

UNIT – III

TDS – TCS

TDS under GST: Basics and Applicability
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Who is liable to deduct TDS under GST?

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| <ul style="list-style-type: none">• A department or an establishment of the Central Government or State Government; or• Local authority; or• Governmental agencies; or• Such persons or category of persons, notified by the Government.• Public sector undertakings, or• A society established by the Central or any State Government or a Local Authority and the society is registered under the Societies Registration Act, 1860, or• An authority or a board or any other body which has been set up by Parliament or a State Legislature or by a government, with 51% equity (control) owned by the government. |
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What is the rate of TDS to be deducted under GST?

The rate of TDS notified under the GST laws is 2% (1% CGST+1% SGST or 2% IGST) on the payments made to the seller of taxable goods or services

Is there any limit for deducting TDS under?

If the total value of supply under a contract exceeds Rs 2.5 lakhs then the person/entity would be liable to deduct TDS.

What is the time limit for payment of TDS?

The deductor would be liable to make the payment of TDS by the 10th day of the next month in form [GSTR-7](#). For example, an 'X' department of the Central Government deducts TDS @2% from 'Y' on 5 March 2021, then it is liable to make payment by 10 April 2021.

Impact of TDS under GST on Government civil contractors

The Indian government, on average, gives out more than 10,000 civil contracts every year throughout the country. The contract for constructing/repairing the national highways average more than Rs.100 crores.

These contracts are acquired by big construction companies and then sub-contracted to smaller firms and then again further sub-contracted to another small firm. This loop will face problems due to GST and in particular due to the TDS liability.

The government would need to deduct TDS from the contractor which would ensure tax compliance by the contractors and all the other sub-contractors. Currently, many small civil/labour contractors do not fulfil tax compliance. Under GST it will be imperative for them to get registered and fulfil tax compliance.

For example, M/s ABC Ltd. got a contract for repair work on an 800-meter road by the government for Rs 10 lakhs. The company outsources work to M/s XYZ Ltd. which is further outsources it to a small civil or labour contractor M/s DEF & Associates.

Under the earlier regime, M/s DEF & Associates would not have registered under service tax and VAT but now he would need to register under GST for claiming the ITC credit. The purpose of inserting the TDS provision under GST (Section 51 of the CGST Act) is to ensure tax compliance by the unorganised sectors such as the construction industry.

TDS rule will help in achieving transparency in the operations of government contracts and tax compliance.

TCS in GST for the e-Commerce Sector: Compliance in Gist

Section 52 has been inserted under the CGST law for all e-commerce aggregators to bring TCS in GST. e-Commerce aggregators are made responsible under the GST law for deducting and depositing tax at the rate of 1% from each transaction.

Any dealers or traders selling goods or services online would get the payment after deduction of 1% tax (0.5% CGST+ 0.5% SGST or 1% IGST).

It is a significant change that has increased the compliance and administration cost for online aggregators like Flipkart, Snapdeal, Amazon, etc. They would need to deposit the tax deducted by the 10th day of the next month in form [GSTR-8](#).

All the traders or dealers selling goods or services online would need to get registered under GST for claiming the tax deducted by e-commerce operators, even if their turnover is less than the [threshold turnover limit](#) notified for GST registration.

For example, Mr Vinay Dua is a trader who sells his ready-made clothes online on Amazon India. He receives an order for Rs 10,000, inclusive of tax and commission. Amazon charges a commission of Rs 200. Further, there is a return worth Rs 1,000. Amazon would, therefore, need to deduct 1% tax (TCS) on the amount, excluding sales returns (Rs 1,000), but including the money paid as a commission (Rs 200) and GST. Amazon would thus be deducting TCS in GST at Rs 90 (1% of Rs 9,000) on net sales value.

Impact of the TCS in GST on e-Commerce Operators

Online sellers like Amazon, Flipkart, Snapdeal, etc had to make certain changes in their online payment process and administration or finance department to implement the TCS in GST.

They must register under GST in every state in which they operate. The ERP systems have to be well integrated to apply these provisions in the day-to-day businesses smoothly.

On the other hand, the e-tailers or sellers must compulsorily register under GST for operating on such e-commerce platforms. Moreover, the working capital of these sellers supplying

through an e-commerce operator will be blocked until they file their return and claim the excess taxes paid.

Benefits of TDS and TCS under GST

TDS and TCS under GST have numerous benefits. Both TDS and TCS under GST were introduced by the government for strengthening regulation on tax evaders. Sections 51 and 52 of the CGST Act respectively covers the provisions of TDS and TCS under GST.

From a deductee or supplier's standpoint, there will an automatic reflection in his electronic ledger once the deductor files his/her returns under the TDS system. The deductee can claim credit in his electronic cash ledger of this tax deducted and use it for payments of other taxes, at his convenience.

TDS majorly helps in bringing the unorganised sectors to comply with the tax provisions and keeps frauds at bay.

Likewise, TCS in GST regulates the online sellers, keeps a check on the transactions and ensures timely deposit of tax with the government.

UNIT – IV

GST COUNCIL

As per Article 279A (1) of the amended Constitution, the GST Council has to be constituted by the President within 60 days of the commencement of Article 279A. The notification for bringing into force Article 279A with effect from 12th September, 2016 was issued on 10th September, 2016.

As per Article 279A of the amended Constitution, the GST Council which will be a joint forum of the Centre and the States, shall consist of the following members: -

- Union Finance Minister - Chairperson
- b) The Union Minister of State, in-charge of Revenue of finance - Member
- c) The Minister In-charge of finance or taxation or any other Minister nominated by each State Government - Members

As per Article 279A (4), the Council will make recommendations to the Union and the States on important issues related to GST, like the goods and services that may be subjected or exempted from GST, model GST Laws, principles that govern Place of Supply, threshold limits, GST rates including the floor rates with bands, special rates for raising additional resources during natural calamities/disasters, special provisions for certain States, etc.

