CHAPTER 24

# MISCELLANEOUS PROVISIONS



*The words 'the Act' wherever used in the Chapter refer to the CGST Act, unless otherwise specified. The section numbers referred to in the Chapter pertain to CGST Act, unless otherwise specified. Examples/Illustrations/Questions and Answers, as the case may be, given in the Chapter are based on the position of GST law existing as on 30.04.2026.*

## LEARNING OUTCOMES

**After studying this Chapter, you will be able to–**

- understand and explain the miscellaneous provisions relating to documents namely, presumption as to documents in certain cases, admissibility of microfilms, facsimile copies of documents and computer printouts as documents and as evidence etc.
- understand and explain the miscellaneous provisions relating to furnishing, collection and publication of information namely, bar on disclosure of information, disclosure of information by a public servant, publication of information in respect of person in certain cases etc.
- understand and explain the miscellaneous provisions relating to removal of difficulties, delegation of powers, omission repeal and saving and other provisions
- appreciate and explain the provisions relating to administration of CGST and IGST.

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# 1. INTRODUCTION

Chapter XXI of the CGST Act and Chapter IX of the IGST Act contain the miscellaneous provisions. State GST laws also prescribe identical miscellaneous provisions. Following provisions of said chapters have been discussed in this Chapter:

| Chapter XXI of the CGST Act: Miscellaneous | | |
|---|---|---|
| **Category** | **Section** | **Particulars** |
| **Documents** | 144 | Presumption as to documents in certain cases |
| | 145 | Admissibility of micro films, facsimile copies of documents and computer printouts as documents and as evidence |
| **Furnishing, collection and publication of information** | 150 | Obligation to furnish information return[1] |
| | 151 | Power to call for information |
| | 152 | Bar on disclosure of information |
| | 158 | Disclosure of information by a public servant |
| | 158A | Consent based sharing of information furnished by taxable person |
| | 159 | Publication of information in respect of persons in certain cases |
| **Removal of difficulties** | 153 | Taking assistance from an expert |
| | 160 | Assessment proceedings, etc., not to be invalid on certain grounds |
| | 161 | Rectification of errors apparent on the face of record |
| | 170 | Rounding off of tax, etc. |

[1] Section *150 is discussed in Chapter 13: Returns in Module 2 of this Study Material.*

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| | | |
|---|---|---|
| | 172 | Removal of difficulties |
| **Delegation of powers** | 164 | Power of Government to make rules |
| | 165 | Power to make regulations |
| | 166 | Laying of rules, regulations and notifications |
| | 167 | Delegation of powers |
| | 168 | Power to issue instructions or directions |
| | 168A | Power of Government to extend time limit in special circumstances |
| **Omission and repeal of earlier laws** | 173 | Amendment of Act 32 of 1994 |
| | 174 | Repeal and saving |
| **Other provisions** | 143 | Job work procedure[2] |
| | 146 | Common Portal |
| | 147 | Deemed Exports[3] |
| | 148 | Special procedure for certain processes |
| | 149 | Goods and services tax compliance rating |
| | 154 | Power to take samples |
| | 155 | Burden of proof |
| | 156 | Persons deemed to be public servants |
| | 157 | Protection of action taken under this Act |
| | 162 | Bar on jurisdiction of civil courts |
| | 163 | Levy of fee |

[2] Section *143 is discussed in Chapter 16: Job Work in this Module of the Study Material.*

[3] *Section 147 is discussed in Chapter 14: Import and Export under GST in this Module of the Study Material.*

