGST+SGST above Rs 2 cr	Additional or Joint Commissioner of Central Tax

### Order of Adjudicating Authority in GST

Section 73 (10) and Section 74(10)

- First of all SCN is issued under Section 73 or 74
- Then reply to SCN in GST is given by assessee
- Then hearing is held

Then based on reply to SCN in GST and representation made during the hearing, adjudicating authority shall pass the order either confirming the liability of SCN or liability may be dropped

Such order shall be passed within following time limit

<b>In the case other than fraud or any willful-misstatement or suppression of facts to evade tax-</b>	<b>In the case of fraud or any willful-misstatement or suppression of facts to evade tax-</b>
<p>Within 3 years from the due date of filling of annual return of the Financial Year to which such tax amount relates</p> <p>OR</p> <p>Within 3 years months from the date of erroneous refund if matter relates to refund</p>	<p>Within 5 years from the due date of filling of annual return of the Financial Year to which such tax amount relates</p> <p>OR</p> <p>Within 5 years from the due date of filling date of erroneous refund if matter relates to refund</p>

### **Appeals to Appellate Authority in GST**

Section 107 of CGST Act, Rule 108, 109 and 109A of CGST Rules 2017, Notification 02/2017 Central Tax dated 19<sup>th</sup> June 2017

Appellate Authority in GST

Notification 02/2017 Central Tax

- Commissioner of Central Tax (Appeals)
- Additional Commissioner of Central Tax (Appeals)
- Joint Commissioner of Central Tax (Appeals)

Appeal to which Appellate Authority in GST?

Rule 109A of CGST Rules 2019

<b>Appeal to Commissioner (Appeal)</b>	<b>Appeal to Joint Commissioner or Additional Commissioner (Appeal)</b>
If order passed by Additional or Joint Commissioner	If order passed by Deputy or Assistant Commissioner or the Superintendent

Time limit of filling appeal to appellate authority in GST

<b>Appeal by Assessee</b>	<b>Appeal by Department</b>
Within three months from the date on which the said decision or order of adjudicating authority is communicated	Within six months from the date on which the said decision or order of adjudicating authority is communicated

Important points for filling appeal to appellate authority in GST.

<b>Sr No.</b>	<b>Topic</b>	<b>Details</b>
1	Extension of date for filling appeal	If appeal could not be filed within 3 or 6 months as the case may be, then appellant authority can grant extension of further one month if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within time limit.
2	Pre-Deposit	10% of tax amount liability confirmed by Adjudicating Authority will have to be paid. Maximum Rs 25 cr . It must be paid before filling of appeal . Once it is paid recovery proceedings for the balance amount shall be deemed to be stayed`

<b>Sr No.</b>	<b>Topic</b>	<b>Details</b>
3	Hearing	<p>Opportunity of hearing shall be granted before Appellate Authority passes the order</p> <p>Adjournment to the hearing can be granted if sufficient cause is shown. However maximum three adjournment can be granted</p>
4	Additional Ground in appeal.	<p>Statement of facts and complete ground of appeal is to be mentioned in appeal. Once appeal is filed, and thereafter appellant wants to add any additional ground, then the same can be added in appeal as additional ground. Such additional ground of appeal can be added in hearing. . However Appellate Authority will accept such additional ground only if he is satisfied that such omission of ground was not willful or unreasonable</p>
5	Remand Back	<p>Appellate authority can not remand back the case to adjudicating authority. Appellate Authority will have to pass order confirming, modifying or annulling the decision or order appealed against.</p>
6	Decision of appeal	<p>Appellate Authority will hear and decide every appeal within a period of one year from the date on which such appeal is filed. This is only to the extent possible. Not compulsory.</p>
7	Copy of order	<p>Shall be communicated to appellant , respondent and adjudicating authority . Also to jurisdictional commissioner</p>
8	FORMS	<p>FORM GST APL-01 for filling appeal to Appellate Authority</p> <p>Provisional acknowledgment shall be issued to the appellant immediately</p> <p>FORM GST APL-03 for application to the Appellate Authority (Means appeal by department)</p>

Sr No.	Topic	Details
		<ul style="list-style-type: none"> <li>FORM GST APL-02 for sending certified copy of Order appealed against (it is to be submitted within 7 days of filling appeal)</li> </ul>
9	Date of filling appeal	<p>If certified copy of order appeal against is submitted within 7 days of filling of GST APL-01, then date of filling of appeal shall be the date of issue of provisional acknowledgment</p> <p>If certified copy of order appeal against is submitted after 7 days of filling of GST APL-01, then date of filling of appeal shall be the date of submission of such copy</p> <p>Appeal shall be treated as filed only when the final acknowledgement, indicating the appeal number, is issued.</p>

### **Revisional Authority in GST**

Section 108 of CGST Act

**Revisional Authority may revise the Order passed under CGST Act under the following circumstances**

- Order is erroneous in so far as it is prejudicial to the interest of revenue and is illegal or improper or has not take into account certain material facts
- As consequence of an observation by the Comptroller and Auditor General of India
- Revisional Authority will revise such order on his on motion or upon information received by him or on request from the Commissioner of State Tax or the Commissioner of Union Territory Tax
- Revisional Authority can revise such order within three years from the from date of passing order sought to be revised.