The Union Cabinet under the Chairmanship of Prime Minister Shri Narendra Modi approved setting up of GST Council on 12th September, 2016 and also setting up its Secretariat as per the following details:

- (a) Creation of the GST Council as per Article 279A of the amended Constitution;
- b) Creation of the GST Council Secretariat, with its office at New Delhi;
- (c) Appointment of the Secretary (Revenue) as the Ex-officio Secretary to the GST Council;
- (d) Inclusion of the Chairperson, Central Board of Excise and Customs (CBEC), as a permanent invitee (non-voting) to all proceedings of the GST Council;
- (e) Create one post of Additional Secretary to the GST Council in the GST Council Secretariat (at the level of Additional Secretary to the Government of India), and four posts of Commissioner in the GST Council Secretariat (at the level of Joint Secretary to the Government of India). The Cabinet also decided to provide for adequate funds

for meeting the recurring and non-recurring expenses of the GST Council Secretariat, the entire cost for which shall be borne by the Central Government. The GST Council Secretariat shall be manned by officers taken on deputation from both the Central and State Governments.

GST Council Meetings

GST Council has met fifteen times since its constitution and some important decisions taken in the GST Council meeting are:-

- Rules for conduct of business in GST Council; [View](#)
- Timetable for implementation of GST;
- The threshold limit for exemption from levy of GST would be Rs. 20 lakhs for the States except for the Special Category States, as enumerated in Article 279A of the Constitution, for which it will be Rs 10 Lakhs);
- The threshold for availing the Composition scheme would be Rs. 50 lakhs. Service providers and some others would be kept out of the Composition Scheme;
- To compensate States for 5 years for loss of revenue due to implementation of GST, the base year for the revenue of the State would be 2015-16 and a fixed growth rate of 14% will be applied to it;
- Approval of the Draft GST Rules on registration, payment, return, refund and invoice, valuation, input tax credit, composition and transitional provisions.
- All entities exempted from payment of indirect tax under any existing tax incentive scheme would pay tax in the GST regime and the decision to continue with any incentive scheme shall be with the concerned State or Central government. In case, the State or Central Government decides to continue with any existing exemption/incentive scheme; it will be administered by way of a reimbursement mechanism.

- Adoption of four slabs tax rate structure of 5%, 12%, 18% and 28%. In addition, there would be a category of exempt goods and further a cess would be levied on certain goods such as luxury cars, aerated drinks, pan masala and tobacco products, over and above the rate of 28% for payment of compensation to the states.
- GST rates on 1211 items were approved at the 14th GST Council meeting held at Srinagar on 18th and 19th of May 2017.
- At the 15th GST Council meeting held at New Delhi on 3rd June 2017, tax rates on the remaining goods were approved.
- 22 states, and 2 Union Territories with Legislatures (Delhi and Puducherry) have already passed their respective State GST Bill in their State Assemblies.
- Issue of cross empowerment and administrative division of taxpayers between the States and Centre has been resolved.

The Central Goods and Services Tax bill, Integrated Goods and Services Tax bill, Union Territories (without legislature) Goods and Services Tax bill and Goods and Services Tax (Compensation to States) bill have been passed by the Lok Sabha on 29.03.2017 and by the Rajya Sabha on 06.04.2017.

GST AUTHORITIES:

Authorised Signatory is the person who can sign all documents for GST purposes. For Sole Proprietors, individual themselves are the authorised signatory. For rest entities, one need to appoint authorised signatory.

Authorised Signatory is declared through a letter of appointment of Authorised Signatory. This letter contains the details of person who is will act as Authorised Signatory. It states that any document signed by authorised signatory will be binding on the entity. Authorised signatory will act as the primary contact with the GST Department.

Process of Appointment of Authorised Signatory

Corporate Entities (Companies & Corporations) can appoint authorised signatory via a resolution. Others like societies can also do so through resolution.

For partnership Firms, the declaration can be signed by all the partners. Post declaration, all communications to GST must have signature of this Authorised signatory.

The head of the committee was then Finance Minister Mr. Asim Dasgupta, under the flagship of Vajpayee Government. However, that time, the GST model was not completely designed. Later on, in February 2006, the acting Finance Minister, Mr. P Chidambaram continued working on the GST model. The final model was implemented on 1st July 2017 by the Finance Minister, Mr. Arun Jaitley. From July 2017, GST replaced all other forms of indirect taxation and became the uniform, comprehensive and a destination-based form of indirect tax. After the concept of GST was implemented, the Government of India also formed a GST Council. The reason for establishing the council was to ensure that the rules of GST would be implemented in all parts of India and that every eligible establishment would abide by the GST rules. So, the GST Council became the governing body of GST implementation in India.

Creation of the GST Council

Creation of the GST Council was facilitated by the Constitution (One Hundred and Twenty Second Amendment) Bill 2016 was approved by the President of India on 8th September 2016. The objective of the Bill was to introduce [GST in India](#). Thereafter, the notification for enforcing Article 279A was issued on 10th September 2016 and the Article came into effect from 12th September 2016. On this date, in a Union Cabinet meeting, the establishment of the GST Council was approved along with the establishment of the GST Council's Secretariat. The Finance Minister at the time, Mr. Arun Jaitley, also convened the first meeting of the GST Council on 26th and 27th September 2016.

Need for a GST Council

As stated earlier, GST Council is the governing body for the implementation of GST rules in India. It is tasked with the duties to make important decisions and changes in GST. The GST

Council is authorised to determine the rate of tax applicable under the GST model, tax exemption rules, the due date of submitting GST forms, tax related laws and deadlines and special exemptions for some States of India. The GST Council is tasked to ensure that one uniform rate of GST is applied on goods and services all across India.

Features of GST Council

GST Council has the following features –

- The office of the council is located in New Delhi
 - The Ex-officio Secretary to the GST Council is the Revenue Secretary of India
 - The Central Board of Excise and Customs (CBEC) is a chairperson and a permanent, non-voting invitee for all the meetings of the GST Council
 - A post for Additional Secretary to the GST Council would be created. This post would be equivalent to the level of the Additional Secretary to the Indian Government.
 - At the level of Joint Secretary of the GST Council, four posts of commissioner would be created in the GST Council Secretariat
 - The GST Council Secretariat would consist of officers on a deputation basis appointed from the Central as well as the State Governments
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Structure of the GST Council

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 for [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.