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| | | |
|---|---|---|
| | 169 | Service of notice in certain circumstances |
| | 171 | Anti-profiteering measure |
| **Chapter VIII of the IGST Act: Apportionment of Tax and Settlement of Funds & Chapter IX of the IGST Act: Miscellaneous** | | |
| **Apportionment and settlement** | 17 | Apportionments of tax and settlement of funds |
| | 18 | Transfer of input tax credit |
| | 19 | Tax wrongfully collected and paid to Central Government or State Government |
| **Removal of difficulties** | 20 | Application of provisions of Central Goods and Services tax Act |
| | 25 | Removal of difficulties |
| **Delegation of powers** | 22 | Power to make rules |
| | 23 | Power to make regulations |
| | 24 | Laying of rules, regulations and notifications |
| **Other provisions** | 21 | Import of services made on or after the appointed day |

Apart from the above provisions, provisions of Chapter II: Administration [Sections 3-6] of the CGST Act and the manner of determination of commencement and termination of time as per section 9 of the General Clauses Act, have also been discussed in this Chapter.

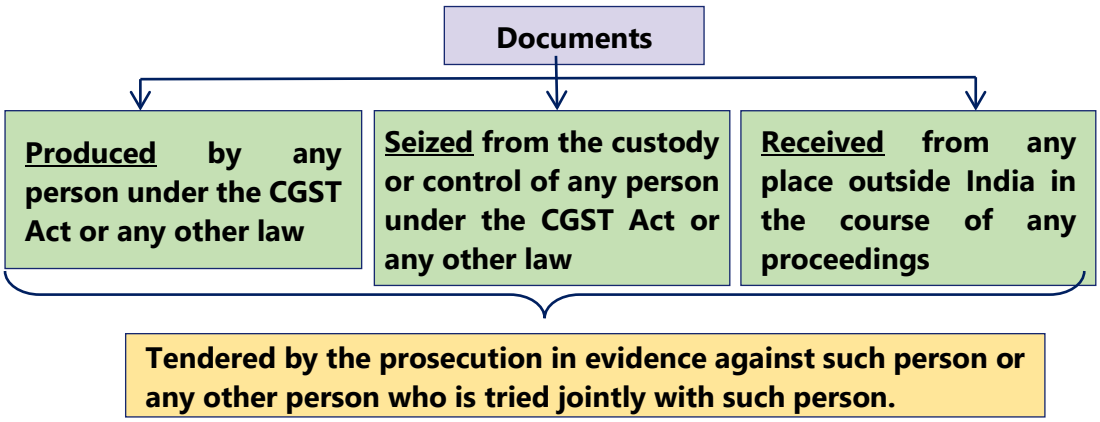
**Miscellaneous provisions under Chapter XXI of the CGST Act have also been made applicable to IGST Act vide section 20 of the IGST Act.**

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# Documents

## 2. PRESUMPTION AS TO DOCUMENTS IN CERTAIN CASES [SECTION 144]

Presumption generally means 'an act of accepting that something is true until it is proved not true'. Section 144 lays down presumptions that are taken cognizance of by the Court when certain documents (given below in the diagram) are submitted as evidence by the prosecution in a proceeding under the GST law against any person.




As per the Evidence Act, 1872, the contents of a document must be proved by evidence and signature or handwriting of a person on the document must be proved to be of the person of whom it is alleged to be. Further, a document which is required by law to be attested shall not be used as evidence until at least one attesting witness has been called for the purpose of proving its execution, except in certain cases.



Section 144 enables the court of law to make departure from the above general principles, in respect of the documents given in the diagram above, and presume:

- truth of the contents of the document

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- that the signature which purports to be in the handwriting of any particular person is in that person's handwriting
- execution or attestation in the document has been made by the person by whom it purports to have been so executed or attested

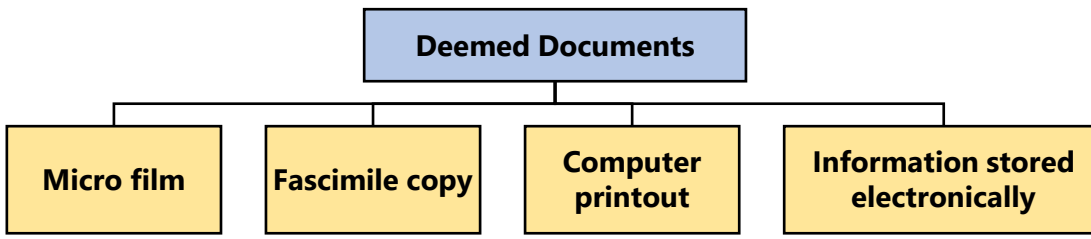
This implies that in case of such documents, if the said person claims that the document is not true or not signed or handwritten by him or not attested or executed by him, the burden of proof in respect of the same shall lie on him.