- If appeal filed and any point has not been raised and decided in an appeal the time limit to revise the order is three years from the date of order sought to be revised or one year from the date of order in appeal whichever is later

### **Order can not be revised under the following circumstances**

- Order is subject to appeal under section 107 or 112 or 117 or 118
- Time limit of filing appeal by Department against the order of adjudication authority has not expired [(Section 107(2))]

### **Constitution of GST Appellate Tribunal**

#### Section 109 of CGST Act

The Government shall, on the recommendations of the Council, by notification, constitute with effect from such date as may be specified therein, an Appellate Tribunal known as the Goods and Services Tax Appellate Tribunal for hearing appeals against the orders passed by the Appellate Authority or the Revisional Authority.

#### National Bench

##### *Members in National Bench*

National bench shall be presided over by President. There will be Technical member (State) and another Technical Member (State)

Benches of National Bench –Known as Regional Benches. There will be Judicial Member and Technical Member (Center)/Technical Member (State)

##### *Jurisdiction of National Bench*

Jurisdiction to hear appeals against the orders passed by the Appellate Authority or the Revisional Authority in the cases where one of the issues involved relates to the **place of supply**.

#### State Bench

### *Members of State Bench*

State bench for each state shall be presided over by President. There will be Technical member (State) and another Technical Member (State)

Benches of State Bench –Known as Area Benches

### *Jurisdiction of State Bench*

Hear appeals against the orders passed by the Appellate Authority or the Revisional Authority in the cases involving matters **other than place of supply**

Procedure before Appellate Tribunal in GST

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

*a) summoning and enforcing the attendance of any person and examining him on*

*oath;*

*(b) requiring the discovery and production of documents;*

*(c) receiving evidence on affidavits;*

*(d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act,*

*1872, (1 of 1872.) requisitioning any public record or document or a copy of such*

*record or document from any office;*

*(e) issuing commissions for the examination of witnesses or documents;*

*(f) dismissing a representation for default or deciding it ex parte;*

*(g) setting aside any order of dismissal of any representation for default or any order*

*passed by it ex parte; and*

*(h) any other matter which may be prescribed.*

## **Appeal to Appellate Tribunal in GST**

Section 112 of CGST Act, Rule 110, 111 , 112 and 113 of CGST Rules 2017

Who can file appeal to Appellate Tribunal in GST?

<b>Appeal by assessee</b>	<b>Appeal by Department</b>
<p>If assessee is aggrieved by any order passed by Appellant Authority or Revisional Authority then he shall file appeal to Appellate Tribunal</p>	<ul style="list-style-type: none"><li>•Commissioner may call for and examine the record of proceedings in which order has been passed</li><li>•Commissioner may direct any officer subordinate to him to apply to the appellate authority</li><li>•In pursuance of such direction of commissioner, authorized officer shall make an application to Appellate Tribunal and the same</li></ul>

<b>Appeal by assessee</b>	<b>Appeal by Department</b>
	shall be deemed to be appeal

Cross Objection by Respondent in GST

The party against whom the appeal has been preferred may file memorandum of cross objections against any party of the order appealed against and such memorandum shall be disposed of by Appellate Tribunal, as if it were an appeal presented

Time limit of filling appeal in GST before Appellate Tribunal

<b>Appeal by Assessee</b>	<b>Appeal by Department</b>
Within three months from the date on which the said order of Appellate Authority is communicated	Within six months from the date on which the said order of Appellate Authority is communicated

Time limit for filling Memorandum of Cross Objections in GST

<b>By respondent</b>
Within 45 days of receipt of notice of filling appeal by appellant

Important points for appeal to Appellate Tribunal in GST

Sr No	Topic	Details
1	Extension of date for filling appeal /cross objection	If appeal could not be filed within 3 or 6 months as the case may be, then appellant tribunal can grant extension of further three months if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within time limit. By the same way can extent further period of 45 days in the case of delay in filling cross objection.
2	Pre-Deposit	20% of tax amount liability confirmed in addition to the amount paid as pre deposit at the time of filling appeal to Appellate Authority . Maximum Rs 25 cr It must be paid before of filling appeal. Once it is paid recovery proceedings for the balance amount shall be deemed to be stayed`
3	Hearing	Opportunity of hearing shall be granted before Appellate Tribunal passes the order Adjournment to the hearing can be granted if sufficient cause is shown. However maximum three adjournment can be granted
4	Production of Additional Evidence	Only evidences produced during the course of the proceedings before the adjudicating authority are allowed to be produced before Appellate Tribunal. However under following circumstances additional evidences are allowed to be produced Where Adjudicating Authority or Appellate Authority had refused to admit evidences Where appellant was prevented from producing evidences by Adjudicating Authority or Appellate Authority