Quorum of GST meetings and decision making

Whenever a GST Council meeting is held, the following rules must be complied with –

- At least 50% of the total number of GST members must be present at every GST Council meeting so that the meeting can be called a valid meeting
- Every decision that is taken in GST Council meetings should be backed by a minimum of 75% majority of the weighted votes cast by the members of the council. The members should be present in the meeting and should also vote. For understanding the weighted

votes cast by the Central Government and State Government members, Article 279A lays down the following rules –

- The vote of the Central Government would have the weightage of 1/3rd of the total votes cast
- The votes of the members of the State Government would have the weightage of 2/3rd of the total votes cast
- Any type of act, decision taken or proceedings of the GST Council meeting would not be considered invalid if there have been the following deficiencies when the GST Council was established –
 - A vacancy remained in the council
 - There was a defect in the constitution of the council
 - There was a defect in appointing an individual as the member of the council
 - In case of non-compliance of a procedure

Dispute handling by the GST Council

The GST Council is also charged with the duty to create a mechanism with which the following disputes would be settled –

- Disputes between the Central Government and the State Government of a State
- The disputes between the Central Government and one or more States on one side and one or more States on the other side
- Disputes between two or more States which occurred due to any recommendation of the GST Council or due to the implementation of the recommendation of the council.

INSPECTION -SEIZURE- ARREST

Introduction: Taxation is one of the most important sources of government revenue. Our government has to perform various activities for the welfare of the people of India. The authority to levy a tax is derived from the Constitution of India which allocates the power to levy various taxes between the Central 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”. Therefore, each tax levied or collected has to be backed by an accompanying law, passed either by the Parliament or the State Legislature. None the less, tax evasion is the massive problem in India. There are many methods that people use to evade taxes in India that range from false tax returns to fake documents. From the past survey report, evaders of tax has been increasing. The tax evaders, by evading the tax, get an unfair advantage over the genuine tax payers. The government has taken various legislative methods to mitigate the effects of tax evasion and to keep corruption free India. To prevent the genuine taxpayers, the concept of Inspection, search, seizure and arrest has been implemented. In India, the power of search and seizure for prevention and investigation of offences was for the first time conferred under the Code of Criminal Procedure and since search and seizure is a process exceedingly arbitrary in character, stringent statutory conditions were imposed on the exercise of the power.

(1) Where the proper officer, not below the rank of Joint Commissioner, has reasons to believe that— (a) a taxable person has suppressed any transaction relating to supply of goods or services or both or the stock of goods in hand, or has claimed input tax credit in excess of his entitlement under this Act or has indulged in contravention of any of the provisions of this Act or the rules made thereunder to evade tax under this Act; or (b) any person engaged in the business of transporting goods or an owner or operator of a warehouse or a godown or any other place is keeping goods which have escaped payment of tax or has kept his accounts or goods in such a manner as is likely to cause evasion of tax payable under this Act, He may authorise in writing (FORM GST INS-01) any other officer of central tax to inspect any places of business of the taxable person or the persons engaged in the business of transporting goods or the owner or the operator of warehouse or godown or any other place. (2) Pursuant to sub-section (1) or otherwise, where the proper officer not below the rank of JC, has reasons to believe that any goods liable to confiscation or any documents or books or things, which in his opinion shall be useful for or relevant to any proceedings under this Act, are secreted in any place, he may authorise in writing (FORM GST INS-02) any other officer of central tax to search and seize or may himself search and seize such goods, documents or books or things Proviso 1: Where it is not practicable to seize any such goods, the proper officer, or any officer authorised by him (FORM GST INS-03), may serve on the owner or the custodian of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer Proviso 2: The documents or books or things so seized shall be retained by such officer only for so long as may be necessary for their examination and

for any inquiry or proceedings under this Act. Others important points need to be pondered: The documents, books or things referred to in sub-section (2) or any other documents, books or things produced by a taxable person or any other person, which have not been relied upon for the issue of notice under this Act or the rules made thereunder, shall be returned to such person within a period not exceeding thirty days of the issue of the said notice. The officer authorised shall have the power to seal or break open the door of any premises or to break open any almirah, electronic devices, box, receptacle in which any goods, accounts, registers or documents of the person are suspected to be concealed, where access to such premises, almirah, electronic devices, box or receptacle is denied. The person from whose custody any documents are seized shall be entitled to make copies thereof or take extracts therefrom in the presence of an authorised officer at such place and time. (Exception: where making such copies, in the opinion of the proper officer prejudicially affect the investigation) The goods so seized shall be released, on a provisional basis (upon execution of FORM GST INS-04), upon execution of a bond and furnishing of a security, in such manner and of such quantum, respectively, as may be prescribed or on payment of applicable tax, interest and penalty payable, as the case may be. (the “applicable tax” shall include Central tax and State tax or Central tax and the union territory tax and the cess (if payable under GST Compensation to state Act 2017)) As per Sub-rule (2) of Rule 140 of the CGST Rules 2017, in case the person to whom the goods were released provisionally fails to produce the goods at the appointed date and place indicated by the proper officer, the security shall be encashed and adjusted against the tax, interest and penalty and fine, if any, payable in respect of such goods.

Where any goods are seized and no notice in respect thereof is given within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized (the period of six months may, on sufficient cause being shown, be extended by the proper officer for a further period not exceeding six months) In respect of perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations, if the taxable person pays an amount equivalent to the market price of such goods or things or the amount of tax, interest and penalty that is or may become payable by the taxable person, whichever is lower, such goods or, as the case may be, things shall be released forthwith, by an order in FORM GST INS-05, on proof of payment. (In respect of such goods an authorised officer shall have to prepare an inventory of such goods) Where the taxable person fails to pay the amount in respect of the said goods or things, the proper officer may dispose of such goods or things

and the amount realized thereby shall be adjusted against the tax, interest, penalty, or any other amount payable in respect of such goods or things. The provisions of the Code of Criminal Procedure, 1973, relating to search and seizure, shall, so far as may be, apply to search and seizure under this section. Where the proper officer has reasons to believe that any person has evaded or is attempting to evade the payment of any tax, he may, for reasons to be recorded in writing, seize the accounts, registers or documents of such person produced before him and shall grant a receipt for the same, and shall retain the same for so long as may be necessary in connection with any proceedings under this Act or the rules made thereunder for prosecution. The Commissioner or an officer authorised by him may cause purchase of any goods or services or both by any person authorised by him from the business premises of any taxable person, to check the issue of tax invoices or bills of supply by such taxable person, and on return of goods so purchased by such officer, such taxable person or any person in charge of the business premises shall refund the amount so paid towards the goods after cancelling any tax invoice or bill of supply issued earlier. Section 68: Inspection of Goods in movement The Government may require the person in charge of the conveyance carrying any consignment of goods to carry the invoice or bill of supply or delivery challan and a copy of the e-way bill in physical form or the e-way bill number in electronic form or mapped to a Radio Frequency Identification Device embedded on to the conveyance in such manner as may be notified by the Commissioner.