Further, the Stamp Act, 1899 provides that a document which is not duly stamped shall be inadmissible in evidence. However, section 144 allows the Court to depart from such general provision by providing that a document shall be admissible in evidence even if it is not duly stamped.

## 3. ADMISSIBILITY OF MICRO FILMS, FACSIMILE COPIES OF DOCUMENTS AND COMPUTER PRINTOUTS AS DOCUMENTS AND AS EVIDENCE [SECTION 145]

'Document' has been defined in section 2(41) of the CGST Act to include written or printed record of any sort and electronic record as defined in the Information Technology Act, 2000.

### Deemed documents




As per section 145(1), the following shall be deemed as 'documents':

- **A micro film** of a document or the reproduction of the image(s) embodied in such micro film, whether enlarged or not;

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Microfilms are films containing microphotographs of a document. Such images are generally provided as negatives.

- **A facsimile copy** of a document;

  A facsimile is a copy or reproduction of a document that is as true to the original source as possible. An exact copy of a document is a facsimile.

- **A statement** contained in a document and included in a printed material **produced by a computer**;

- **Information stored electronically** in any device or media, including any hard copies made of such information.

  It refers to the information stored in digital form, which requires the use of computer hardware and software. Also, such information is normally created and altered in the digital form. This category would include the information stored in ERP systems that are employed by most businesses presently. It also includes printouts of such digital information.

Such documents shall be admissible in any proceedings under the Act, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

## Certification

As per section 145(2), a certificate,—

(a) identifying the document containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer,

shall constitute evidence of any matter stated in the certificate.

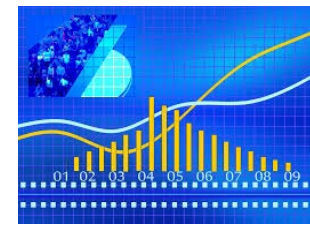
It may be noted that it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

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# Furnishing, Collection and Publication of Information

## 4. POWER TO CALL FOR INFORMATION & BAR ON DISCLOSURE OF INFORMATION [SECTIONS 151 & 152]

Section 151 lays down as under:



- The Commissioner or an officer authorised by him may, by an order, direct any person to furnish information.
- Information may be sought relating to any matter dealt with in connection with this Act, within such time, in such form, and in such manner, as may be specified therein.

### Bar on disclosure of information [Section 152]

- No information with respect to any matter given for the purposes of sections 150 or 151 shall, without the previous consent in writing of the concerned person or his authorised representative, be published in such manner as to enable any particulars to be identified as referring to a particular person without giving an opportunity of being heard to the person concerned.
- No such information shall be used for the purpose of any proceedings under the Act without giving an opportunity of being heard to the person concerned.

### Exception reporting

No restriction shall apply to the publication of any information relating to a class of taxable persons or class of transactions, if in the opinion of the Commissioner, it is **desirable in the public interest,** to publish such information.

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## 5. DISCLOSURE OF INFORMATION BY A PUBLIC SERVANT [SECTION 158]

Section 158 lays down the provisions for disclosure of information by a public servant as also maintaining the confidentiality of the same and related penal provisions in the event of contravention of the same.

### (i) Information/ documents to be treated as confidential [Section 158(1)]

The following shall be treated as confidential:

(i) all particulars contained in any statement made, return furnished or accounts or documents produced in accordance with the Act, or

(ii) all particulars contained in any record of evidence given in the course of any proceedings under the Act (other than proceeding before a Criminal Court), or

(iii) all particulars contained in any record of any proceedings under the Act.