Sr No	Topic	Details
		Where Adjudicating Authority or Appellate Authority made the order without giving opportunity to appellant to produce evidences
5	Remand Back	Appellate Tribunal can refer the case back to the Appellate Authority or the Revisional Authority or to the original adjudicating authority for fresh adjudication after taking additional evidence if necessary
6	Decision of appeal	Appellate Tribunal will hear and decide every appeal within a period of one year from the date on which such appeal is filed. This is only to the extent possible. Not compulsory.
7	Copy of order	Shall be communicated to Appellate Authority or the Provisional Authority or to the original adjudicating authority , appellant. Also to jurisdictional commissioner
8	FORMS	<p>FORM GST APL-05 for filling appeal to Appellate Tribunal</p> <p>Provisional acknowledgment shall be issued to the appellant immediately</p> <p>FORM GST APL-06 for filling Memorandum of Cross Objections</p> <p>FORM GST APL-07 for application to the Appellate Tribunal (Means appeal by department)</p> <p>FORM GST APL-02 for sending certified copy of Order appealed against (it is to be submitted within 7 days of filling appeal.</p>
9	Date of filing appeal	<p>If certified copy of order appeal against is submitted within 7 days of filling of GST APL-05, then date of filing of appeal shall be the date of issue of provisional acknowledgment</p> <p>If certified copy of order appeal against is submitted after 7 days of filling</p>

Sr No	Topic	Details
		of GST APL-05, then date of filling of appeal shall be the date of submission of such copy Appeal shall be treated as filed only when the final acknowledgement, indicating the appeal number, is issued.
10	Fees for filling appeal	Rs 1000 for every one lakh rupees of liability determined . Max Rs 25000
11	Order	Order of appellate tribunal shall be in FORM GST APL-04

#### **Interest on refund paid for admission of appeal in GST**

Pre-deposit made at the time of appeal to Appellate Authority and or Appellate Tribunal shall be refunded along with interest if Order of Appellate Authority or Appellate Tribunal is in favor of appellant

#### **Authorized Representative in GST**

Section 116 of CGST Act

Following persons can be nominated by Assessee as Authored Representative to appeal before officer or Appellate Authority or Appellate Tribunal

- *his relative or regular employee; or*
- *an advocate who is entitled to practice in any court in India, and who has not been debarred from practicing before any court in India; or*
- *any chartered accountant, a cost accountant or a company secretary, who holds a certificate of practice and who has not been debarred from practice;*
- *a retired officer of the Commercial Tax Department of any State Government or Union territory or of the Board who, during his service under the*

*Government, had worked in a post not below the rank than that of a Group-B Gazetted officer for period of not less than two years: Provided that such officer shall not be entitled to appear before any proceedings under this Act for a period of one year from the date of his retirement or resignation; or*

## **Appeal to High Court in GST**

### **Section 117 of CGST Act and Rule 114 of CGST Rules 2017**

Who can file appeal to High Court in GST ?

Any person aggrieved by any order passed by the State Bench or Area Benches of the Appellate Tribunal may file an appeal to the High Court

What is time limit for filling appeal in High Court?

Time limit to file appeal in High Court is 180 days from the date of receipt of order by aggrieved person

Can high court entertain appeal in GST after expiry of time period to file appeal?

Yes if it is satisfied that there was sufficient cause for not filing it within such period.

### **A question of law**

SC in case of Chunilal V. Mehta V. Century Spinning AIR

Following test have been laid down to determine whether a substantial question of law is involved

a) To determine whether a substantial rights of parties are affected

b) Whether it is an open issue in the sense that issue is not settled by Supreme Court

c) Issue is not free from difficulty

d) It calls for a discussion for alternative view –



## Important points for appeal to High Court in GST

Sr No	Topic	Details
1	HC can entertain appeal even after expiry of period for filling appeal	If appeal could not be filed within 6 by the appellant, then High Court can entertain appeal if it is satisfied that there was sufficient cause for not filing it within such period.
2	Issue which HC may decide	The High Court may determine any issue which <i>a) has not been determined by the State Bench or Area Benches; or</i> <i>(b) has been wrongly determined by the State Bench or Area Benches, by reason of a decision on such question of law as herein referred to in sub-section (3).</i>
3	FORMS	Appeal shall be filed in FORM GST APL-08

## Appeals to Supreme Court in GST

Who can file appeal to Supreme Court in GST?

An appeal shall lie to the Supreme Court-

*from any order passed by the National Bench or Regional Benches of the Appell Tribunal;  
or from any judgment or order passed by the High Court*

*Note: Appeal can be filed to Supreme Court only if High Court certifies to be a fit one for appeal to the Supreme Court.*

What is time limit for filling appeal in Supreme Court?

The GST Act does not provide any time limit to file appeal to Supreme Court in GST.