Where any conveyance is intercepted by the proper officer at any place, he may require the person in charge of the said conveyance to produce the documents prescribed and devices for verification, and the said person shall be liable to produce the documents and devices and also allow the inspection of goods. Note: As per Rule 138C of the CGST Rules 2017, Where the physical verification of goods being transported on any conveyance has been done during transit at one place within the State or Union territory or in any other State or Union territory, no further physical verification of the said conveyance shall be carried out again in the State or Union territory, unless a specific information relating to evasion of tax is made available subsequently. Section 69- Power to Arrest A. Where the Commissioner has reasons to believe that a person has committed any offence which is prescribed below: > supplies any goods or services or both without issue of any invoice, in violation of the provisions of this Act or the rules made thereunder, with the intention to evade tax > issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilisation of input tax credit or refund of tax

avails input tax credit using such invoice or bill referred above ; > collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due Which is punishable- > In cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds five hundred lakh rupees, with imprisonment for a term which may extend to five years and with fine; > In cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds two hundred lakh rupees but does not exceed five hundred lakh rupees, with imprisonment for a term which may extend to three years and with fine; He may by order, authorise any officer of Central Tax to arrest such person. B. Where a person is arrested for an offence specified above and punishable with a term which may extend to five years and with fine which shall be cognizable and non-bailable, the officer authorised to arrest the person shall inform such person of the grounds of arrest and produce him before a Magistrate within twenty-four hours. C. Subject to the Provision of the Code of Criminal Procedure, 1973- > where a person is arrested for any offence which is non-cognizable and bailable , he shall be admitted to bail or in default of bail, forwarded to the custody of the Magistrate; > in the case of a non-cognizable and bailable offence, the Deputy Commissioner or the Assistant Commissioner shall, for the purpose of releasing an arrested person on bail or otherwise, have the same powers and be subject to the same provisions as an officer-in-charge of a police station. Section 70- Power to summon persons to give evidence and produce documents The proper officer under this Act shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry in the same manner, as provided in the case of a civil court under the provisions of the Code of Civil Procedure, 1908. Every such inquiry referred to in sub-section (1) shall be deemed to be a “judicial proceedings” within the meaning of section 193 and section 228 of the Indian Penal Code.

Any officer under this Act, authorised by the proper officer not below the rank of Joint Commissioner, shall have access to any place of business of a registered person to inspect books of account, documents, computers, computer programs, computer software whether installed in a computer or otherwise and such other things as he may require and which may be available at such place, for the purposes of carrying out any audit, scrutiny, verification and checks as may be necessary to safeguard the interest of revenue

> Every person in charge of place shall, on demand, make available to the officer authorised or the audit party deputed by the proper officer or a cost accountant or chartered accountant nominated under section 66—

(i) such records as prepared or maintained by the registered person and declared to the proper officer in such manner as may be prescribed;

(ii) Trial balance or its equivalent;

(iii) Statements of annual financial accounts, duly audited, wherever required;

(iv) Cost audit report, if any, under section 148 of the Companies Act, 2013;

(v) the income-tax audit report, if any, under section 44AB of the Income-tax Act, 1961; and

(vi) any other relevant record, for the scrutiny by the officer or audit party or the chartered accountant or cost accountant within a period not exceeding fifteen working days from the day when such demand is made, or such further period as may be allowed by the said officer or the audit party or the chartered accountant or cost accountant. Section 72: Officers to assist proper officers > All officers of Police, Railways, Customs, and those officers engaged in the collection of land revenue, including village officers, officers of State tax and officers of Union territory tax shall assist the proper officers in the implementation of this Act. > The Government may, by notification, empower and require any other class of officers to assist the proper officers in the implementation of this Act when called upon to do so by the Commissioner.

DEMAND RECOVERY LIABILITY TO PAY TAX IN CERTAIN CASES

- Liability to pay in GST in case of agent and principal Where an agent supplies or receives any taxable goods on behalf of his principal, such agent and his principal shall be jointly and severally liable to pay the tax payable on such goods under the Act.
Liability to pay in GST in case of amalgamation /merger of companies

Introduction: Levy of tax is mandated by law under GST, its recovery is an important administrative function under law. Though the focus is on self-assessment and voluntary payment of tax, there bound to be certain disputes and other factors resulting in non-payment, delayed payment of tax. In civil society the demand of tax before its recovery is more humane touch to the process, these processes ultimately aimed at proper recovery of tax for larger social good. The verification, scrutiny, audit, review of returns and records are well recognised

methods	in	tax	administration.
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. Legal provisions under GST for demand and recovery: Chapter XV comprising sections 73 to 84 lay down the procedure in demand and recovery of GST. Tabular representation may help to understand the broad spectrum of the process: Section Details 73 Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful misstatement or suppression of facts. 74 Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful misstatement or suppression of facts. 75 General provisions relating to determination of tax. 76 Tax collected but not paid to Government. 77 Tax wrongfully collected and paid to Central Government or State Government. 78 Initiation of recovery proceedings 79 Recovery of tax. 80 Payment of tax and other amount in instalments. 81 Transfer of property to be void in certain cases 82 Tax to be first charge on property 83 Provisional attachment to protect revenue in certain cases. 84 Continuation and validation of certain recovery proceedings. 3. Section 73 and 74 have many similarities on recovery procedure, though the circumstances under which the proceedings are initiated are totally different. The time limit is higher under section 74 considering the serious nature of circumstances like "...by reason of fraud or any wilful misstatement or suppression of facts." Following table summarises the details: Particulars Section 73 Section 74 Situation of proposing GST demand of tax interest, penalty etc. When tax is not paid or short paid or wrong availment or utilization of ITC or refund is erroneously refunded for reason other than fraud or wilful misstatement or suppression of facts to evade tax For reason of fraud or wilful misstatement or suppression of facts to evade tax Time limit for issuance of SCN 3 month prior to issuance of order 6 month prior to issuance of order Time limit for Passing of order Within 3 year from the due date for furnishing of annual return for financial year to which tax has not paid or short paid or wrong availment or utilization of ITC relates to or 3 years from the date of erroneous refund Within 5 year from the due date for furnishing of annual return for financial year to which tax has not paid or short paid or wrong availment or utilization of ITC relates to or 5 years from the date of erroneous refund 4. The following points are important to the proceedings: a. Proper officer- only proper officer, not all can initiate proceedings. Jurisdiction in terms of administrative instructions determine the position of proper officer.