### (ii) Exceptions to section 158(1) - Particulars that can be disclosed [Section 158(3)]

Section 158(3) lays down that notwithstanding anything contained in section 158, the following information may be disclosed:

- **For prosecution**: Any particulars in respect of any such statement, return, accounts, documents, evidence, affidavit or deposition, for the purpose of any prosecution under the Indian Penal Code or the Prevention of Corruption Act, 1988, or the Act, or any other law for the time being in force; or
- **For carrying out the objects of the Act**: Any particulars to the Central Government or the State Government or to any person acting in the implementation of the Act, for the purpose of carrying out the object of the Act; or
- **For service of notice or recovery of demand**: Any particulars when such disclosure is occasioned by the lawful exercise under the Act of any process for the service of any notice or the recovery of any demand; or

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- **For furnishing information to Court in a proceeding where Government is a party:** Any particulars to a Civil Court in any suit or proceeding, to which the Government or any authority under the Act is a party, which relates to any matter arising out of any proceeding under the Act or under any other law for the time being in force authorising any such authority to exercise any powers thereunder; or
- **For audit of tax receipts or refunds**: Any particulars to any officer appointed for the purpose of audit of tax receipts or refunds of the tax imposed by the Act; or
- **For inquiry into the conduct of GST officer**: Any particulars where such particulars are relevant the purposes of any inquiry into the conduct of any GST officer, to any person or persons appointed as an inquiry officer under any relevant law; or
- **For enabling levy/realisation of any tax or duty**: Any such particulars to an officer of the Central Government/ by a public servant/ statutory authority/ State Government, as may be necessary for the purpose of enabling that Government to levy or realise any tax or duty; or
- **By lawful exercise of powers**: Any particulars, when such disclosure is occasioned by the lawful exercise by a public servant or any other statutory authority, of his or its powers under any law for the time being in force; or
- **For inquiry into a charge of misconduct by any professional**: Any particulars relevant to any inquiry into a charge of misconduct in connection with any proceedings under the Act against a practising advocate, a tax practitioner, a practising cost accountant, a practising chartered accountant, a practising company secretary to the authority empowered to take disciplinary action against the members practising the profession of a legal practitioner, a cost accountant, a chartered accountant or a company secretary, as the case may be; or
- **For data entry on automated system**: Any particulars to any agency appointed for the purposes of data entry on any automated system or for the purpose of operating, upgrading or maintaining any automated system where such agency is contractually bound not to use or disclose such particulars except for the aforesaid purposes; or

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- **For any other law**: Any particulars to an officer of the Government as may be necessary for the purposes of any other law in force in India; and
- **In public interest**: Any information relating to any class of taxpayers or class of transactions for publication, if, in the opinion of the Commissioner, it is desirable in the public interest, to publish such information.

### (iii) Restriction on Courts [Section 158(2)]

Section 158(2) overrides the provisions contained in the Indian Evidence Act, 1872. It states that Court shall not require any GST officer to produce before it or to give evidence before it in respect of the particulars referred to in section 158(1). However, this restriction will not apply in respect of disclosures mentioned under sub-section (3).

## 6. CONSENT BASED SHARING OF INFORMATION FURNISHED BY TAXABLE PERSON. [SECTION 158A]

The following details furnished by a registered person may, be shared by the common portal with such other systems as may be notified by the Government, in the prescribed manner and subject to prescribed conditions namely:—

| | |
|---|---|
| (a) | particulars furnished in the application for registration under section 25 or in the return filed under section 39 or under section 44 [Annual Return]; |
| (b) | the particulars uploaded on the common portal for preparation of invoice, the details of outward supplies furnished under section 37 and the particulars uploaded on the common portal for generation of documents under section 68 [Inspection of goods in movement]; |
| (c) | such other details as may be prescribed. |

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- For the purposes of sharing details, the consent shall be obtained, of—

| | |
|---|---|
| (a) | the supplier, in respect of details furnished above and |
| (b) | the recipient, in respect of details furnished under (b), and under (c) only where such details include identity information of the recipient, |

in the prescribed form and manner.