However, the order XX-B incorporated in the Supreme Court Rules, 1996 specified the time limit of 60 days for filing appeal under the Central Excise Act and the Customs Act. It is expected that the same time will be specified for filing appeal to Supreme Court under GST Act.

#### Application for review of order of Supreme Court in GST

Application for review (reconsideration) of judgment of Supreme Court to be filed within 30 days. Hence, review proposal should be sent to Board within 10 days from the order. Review should be applied only in exceptional cases.

#### FAQs

##### Who can file appeal in GST?

If assessee is aggrieved by any decision or order passed by Adjudicating authority/Appellate Authority then he can file appeal. On director of commissioner, department can also file appeal against the order of Adjudicating/Appellate Authority.

##### What is the maximum time limit for filing appeal in GST?

##### **Time limit of filing appeal in GST**

##### **Time limit for filing Appeal to Appellate Authority in GST and GST Appellate Tribunal**

Assessee can file appeal within 3 months from the date of communication of order of adjudicating authority.

Department can file appeal within 6 months from the date of communication of order of adjudicating authority

For filing appeal to GST Appellate Tribunal

##### **Time limit for filing Appeal to High Court**

Assessee and department both can file appeal within 180 days from the date of communication of order of appellate tribunal

## **Time limit for filing Appeal to Supreme Court**

The GST Act does not provide any time limit for filing the appeal to Supreme Court. However, the order XX-B incorporated in the Supreme Court Rules, 1996 specified the time limit of 60 days for filing appeal under the Central Excise Act and the Customs Act. It is expected that the same time will be specified for filing appeal to Supreme Court under GST Act.

### **Revisions Offenses – Compounding of offenses:**

Under Section 138 of the [CGST Act 2017](#) and Rule 162 of the [CGST Rules](#) states the procedure for compounding of offences. Compounding here simply relates to payment of monetary compensation or some fine instead of undergoing prosecution for an offence committed which may warrant such a prosecution.

As per Section 320 of Code of Criminal Procedure, there is a provision of compounding to forbear the prosecution and is defined as “arranging, coming to terms, or condone for money”. Hence, this makes compounding a legally recognized arrangement where a person charged with an offence is offered the option of avoiding any kind of prosecution or imprisonment in lieu of monetary considerations by way of penalty. Compounding is like a contract between the State and the offender where the State secures a form of revenue and offender secures an immunity from prosecution.

Compounding is a sort of compromise which an offender makes with the department to any criminal proceedings against the offense that he has committed.

Hence, all the offense that can be allowed to be compounded under law are compoundable offence.

### **Offences that can be compounded:**

As per section 138(1) of [GST Act 2017](#), any offence under the Act may be compounded by the commissioner on payment by an accused person to the Central Government or the State Government. The compounding of an offence can be done: • By the Commissioner • On Payment of Compounding Amount by the offender • Offence could

have been committed either before or after the institution of prosecution •  
Compounding must be done as per prescribed manner under the GST Act

Restriction on compounding of offences:

Compounding of offence shall not apply to below mentioned cases as per section 138(1) of GST Act 2017-

- A person who have already been allowed to compound in respect to a specified offence as per section 132(1) (a) to (f) and (l) under GST Act.
- A person who has been allowed to compound once in respect of any offence under GST Act or under provision of any other SGST or IGST Act in relation to value of supplies exceeding one crore rupees.
- A person who has been accused of committing an offence under the Act which is also an offence under any other Act
- A person who has been convicted for an offence under this act by a court of law.
- A person who has been accused for committing an offence as specified in clause (g) or Clause (j) or Clause (k) of sub section (1) of Section 132

Amounts to be paid for compounding:

Compounding of an offence is only allowed once the accused have paid all the liable taxes, interests and penalty related to that offence. And as per section 138 of GST Act 2017, any compounding allowed shall not affect the proceedings which is instituted under any other law and compounding shall only be allowed after payments of all the due taxes, interests, and penalty as applicable for such an offence.

Minimum amount of compounding cannot be less than ten thousand rupees or fifty percent of tax involved, whichever maybe higher.

Maximum amount of computing cannot be less than thirty thousand or one hundred and fifty percent of tax, whichever is higher.

Here the word tax would include any amount of tax that is evaded, any amount of input tax credit that is availed wrongly or utilized under the provision of GST Act, or State Goods and Services Tax Act, or the [Integrated Goods and Services Tax Act](#) or the Union Territory Goods and Services Tax Act or any cess levied under the Goods and Services Tax Act.

The amount of compounding shall be determined by the Commissioner under CGST/SGST/ UTGST law.

#### Withdrawal of immunity:

As per rule 162(8) of the GST Rules, the immunity granted to the offender through compounding of offence may be withdrawn at any time by the Commissioner in case he is satisfied that such a person has concealed any material about the offence during proceedings or had produced any false evidences.