b. Tax period- any period i.e. any one month, number of months, any months in different financial years with in the limited period of 3 or 5 years.S.73(3)/74(3). c. Person chargeable

with tax- the scope is widened by no restriction to registered person or taxable person. Even persons not registered are covered here. In case of HUF, Firms, LLP, Corporate bodies the persons responsible will be liable to take note of the SCN and reply to that. d. Voluntary payment is always encouraged for easy and speedier closure of proceedings. To incentivise such compliance, no penalty or lesser penalty are proposed as per the situation mentioned in the section. e. Tax, interest and penalty are recoverable under these provisions. 5. Voluntary tax payment related provisions are as follows: Section 73 Section 74 Proper officer shall not serve any notice/statement on receipt information with respect to payment of tax along with application interest on the basis of his own ascertainment or as ascertained by proper officer. Such payment must be made before service of notice /statement Proper officer shall not serve any notice/statement on receipt information with respect to payment of tax along with application interest and 15% of tax as penalty on the basis of his own ascertainment or as ascertained by proper officer. Such payment must be made before service of notice /statement If the applicable pay tax along with applicable interest within 30 days from the date of issuance of notice/statement, then the penalty shall not be applicable and all the proceeding in the respect shall be deemed to be concluded If the applicable pay tax along with applicable interest and 25% of tax as penalty within 30 days from the date of issuance of notice/statement ,then the penalty shall not be applicable and all the proceeding in the respect shall be deemed to be concluded 6. Issue of show cause notice SCN and related issues: Show Cause Notice (SCN) is the first stage of litigation under GST. SCN is to be issued proposing demand of tax, interest, fees, or penalty and is required to be issued for taking action with respect to payment of tax collected by any person which has not been deposited with the govt. Under GST, the department is required to issue SCN when- a. Tax is not paid or short paid or b. Tax is erroneously refunded or c. Input tax credit is wrongly availed or utilized or

Any demand of tax, interest, fee or penalty is to be proposed as a result of inquiry or audit. Validity of SCN must be verified in pursuance of Section 75 of the Act. Section 75 prescribe situations like pending/further adjudication proceedings and time line restrictions with respect to issue of SCN. SCN must be issued within the time limit as prescribed u/s section 73 or 74 of the Act. It should be issued along with document relied upon by Department. Interesting to note that section 75(2) permits proceedings to be continued under 73(1) even if the SCN issued under 74(1) fail to establish the allegation of fraud or any wilful misstatement or suppression of facts to evade tax has not been established. The SCN must be specific with respect to allegation and should not suffer from vagueness and arbitrariness. 7. Penalty payable under

section 73 and 74: Penalty payable under proceedings vary depending on the level of voluntary compliance. Early response to proceedings and early payment of tax and interest (u/s 50) entail the chargeable person certain concessions in levy of penalty. In a nutshell the details are as follows:

ADVANCED RULING -AUTHORITY AND APPELLATE AUTHORITY:

Procedure of GST Appeals to First Appellate Authority

Updated on : Jun 07, 2021 - 10:45:48 PM

10 min read.

In our previous article, we discussed the [basics of any appeal](#) under GST. In this article, we will continue to understand Appeals to First Appellate Authority through some commonly asked questions.

Latest Updates

Union	Budget	2021	Outcome
1st	February		2021:

With respect to orders received on detention and seizure of goods and conveyance, 25% of penalty needs to be paid for making an application of appeals under section 107 of the CGST Act. Date of applicability is yet to be notified.

Appeal to First Appellate Authority

Who can appeal to First Appellate Authority?

A person unhappy with the order passed by an adjudicating can appeal **within 3 months** (extendable up to 1 month) from the date of the order in [FORM GST APL-01](#).

Can the Commissioner appeal to the First Appellate Authority?

Yes. He can appeal within 6 months from the date of order. The officer will examine the record of the order for its legality or propriety based on the appellant's motion or on a request from the Commissioner. The Commissioner can then direct his subordinate officer to apply to the First Appellate Authority **within six months** from the date of the order. If the authorized officer makes an application to the First Appellate Authority then such application will be treated as an appeal made against the order. Appellate Authority will issue a final acknowledgement, along with appeal number in FORM GST APL-02.

Is adjournment allowed?

The First Appellate Authority may adjourn the hearing of the appeal if there is sufficient cause. The reasons will be recorded in writing. Adjournment will be allowed only three times.

Will any additional grounds be allowed?

The First Appellate Authority can allow an appellant to go into any ground of appeal which was not earlier specified in the appeal only if he feels the omission was not willful.

Decision of the First Appellate Authority

The First Appellate Authority can confirm, modify or annul the decision but will not refer the case back to the authority.

Negative impact of the order Any order increasing any fee/penalty/fine or confiscating higher value goods or decreasing the refund or input tax credit will be passed only after a reasonable opportunity of showing cause. Any order for payment of unpaid/short-paid tax or wrong refunds or input tax credit wrongly availed will be passed only after the appellant is given show cause notice

Time limit for the decision

The order must be passed within 1 year from the date of filing the appeal. If the order is stayed by an order of a Court or Tribunal, the period of such stay shall be excluded in from the one year period.

Communication of the decision

The First Appellate Authority shall communicate the order passed to the appellant and to the adjudicating authority. A copy of the order will also be sent to the jurisdictional Commissioners of CGST and SGST.

Revisional Authority

The Revisional Authority can, on his own, or on request from the Commissioner of SGST/CGST, examine the records of any proceeding. He will examine the records if he considers that any decision by any subordinate officer is-

- Prejudicial to the interest of the revenue
- Illegal or
- Improper or
- Not taking into account certain (whether or not available at the time of issuance of the order) or
- An observation was made by the C&AG

If he thinks it is necessary, he can stay the order for a time period as he deems fit. The person concerned will be given an opportunity of being heard.

Chief Commissioner or Commissioner can enhance or modify or annul the order.

When is revision not allowed?

The Chief Commissioner or Commissioner will not revise the order if-

- The order was already under appeal
- 6 months have not passed from the date of order (i.e., there is time left for appeal)
- More than three years have passed after the date of order
- The order has already been taken for revision

The Chief Commissioner or Commissioner can pass an order on any point which has not been raised in any appeal. Such order must be passed before one year from the date of the appeal order or before three years. If the order is stayed by the order of a Court or Tribunal, the period of the stay will be excluded. If the aggrieved person is not happy with the decision of the [First Appellate Authority](#), he can appeal to the [National Appellate Tribunal](#) and then to [High Court](#) and finally [Supreme Court](#).