- No action shall lie against the Government or the common portal with respect to any liability arising consequent to information shared under this section.
- There shall be no impact on the liability to pay tax on the relevant supply or as per the relevant return.
- This section overrides the following sections:-

| Section No. | |
|---|---|
| 133 | Liability of officers and certain other persons |
| 152 | Bar on disclosure of information |
| 158 | Disclosure of information by a public servant |

The said provision is implemented by rule 163 which provides that where a registered person opts to share the information furnished in—

(a) application for registration in Form GST REG-01 as amended from time to time;

(b) return in Form GSTR-3B for certain tax periods;

(c) Form GSTR-1, as amended in Form GSTR-1A if any, for certain tax periods, pertaining to invoices, debit notes and credit notes issued by him, as amended from time to time**,

with a system referred to in section 158A(1) (hereinafter referred to as "requesting system"), the requesting system shall obtain the consent of the said registered person for sharing of such information and shall communicate the consent along with the details of the tax periods, where applicable, to the common portal.

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**The registered person shall give his consent for sharing of information furnished in Form GSTR-1 above only after he has obtained the consent of all the recipients, to whom he has issued the invoice, credit notes and debit notes during the said tax periods, for sharing such information with the requesting system and where he provides his consent, the consent of such recipients shall be deemed to have been obtained.

The common portal shall communicate the information referred in this rule with the requesting system on receipt from the said system-

(a) the consent of the said registered person, and

(b) the details of the tax periods or the recipients, as the case may be, in respect of which the information is required.

Central Government has notified following as the systems with which information may be shared by the common portal based on consent:-

(1) Account Aggregator

(2) Public Tech Platform for Frictionless Credit

"Account Aggregator" means an NBFC which undertakes the business of an Account Aggregator in accordance with the policy directions issued by the RBI[4] and defined as such in the NBFC-Account Aggregator (Reserve Bank) Directions, 2016.

"Public Tech Platform for Frictionless Credit" means an enterprise-grade open architecture information technology platform, conceptualised by the Reserve Bank of India as part of its "Statement on Developmental and Regulatory Policies" dated the 10th August, 2023 and developed by its wholly owned subsidiary, Reserve Bank Innovation Hub, for the operations of a large ecosystem of credit, to ensure access of information from various data sources digitally and where the financial service providers and multiple data service providers converge on the platform using standard and protocol driven architecture, open and shared Application Programming Interface (API) framework.

[4] *under section 45JA of the Reserve Bank of India (RBI) Act, 1934*

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This provision can be helpful in many cases as follows –

(a) where the recipient of goods or services wants to confirm whether supplier of goods or services has filed returns and has paid the tax. This is because if the supplier does not pay tax, recovery can be made from recipient. In such cases, after obtaining consent from supplier, the recipient can check whether supplier as filed returns and paid taxes, before releasing his payment. At present, there is no mechanism by which recipient can know whether supplier has paid the taxes and filed returns

(b) This provision will also be helpful to buyer for vendor registration, rating of vendors and verifying credentials of vendors

(c) Suppliers of goods and services can judge credit worthiness of recipient, before extending him credit.

(d) Bankers can use this provision while making assessment of loan applications.