- Compounding under GST Regime Section 138 of CGST Act and Rule 162 of CGST Rules covers the provision for compounding offence. Section 138 provides once in a lifetime opportunity for compounding to certain offences. This section allows compounding of offences under CGST Act.

#### **Penalty – Traditional GST Provisions:**

In the GST regime, there is uniform penalty and prosecution provision for similar type of offence that may be committed by a registered person, depending upon its severity. The word penalty is not defined in the GST Law, but as an English word it means punishment (in this case monetary as well as prosecution) given to a person for some wrongdoing. In the context of the GST law, contravention of the provisions of the law would attract a penalty(s). Penalty is expected to be an area where the law will develop significantly to encourage voluntary compliance. What is meant by the term penalty? The word “penalty” has not been defined in the CGST/SGST Act, but judicial pronouncements and principles of jurisprudence have laid down that a penalty is:

(i) a temporary punishment or a sum of money imposed by statute, to be paid as punishment for the commission of a certain offence; (ii) a punishment imposed by law or contract for doing or failing to do something that was the duty of a party to do. Any breach of law/act is an offence. Accordingly, punishment for committing an offence is 'Penalty'. The present article covers the provisions relating to penalty under GST Act'17 with section wise summarized penalties chart. Penalty for certain Offences by a Taxable Person: Section 122(1) of the CGST Act- As per the provisions of sub-section (1) of section 122, there are 21 offences, for which a taxable person may be held liable to penalty. The list of offences punishable are summarized hereunder. i. Supply of goods or services or both without issue of any invoice or issues an incorrect or false invoice with regard to any such supply, ii. Issuance of any invoice or bill without actual supply of goods or services or both, iii. Collecting any amount as tax but failing to pay the same to the Government beyond a period of three months from the date on which such payment becomes due, iv. Collecting any tax in contravention of the provisions of this Act and failing to pay the same to the Government beyond a period of three month from the date on which such payment becomes due, v. Failing to deduct the tax at source or deducting lesser tax or failing to pay deducted tax to Government account.

vi. Failing to collect tax at source or collecting lesser tax or failing to pay collected tax to Government account. vii. Taking or utilizing input tax credit without actual receipt of goods or services or both either fully or partially, viii. Fraudulently obtaining refund,

vii. Taking or utilizing input tax credit without actual receipt of goods or services or both either fully or partially, viii. Fraudulently obtaining refund,

ix. Taking or distributing input tax credit in contravention of Section 20, or the rules made thereunder, x. Falsifying or substituting financial records or producing fake accounts or documents or furnishing any false information or return with an intention to evade payments of tax due under this Act, xi. Failing to obtain registration under this Act, xii. Furnishes any false information with regard to registration particulars, either at the time of applying for registration, or subsequently, xiii. Obstructing or preventing any officer in discharge of his duties, xiv. Transporting any taxable goods without the cover of prescribed documents,

xv. Suppressing turnover leading to evasion of tax, xvi. Failing to keep, maintain or retain

books of account and other documents in prescribed manner, xvii. Failing to furnish information or documents called for by an officer or furnishing false information or documents, xviii. Supplies, transporting or storing any goods which he has reasons to believe are liable to confiscation, xix. Issuing any invoice or document by using the registration number of another registered person, xx. Tampering with, or destroying any material evidence or documents, xxi. Disposing off or tampering with any goods that have been detained, seized or attached under this Act. For any of the above offences, the taxable person shall be liable to pay higher of the following amount as a penalty- A. INR 10,000/- or B. An amount equivalent to, any of the following (applicable as the case may be)- i. Tax evaded; or ii. Tax not deducted under section 51 or short deducted or deducted but not paid to the Government; or iii. Tax not collected under section 52 or short collected or collected but not paid to the Government; or

Inter state & Intra supply:

All you need to know on Inter-State Supply and Intra State Supply Under GST

Whether a supply is classified as an Intra State GST or Inter-State Supply is determined by the location of the supplier and the location of the supplied. The nature of the supply must be determined in order to determine whether integrated tax or Central plus State tax must be paid. The term “Inter-State Supply of Products” refers to a supply of goods where the supplier and the recipient are in different states or union territories.

Intra-State delivery of products, on the other hand, refers to goods delivered to a location within the same State or Union area as the supplier. In this article information such as “What is an Intrastate supply?”, “What is an Inter-State Supply?”, Intrastate vs Interstate will be included.

### **What is an Interstate supply?**

When the provider and the place of supply are in different states, this is referred to as inter-state supply. The transaction is also presumed to be Inter-State when goods or services are exported or imported, or when products or services are supplied to or by an SEZ unit.

### **What is an Intrastate Supply?**

Intra State supply of products or services occurs when the supplier's location and the place of supply, i.e., the buyer's location, are both in the same state. A vendor must collect both CGST and SGST from the customer in intra-state transactions.