Under Goods and Service Tax (“[GST](#)”) provisions related to appeals and revision are given under Chapter XVII (Section 107 to Section 121) of Central Goods and Service Tax Act, 2017 (“[CGST Act](#)”).

Any parties aggrieved by order of lower authorities can file [appeal under GST](#) with appellate authority for review. Under GST, the very first appeal lies with the Appellate Authority.

In this article, a detailed discussion has been made about filing of appeal with Appellate authority.

1. When an appeal can be filed before the Appellate Authority?

- Provisions empowering appeal filing before appellate Authority are given under Section 107 of [CGST](#) Act.
- As per section 107, **any person** aggrieved by any decision of **Adjudicating Authority** may file an appeal before Appellate Authority.

2. Which authority is the Adjudicating Authority?

- As per Section 2(4) of CGST Act, adjudicating Authority is any authority, appointed or authorised to pass any order or decision under CGST Act.
- Therefore, all orders issued under other chapters of CGST Act can be challenged before appellate authority by aggrieved party such as refund order issued under Chapter XI, assessment order issued under Chapter XII etc.
- However, following authorities are not covered under “Adjudicating Authority”:
 - Central Board of Indirect Taxes and Customs,
 - The Revisional Authority,
 - The Authority for Advance Ruling,
 - The Appellate Authority for Advance Ruling,
 - The National Appellate Authority for Advance Ruling,
 - The Appellate Authority,
 - The Appellate Tribunal and
 - Anti-Profiteering measure Authority appointed under section 171(2) of CGST Act.
- Therefore, orders issued by above mentioned authorities can't be challenged with Appellate Authority. However, an application against such orders can be filed with higher authority as given under other sections of CGST Act.

3. What are the Levels of Appellate Authority?

Section 107 provides that Appeal can be filed with following 2 levels of Appellate Authority:

1. Where impugned order under CGST Act/[SGST](#) Act is issued by Additional Commissioner or Joint Commissioner then appeal shall be filed by **Commissioner (Appeals)**
2. Where an impugned order is issued by the Deputy or Assistant Commissioner or Superintendent the application shall be filed with **Joint Commissioner (Appeals)**.

4. Who can file an appeal with the Appellate Authority?

An application with Appellate Authority can be filed by any person who is aggrieved by order of the adjudicating Authority. Therefore, application can be filed by either of the following party:

1. Assessee or
2. Departmental Authorities

4.1 Appeal by Assessee under GST

- If a [taxpayer](#) is aggrieved by the order of adjudicating authority then he may file an application in accordance with provisions given under CGST Act.

4.2 Appeal by Department under GST

- Commissioner of CGST/SGST/UTGST may call for records of any proceeding where order is passed by any adjudicating authority to ensure that order is legal and has been passed in conformity with other provisions of CGST Act.
- Where the commissioner is not satisfied with any matter decided in order then he may direct any officer, subordinate to him, to file an application with appellate authority for determining such points as highlighted by the Commissioner.
- Such application shall be dealt with as it is an application made against order of Adjudicating authority and authorised officer shall be considered as appellant.

5. Procedure of filing an appeal under GST to Appellate Authority

5.1 Time Period to file Appeal under GST with appellate authority

- Appeal with appellate Authority can be filed by the assessee **within 3 months** from date of communication of order of adjudicating authority.
- In case of departmental appeal, application can be filed **within 6 months** from date of communication of order.

5.2 Relevant form to file appeal with appellate authority

- Appeal with Appellate Authority shall be filed in **form GST APL-01** along with relevant documents. Appeal can be filed electronically or otherwise.
- **Application to Appellate Authority shall be filed by Departmental Authority in Form GST APL-03 alongwith all relevant documents.** Application can be filed electronically or otherwise.
- Upon submission of application, an acknowledgment shall be generated immediately.

5.3 What is the Pre deposit before filing appeal with appellate Authority

- Appeal shall be filed by the assessee post payment of following amounts of pre-deposits.
 1. 100% Amount of tax, interest, penalty or any other amount which is agreed by both the parties, i.e., computed through impugned order and also admitted by assessee; and
 2. 10% of remaining disputed amount, i.e., amount computed by adjudicating authority in impugned order but not admitted by the assessee subject to maximum of INR 25 Crores.
- Upon payment of above mentioned amount, recovery proceedings for the remaining disputed amount shall be stayed.

5.4 Submission of impugned order with appellate authority

- Certified copy of impugned order shall be submitted with Appellate authority within 7 days from date of generation of initial acknowledgment. Upon submission of impugned order, final acknowledgment shall be generated in **form GST APL-02**.

5.5 Reasonable opportunity of being heard and Maximum adjournments

- Appellate Authority shall give a reasonable opportunity of being heard to both the parties to appeal.
- For sufficient reasons, appellate authority may adjourn the hearing of appeal. However, no adjournment shall be granted more than 3 times to either of the parties.

5.6 Time Limits to decide the matter in appeal with appellate authority

- **Where possible, Appellate Authority shall hear and decide the matter and pass the order within one year from date of filing of appeal.** Therefore, the time limit of one year is not binding and shall be based on facts and circumstances of each case.
- Where issuance of order by Appellate Authority is stay by the order of any court or Tribunal then period of such stay shall be excluded while computing one year.

5.7 Order by Appellate Authority

- Upon closure of hearing, the Appellate Authority shall either confirm or modify or set aside the impugned order. However, **Appellate Authority can't refer the matter back to the adjudicating authority who passed the impugned order.**
- Appellate Authority shall not pass the order without giving a reasonable opportunity to showing cause against the proposed order, where the proposed order is:
 1. Enhancing the fee or
 2. Enhancing the penalty or
 3. Enhancing the fine in lieu of confiscation or
 4. Confiscating goods of greater value or
 5. Reducing amount of refund or
 6. Reducing amount of [Input Tax Credit](#)
- Order by Appellate Authority shall be in writing and shall state the points for determination, decision thereon and reason of such order.
- Upon disposal of appeal, Appellate Authority shall communicate about the appeal to the appellate, respondent and adjudicating Authority. A copy of order shall also be sent to jurisdictional commissioner or any authority designated by him.
- Order passed under section 107 shall be final and binding on parties subject to below provisions

- Section 108 (Appeal to Revisional Authority),
- Section-113 (Order of Appellate Tribunal),
- Section 117 (Appeal to High Court) and
- Section 118 (Appeal to Supreme Court).
- Alongwith order, The Appellate Authority shall issue a summary of the order in **FORM GST APL-04** clearly indicating the final amount of demand confirmed.