### **Point to remember for Inter-State Supply**

- As per the GST Act, Inter stat supply means the transportation of goods or services between the state and union territory.
- Before they reach the customs station, products delivered to India are frequently referred to as an Inter-State Supply.
- Inter-State Supplies are the transportation of products and services from or to an exclusive economic zone or a specific development zone.

### **Points to remember for Intra State Supply**

- A seller must collect both the State Goods and Services Tax (SGST) and the Central Goods and Services Tax (CGST) from a buyer in Intra State Supply.
- This stipulates that if the supplier's and buyer's positions are both located within the same State, the supply is considered an Intra State Supply.
- The Central Goods and Services Tax (CGST) is to be placed with the federal government, while the State Goods and Services Tax (SGST) is to be deposited with the state government.

### **Intra state GST vs Inter state GST**

- The Integrated (GST)Goods and Services Tax, or IGST, is imposed on interstate supplies under the GST.
- An intra-state supply is subject to both the CBT and the State Goods and Services Tax (SGST).
- The GST rate for products and services sold within the state would stay unchanged.
- The GST and tax rate, on the other hand, will be shared evenly between two headings: SGST and CGST.
- Different taxes are charged on different commodities or services depending on the supply location under the current GST law.



- If the transaction is an intra-state supply of goods and services, the Center of Commerce collects the central GST (CGST) and the State GST (SGST) is collected by the state where the supply takes place.
- The Centre collects integrated GST on interstate supplies of goods and services (IGST). In this instance, no CGST or SGST will be applied.
- The IGST rate will be equal to the sum of the CGST and the SGST.

## **FAQs on Intra State GST and Inter-State GST**

### *1. How will the GST be calculated for Intrastate Supplies and Billing in a different State?*

Intrastate supplies are subject to both the Central Goods and Service Tax (CGST) and the State Goods and Service Tax (SGST). The GST rates for goods and services will remain the same, however, the GST rate and tax amount will be split evenly between two headings, SGST, and CGST.

### *2. If I have an Interstate Supply of Products, what GST taxes must I pay?*

The central government deposits an integrated Goods and Services Tax in the case of an interstate supply of goods and services (IGST). In this instance, CGST (Central Goods and Services Tax) and SGST (State Goods and Services Tax) will not be applied.

### *3. What is the difference between Interstate and Intrastate Supplies?*

Inter-state and intra-state supplies are specified in Sections 7 and 8, respectively, of the IGST Act. Intra-state supplies occur when the supplier's location and the location of supply are both in the same state, while inter-state supplies occur when they are in separate states.

### *4. How would GST affect Intra-State Transactions?*

On every transaction of taxable supply of goods and services on an intra-state basis, the Central GST (CGST) and State GST (SGST) shall be imposed simultaneously. Furthermore, both would be beneficial. It is imposed on the same price or value calculated in accordance with section 15 of the CGST Law.

### *5. How will Interstate Transactions be taxed?*

The Integrated GST (IGST) would be charged on every taxable supply of goods transaction & services provided on an interstate basis. It would also be based on the same price or value. Calculated in accordance with Section 15 of the CGST Law

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**ZERO RATE SUPPLY:**

Other Supplies Covered Under Zero Rating Benefit Apart from Exports following supplies are also eligible for Zero Rating benefit under GST, though Goods does not leave the territory of India: 1) Supplies to SEZ unit/ SEZ Developer [Section 16, IGST Act, 2017] 2) Deemed Exports [Section 147 CGST Act, 2017; Notification No. 48/2017 Central Tax] a. Supply of goods by a registered person against Advance Authorisation b. Supply of capital goods by a registered person against Export Promotion Capital Goods Authorisation (EPCGA) c. Supply of goods by a registered person to Export Oriented Unit (EOU) d. Supply of gold by a bank or Public Sector Undertaking specified in the notification No. 50/2017-Customs. 3) Supplies to Merchant Exporter [Notification No.- 40/2017 Central Tax Rate] Supplies to Merchant Exporter are not treated as Zero Rated Supply but are taxed at nominal Rate of 0.1% and the supplier is eligible refund of Input tax credit on inputs and input services under Inverted Structure Mechanism. Thus Supplies to merchant exporter are almost at par with the Zero Rate Supplies. Refund of Zero Rated Supplies (Rule 89 of CGST Rules, 2017) Refund Form: RFD 01A In the following paragraphs we have highlighted the Refund Type and Documentary Evidence to be provided as per Rule 89 of CGST Act, 2017 for abovementioned supplies: I. Exports/ Supplies To SEZ The Exporters have two options for claiming refund of Zero Rated Supply, which are as follows:

a) To pay integrated tax on supplies meant to be exported and get refund of tax so paid after the supply is exported. b) To make export supplies under a Bond or LUT without payment of Integrated Tax and claim refund of Input tax credit on Inputs and input services in relation to such exports.

As per section 16 (1) of Central Goods and Services Act, 2017, the following supplies are considered as 'Zero rated supply': Export of goods or services or both Supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit Take Input Tax Credit for Zero rated supplies Input tax credit is available on inputs and input services to make Zero rated supplies subject to the provisions of sub-section (5) of section 17 of CGST Act. Claim Refund for Zero rated supplies The registered person making zero rated supply can claim refund under either of the following options, in accordance with the provisions of section 54 of CGST Act: Supplies without payment of IGST under Bond/Letter of Undertaking– claim refund of unutilised input tax credit Supplies with payment of IGST – claim refund of IGST paid Eligible Refund of Input Tax credit for Zero rated supplies

## IMPORTED SUPPLY - TRANSFER OF ITC:

- The import of goods has been defined in the IGST Act, 2017 as bringing goods into India from a place outside India. Import of goods or services will be treated as deemed inter-State supplies and would be subject to Integrated tax in addition to the applicable Custom duties.
- Import of goods or services will be treated as deemed inter-State supplies and would be subject to Integrated tax in addition to the applicable Custom duties. IGST on import of services would be levied under the IGST Act.

- Article discusses about The Import of services and treatment under GST. Effective from 01.07.2017 many services are included under Tax Net in India. The Goods and Services Tax Act, 2017 is introduced all over India (Except Jammu and Kashmir up to 7.7.2017). In Jammu and Kashmir GST Act is been applicable from 8.7.2017. Let us understand what is a service? What is import of services? how it is taxable in the GST Scenario? Now we have to study the definitions of Important terms to apply GST Law on import of services as per GST Law, 2017 for better understanding. What is the definition of services as per GST Law, 2017? As per Section 2 sub-section 102 of CGST Act, 2017” 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 of currency or denomination to another form, currency or denomination for which a separate consideration is charged”. What is the definition of “Import of Services” under GST Law? Section 2 sub-section 11 of CGST Act, 2017 “Import of services means , the supply of any services , where –

(i) The supplier of service is located outside of India, (ii) The recipient of services is located in India, and (iii) The place of supply of service is in India. What is the definition of Place of supply of services under GST Law, 2017? Under GST Scenario determination of place of supply of services is more complicated as compared to determination of place of supply of goods as there is no physical supply as in the case of goods. The deeming concept of place of supply is more prevalent in case of services. The place of supply of services in case of GST law is to certain extent similar to the existing provisions of Provision of Services Rules, 2012. What is the meaning of Location of the recipient of services under GST Law? As per section 2(14) of the

Integrated Goods and Services Tax Act, 2017 (IGST Act), Location of the recipient of services means as below: (a) Where a supply is received at a place of business for which registration has been obtained, the location of such place of business, (b) Where a supply is received at a place other than the place of business for which registration has been obtained the fixed establishment.

#### TRANSFER OF ITC:

- GST ITC-02 can be filed for transfer or matched input tax credit in case of the following circumstances: In case any registered institution undergoes sale, merger, de-merger, amalgamation, lease or transfer, the institution or organization must file an ITC declaration for transfer of ITC in the Form GST ITC-02.

#### Transfer of Input Tax Credit

A registered taxpayer can apply for transfer of matched [input tax credit](#) that is available in the Electronic Ledger to another business organization in case of transfer of business by way of sale of business/ merger/ demerger by the filing of ITC declaration in Form GST ITC – 02. In this article, we look at the procedure for transfer of input tax credit through the GST portal in detail.

#### GST ITC-02 Filing

GST ITC-02 can be filed for transfer or matched input tax credit in case of the following circumstances:

- In case any registered institution undergoes sale, merger, de-merger, amalgamation, lease or transfer, the institution or organization must file an ITC declaration for transfer of ITC in the Form GST ITC-02.
- The acquired/ transferer institution should have matched Input Tax Credit available in the Electronic Credit Ledger, that is effective from the date of merger/ acquisition/ amalgamation/ lease/ transfer.
- The transferee and the transferor should have [GST registration](#).
- It is mandatory for the transferor to [file all GST returns](#) in the past periods.
- All the pending transactions for the action of merging should either be accepted, rejected or modified and all liabilities of the returns filed by the transferor must be paid.

- The transfer of business has to be with an accurate provision of transfer of liabilities which will be the stayed demands of tax, or with any litigation /recovery cases. It has to be accompanied by the certificate that is issued by the Chartered Accountant or Cost Accountant.

### **Transfer of ITC**

Given below are the ITC that can be transferred by filing the form GST ITC – 02.

- Matched ITC balance available in the transferor's [Electronic Credit Ledger](#).
- The ITC appearing under major heads such as Central tax, State/ UT tax, integrated tax, and CESS can be transferred by filing form GST ITC – 02.

### **Transfer of Matched Unutilized ITC by the Transferor**

Given below are the steps to transfer the matched the unutilized ITC by filing Form GST ITC – 02.

#### **Step 1: Log on to the official**

The transferor or the acquiring entity has to log on to the GST Portal. The GST Home page is displayed.