5.8 Summary of relevant time periods for filing appeal before Appellate Authority

Action	Time Limit
Time limit of Application filing before Appellate Authority by Assessee	Within 3 months from date of communication of order of adjudicating authority
Time limit of Application filing before Appellate Authority by Department	Within 6 months from date of communication of order of adjudicating authority
Certified copy of impugned order to be submitted with appellate authority	within 7 days from date of generation of impugned order and acknowledgment
Time limit to pass order by Appellate Authority	Within 1 year from date of filing of appeal where possible

6. Production of Additional Evidence before Appellate Authority (Rule 112 to CGST Rules)

- If any appellant failed to produce any document or evidence before adjudicating authority then he shall not be allowed to produce such document before appellate authority. Therefore, only those documents or evidences can be produced which are produced earlier.

6.1 Cases where additional evidence can be produced during appeal under GST

- However, Following are the exceptions to, i.e., in following cases additional evidence shall be allowed during appeal preceding with appellate authority under GST.
 1. Where evidence was proposed to present before adjudicating authority, however, it was refused by the adjudicating authority; or
 2. Where the appellant could not produce such evidence before Adjudicated Authority due to reasonable cause and such evidence was called by Adjudicating Authority; or
 3. Where evidence or document could not be produced due to reasonable cause and such evidence is relevant to any ground of appeal; or
 4. Where the adjudicating authority has passed the impugned order without giving sufficient opportunity to the appellant to produce documents or evidences relevant to any ground of appeal.

6.2 Conditions for Allowing additional Evidences

- Without recording reason for allowing such additional documents in writing, No additional evidence shall be allowed.
- Appellate Authority shall admit the additional evidence only after providing a reasonable opportunity to adjudicating authority. It may:
 - Examine the evidence or document additionally produced by the appellant or cross-examine any witness additionally produced; or
 - Produce any evidence or any witness in rebuttal of the evidence produced by the appellant
- Appellate Authority may ask for any additional document or information on its own and then provisions of Rule 112 shall not apply to such information additionally asked for by Appellate Authority itself.

7. Appeal against order of Appellate Authority

Any person aggrieved by the order of Appellate Authority shall file an application before Appellate Tribunal under Section 112 within 3 months from the date of communication of order of Appellate Authority.

- GSTN, short for Goods and Service Tax Network, is a non-profit non-government company. It provides shared IT infrastructure and service to both central and state governments including taxpayers and other stakeholders. The registration Front end services, Returns, and payments to all taxpayers will be provided by GSTN.

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GSTN, short for Goods and Service Tax Network, is a non-profit non-government company. It provides shared IT infrastructure and service to both central and state governments including taxpayers and other stakeholders. The registration Front end services, Returns, and payments to all taxpayers will be provided by GSTN. In a nutshell, it will be acting as the interface between the government and the taxpayers.

Structure of GSTN

The [GST](#) System Project is one of a kind and complex IT initiative. What makes it unique is the way it seeks for the first time to establish a uniform interface for the taxpayer and a common and shared IT infrastructure between the Centre and States.

Talking about the structure of it, private players have a share of 51% in the GSTN, and the remaining is owned by the government. The authorized capital of the GSTN is Rs. 10 crores (US\$1.6 million), out of which the percentage divided equally between the Central and State governments is 49%, and the remaining is with private banks.

Furthermore, the GSTN has also been approved for a non-recurring grant of Rs. 315 crores. This vast and complex technological backend development was taken by Infosys and September 2015.

The GSTN is headed by Dr. Ajay Bhushan Pandey (Chairman), an Indian Administrative Service servant (1984 batch IAS), along with the CEO of GSTN, Shri Prakash Kumar.

Key Features of the GSTN

National Information Utility

The GST Network has been considered to be a trusted National Information Utility(NIU). What this means primarily is that the network is in charge of providing reliable, strong as well as, seamless IT infrastructure and information passing.

Ownership

It is partially owned by the Central Government (49%) and the rest by private players (51%) which includes Banks and Financial Institutions

Robust Infrastructure and Complex Operations

The basic function of GSTN is to help taxpayers to register themselves, make tax payments, and claim GST returns to generate business analytics among others. Furthermore, the network is also responsible for calculating and settling the Integrated GST (IGST) along with the Input Tax Credit (ITC). The GST network thus focuses to provide holistic solutions to difficult and exhaustive taxation solutions

Information Security

A major share of the GST network is owned by the central government as compared to any other individual player. Hence the major chunk of the responsibility for confidentiality as well as the security of the information provided by the taxpayers. The central government will handle the composition of the board, special resolutions mechanism, shareholder's agreement, and the agreements made between the network and other state governments.

Payment

The GST network has provided the taxpayers the options of payment through both online and offline methods.

Online: Online payment can be availed through internet banking. The RBI has allocated certain banks (Agency Banks) for the same purpose with the authority to collect payments made in favor of GST. The taxpayer will have to make the payment by selecting from a list of the

agency banks authorized by RBI to collect the tax. Once selected, the taxpayer needs to login to the respective bank's online portal and make the payment and download the challan generated for the said payment of GST.

Offline: Taxpayers can also make payments through offline methods. The government has also made the provision of payment of GST offline via "over the counter" payments. You can directly visit the respective bank to make the payment for GST. Bank will further notify the RBI as well as the GST portal to update all the relevant details.

Expenses

The user charges will be paid solely by the Central Government and the State Governments in equal proportion (i.e. 50:50) on behalf of all users. The state share will be then divided into individual states, according to the number of taxpayers in the state.

Functions of GSTN

The GST Network is basically the front end of the IT ecosystem for taxpayers and thus forms a channel of communication for the government and the business taxpayers online.

The total number of invoices processed by GSTN per month sums up to more than 2 billion and moreover, it also processes the returns for over 65 lakh taxpayers and counting. Here are some of the major key responsibilities that the GST network is in charge of the following:

Registration

As mentioned earlier, the GST network is an online portal that forms the interface between the taxpayer looking to register GST under the new taxation laws and the government. GSTN issues the GST Identification Number to the respective taxpayer and files the information with the respective Tax authorities once the registration has been verified.