#### **Step 2: Enter the Credentials**

The user has to enter all the credentials to log in to the GST Portal. The taxpayer's dashboard gets displayed on the screen.

#### **JOB WORK PROCEDURE DEMEED EXPORT:**

**Simplified GST Series –Miscellaneous- Section 143/CGST ACT 2017 Section 143-Job Work Procedure ♣** This section provides for a special procedure to exempt supplies from payment of GST by a principal to a job worker and return from a job worker to a principal subject to certain conditions and procedures. ♣ The definition of job work contains three important phrases, namely: ✓ treatment or process – any treatment or process which is applied to another person's goods is a supply of services. Therefore,

the services provided by the job-worker will be classified under HSN 9988 and treated as supply of services. ✓ goods belonging to another person-A reasonable approach demands that at least one, if not more, of the primary material must be provided by the principal where the intention is to secure the services of treatment or process – offered by the job worker to be expended on these primary materials of the principal.

✓ such person being a registered person-this is very interesting that unless the principal is himself already registered, the entire transaction will fail to be job work. ✓ Rule 55 of CGST Rules provides that transaction of goods sent for job work can be without an invoice, but a proper delivery challan containing specific details must be issued while sending goods to the job worker. serial number of such delivery challan shall also be provided in Table 13 of GSTR 1. ✓ After the processing of goods or otherwise, the goods may be dealt with in any of the following manner by the principal within 1 year/ 3 years or such further period as extended by the commissioner- (a) Brought back to any place of business without payment of tax and thereafter supplied, (i) Within India on payment of tax, (ii) For export – with or without payment of tax, (b) Supply from the place of business of job worker – (i) Within India on payment of tax,

(ii) For export – with or without payment of tax, ✓ Direct Supply of goods from job worker The goods can be supplied directly from the place of business of job worker by the principal only when the principal declares the place of business of the job worker as his additional place of business. However, the exceptions are –

i) If job worker is registered under Section 25; (ii) The principal is engaged in the supply of notified goods ✓ Responsibility for accountability of Inputs/ Capital Goods The principal is responsible and accountable for keeping proper accounts of the inputs or capital goods and for all the transactions between him and the job worker. ✓ Inputs sent to Job Worker not received back within one year or such extended period by the commissioner As per section 143(3), where the inputs sent for job-work are not received back by the “principal” after completion of “job-work or otherwise” or are not supplied from the place of business of the job worker as aforesaid within a period of one year of their being sent out or such extended period to a maximum of one year, it shall be deemed that such inputs had been supplied by the principal to the job-worker on the day when the said inputs were sent out.

Hence, the Principal would be liable to pay GST along with interest from the date inputs were sent out. As per CGST Amendment Act 2018, this period of one year can be extended up to further period of up to one more year by commissioner if taxpayer has shown sufficient reason for doing the same. Capital Goods Sent to Job Worker not received back within three years or such extended As per section 143(4), where the capital goods, other than moulds and dies, jigs and fixtures, or tools, sent for job-work are not received back by the “principal” or are not supplied from the place of business of the job worker as aforesaid within a period of three years of their being sent out or such extended period to a maximum of two years, it shall be deemed that such capital goods had been supplied by the principal to the job-worker on the day when the said capital goods were sent out. Hence, the Principal would be liable to pay GST along with interest from the date capital goods were sent out. It is also important to note that the requirement of bringing back the goods sent to the job worker is not applicable on moulds and dies, jigs and fixtures, or tools. Hence such items may remain with the job worker.

As per CGST Amendment Act 2018, this period of three years can be extended up to further period of up to two more years by commissioner if taxpayer has shown sufficient reason for doing the same. Waste and Scrap generated at Job workers’ premises As per section 143(5), any waste and scrap generated during the job work may be supplied by the job worker directly from his place of business on payment of tax if such job worker is registered, or by the principal, if the job worker is not registered. Aspects relating to taking input tax credit in respect of inputs/capital goods sent for job-work have been specifically dealt in Section 19, which provides that the credit of taxes paid on inputs or capital goods can be taken in the specified manner. Amortization of capital goods issued free-of-charge Principal wants job worker to process the goods as per their customization and for that purpose, principal sends certain capital goods viz. Moulds and dies, jigs and fixtures or tools which are used in the process of Job working having short span of life and bound to be Wiped out during that process. By nature, such goods are regarded as capital goods for principal but similarly its very rare that such goods remain intact after certain period. Accordingly, even though such goods are issued free of charge to job worker, the same need not be returned back within stipulated time as mentioned in section 143(4). Eligibility of Input tax credit in the

hands of Principal: The input tax credit would be available to the principal, irrespective of the fact whether the inputs or capital goods are received by the principal and then sent to the job worker for processing, etc. or whether they are directly received at the job worker's place of business/premises, without being brought to the premises of the principal. Since ownership of such goods will remain with principal, this is not called permanent transfer of business assets and not falls in Schedule-I transaction. Principal can claim ITC on such free supplied goods.