Invoice Matching

Delving deeper, the GST network basically tallies the purchase invoices with the sale invoices to check for mismatches and fixes them so that the taxpayers can avail of the benefits of Input Tax Credit.

Return Filing

The services of GSTN includes processing and forwarding the returns to both the central and state tax authorities. The best and the unique thing about GSTN is, there is a unified common return filing for all types of GST i.e. [SGST](#) (State GST), [CGST](#) (Central GST), [IGST](#) (Integrated GST). This, in turn, has eliminated the need for filing multiple returns.

Taxpayer Profile Analysis

When a taxpayer wants to register for GST, all the particular details of the taxpayer are verified, and then it is put forth to the Central as well as the state government tax authorities for approval.

Some Additional Duties of GSTN

Further to managing the basic tax filing and tax returns, there are a few more responsibilities of GSTN that come along with managing taxation, these are as follows:

- Calculation and settlement of IGST (Integrated GST)
- Integrating Banking Network (Agency banks) with tax payment details
- Managing Computation Engine of Input Tax Credit
- Submitting the MIS reports to the Government

How to Apply for GSTN?

To apply for GSTN, first and foremost, you need a valid mobile number, email address, and a PAN for the respective business. You can follow the given steps to register:

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GST- Infrastructure and construction Industry Introduction:

The Government of India has identified infrastructure and construction as the key drivers for economic growth of the country and major investment is planned in this sector under the current plan. Airports, roads, ports and railways including metro/mono play pivotal role in improving the infrastructure of the nation. Similarly, trade/ convention centers, stadiums, residential complexes are being constructed across the country. Thus, construction sector provides major employment opportunities to the citizens of the country.

The changes in the GST Act and Rules will substantially increase the ease of doing the business in the country. It is pertinent to note that GST amendments reduces the cascading effect of tax by allowing seamless credit. Also it will increase compliance across the value chain very effectively. It is important that GST Act/Rules are modified suitably so that it facilitates the business and reduces legal hassles. This will enable the business houses focus on productive future. This proposal will help the infrastructure /construction industry and make compliance easier for the industry.

1. Withdrawal of concessions/exemptions to solar power projects Power is one of the key requirements for infrastructure development. The Government of India through Ministry of New and Renewable Energy (MNRE) is playing a proactive role in promoting the adoption of renewable energy resources by offering various incentives such as generation-based incentives (GBIs), capital and interest subsidies, viability gap funding (VGF), concessional finance, fiscal incentives etc. The National Solar Mission aims to promote the development and use of solar energy for power generation and other uses, with the ultimate objective of making solar energy

compete with fossil-based energy options. In pre- GST regime exemption was accorded from payment of excise duty for all equipment, instruments etc. required for initial setting up of Solar Power Project or facility as per CE Notification No.15/2010 dated 27.02.2010 – Central Excise. Under GST there is a levy of tax ranging between 5% to 18% on different equipment and instruments as detailed below: a. GST rate for solar energy system falling under Chapter 85.41 – 5% b. Other than the above GST rate is 18% e.g., inverters, cables etc., Predominantly, goods required for Solar projects attract GST levy @ 5%. For development of solar renewable energy project, generally the solar system can be installed in civil foundation. Since the system is installed in civil works, the field formation may treat it as works contract service in relation to immovable property and levy GST at 18%. This leads to increase in cost for the project Relevant GST Law: As per schedule II composite supply of works contract is deemed as service and the applicable rate of GST is 18% as per 11/2017 dated 25th June, 2017.

2. Benefit of zero rating to the sub-contractors of contractors supplying to SEZ Benefit of zero rated supply is not available to sub- contractors supplying goods/services to a contractor providing supply of goods or services to SEZ unit or developer.

This leads to blockage of working capital for the contractor. Relevant Law: As per Section 16 of the IGST Act, supply of goods or services or both to a Special Economic Zone Developer or a Unit are zero rated. However these provisions are silent about the sub-contractor supplying goods or services or both to the contractor Suggestion: It is suggested for inclusion of adequate provisions in the IGST Act so that the benefit of zero rated supply shall also be extended to sub-contractors providing supply of goods/services to contractors of SEZ Units/ Developers. This will be in line with Rule 10 of SEZ Rules updated up to 2010 which states that: Provided further that exemptions, drawbacks and concessions on the goods and services allowed to a Developer or Co-developer, as the case may be, shall also be available to the contractors including subcontractors appointed by such Developer or Co-developer, and all the documents in such cases shall bear the name of the Developer or Co-developer along with the contractor or sub-contractor and these shall be filed jointly in the name of the Developer or Co-developer and the contractor or sub-contractor, as the case may be.

3. Deemed exports benefit for goods portion in works contract Supply of specified goods to notified Power Projects have been considered as ‘deemed exports’ in Chapter 7 of the Foreign Trade Policy 2015-20 and benefits in the nature of advance authorization, duty drawback, and

terminal duty refund were extended to such supplies. The intention was to support the Power Sector which is considered critical for development of the economy. The pre-GST exemptions on account of excise duty/CVD & SAD for eventual supply to these projects are not available in the GST regime. In GST regime suppliers/ importers of such goods are liable to pay IGST/CGST+SGST from 18% to 28% which increases cost to the power producers.

The cost of power projects will therefore increase significantly which may have ramifications not only for the power producers but also for EPC contractors. Relevant GST Law: Extract of section 147 of GST Act, 2017 is as under: 147. The Government may, on the recommendations of the Council, notify certain supplies of goods as deemed exports, where goods supplied do not leave India, and payment for such supplies is received either in Indian rupees or in convertible foreign exchange, if such goods are manufactured in India Suggestion: As per the above section supply of goods alone can be considered as deemed exports by the government whereas works contract has been deemed as supply of service under GST. Hence it is suggested to amend section 147, to extend the benefit of deemed exports for the goods portion in works contract. Under the above section notification stating that Mega Power projects and Nuclear Power projects are deemed exports shall be issued.

4. Export of services between related parties As per export of services definition under IGST act, supplier of service and recipient of service shall not be merely establishments of a distinct person. This leads to denial of legitimate benefit in spite of fulfilling all other conditions of export of services Relevant GST Law: As per section 2(6) “export of services” means the supply of any service when/— (i) the supplier of service is located in India; (ii) the recipient of service is located outside India;