## 7. PUBLICATION OF INFORMATION IN RESPECT OF PERSONS IN CERTAIN CASES [SECTION 159]

Section 159 confers powers on the Commissioner for publishing names and other particulars of persons in certain cases.

| | |
|---|---|
| What type of information can be published? | The name of any person and any other particulars relating to any proceedings or prosecutions under the Act in respect of such person. |
| Who can publish such information? | Commissioner, or any other officer authorised by him in this behalf |
| What is the manner of publication of information? | The information shall be published in such manner as the Commissioner/authorised officer thinks fit. |

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| | |
|---|---|
| When can the information be published? | Such information shall be published if Commissioner/any other officer authorised by him in this behalf is of the opinion that it is necessary/expedient in public interest to do so. |
| Is there any additional information which can be published? | In cases of firm, company or association of persons, names of the partners of the firm, directors, managing agents, secretaries and treasures or managers of the company, or the members of the association, as the case may be may also be published, if in the opinion of the Commissioner/authorised officer, circumstances of the case justify it. |
| What is the limitation on publication of information relating to penalty? | No publication under this section shall be made in relation to any penalty imposed under the Act:<br>• until the time for presenting an appeal to the Appellate Authority under section 107 has expired (three months extendable to further one month) without an appeal having been presented; or<br>• the appeal, if presented, has been disposed of. |

## 8. TAKING ASSISTANCE FROM AN EXPERT [SECTION 153]

Section 153 enables an officer, not below the rank of Assistant commissioner, to take assistance of any expert at any stage of scrutiny, inquiry, investigation or any other proceedings before him. It may be noted that such decision shall be taken having regard to the nature and complexity of the case and the interest of revenue.




**(1)** An IT professional's assistance may be sought where the officer is of the view that information pertaining to a taxable person stored on a computer system does not reveal correct details.

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## 9. ASSESSMENT PROCEEDINGS, ETC. NOT TO BE INVALID ON CERTAIN GROUNDS [SECTION 160]

Sometimes, proceedings are challenged for their validity merely for reasons of mistakes etc. This provision aims at saving the proceedings from such challenges.

| | |
|---|---|
| Which proceedings are covered under this provision? | The following proceedings done, accepted, made, issued, initiated, or purported to have been done, accepted, made, issued, initiated in pursuance of any provisions of the Act are covered:<br>• Assessment<br>• Re-assessment<br>• Adjudication<br>• Review<br>• Revision<br>• Appeal<br>• Rectification<br>• Notice<br>• Summons<br>• Other proceedings |
| On which grounds, will such proceedings be not held as invalid? | Such proceedings shall not be held invalid for mere reason of:<br>• Mistake<br>• Defect<br>• Omission<br>if such proceedings are in substance and effect in conformity with or according to the intents, purposes and requirements of the Act or any earlier law. |
| When will the service of any notice, order, or communication be not called in question? | The service of any<br>• Notice<br>• Order |

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| | |
|---|---|
| | • Communication<br>shall not be called in question if:<br>• the notice, order or communication has already been acted upon by the person to whom it is issued or<br>• where such service has not been called in question at or in the earliest proceedings commenced, continued or finalised pursuant to such notice, communication or order. |

## 10. RECTIFICATION OF ERRORS APPARENT ON THE FACE OF RECORD [SECTION 161]

Section 161 provides for rectification of mistakes/errors apparent on the face of record by any authority. It may be noted that this section overrides the entire Act, except for the provisions of section 160 (discussed above).

| | |
|---|---|
| Which documents are covered under section 161? | • Decision<br>• Order<br>• Any notice<br>• Certificate<br>• Any other document |
| Who can rectify the errors apparent on the face of record? | • Any authority who has passed or issued any decision or order or notice or certificate or any other document may rectify any error which is apparent on the face of record in such documents. |
| What type of mistakes or errors can be rectified? | Errors or mistakes which are apparent on the face of record may be rectified. Rectification can only be of error apparent from record. It is a settled law that a decision on a debatable point of law is not a mistake apparent from the record. |

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| | |
|---|---|
| When does the Authority rectify the mistakes/errors? | The authority may rectify the mistake/error:<br>• *suo moto*<br>• when such error or mistake is brought to its notice by a GST officer<br>• when such error or mistake is brought to notice by the affected person within a period of 3 months from the date of issue of such decision or order or notice or certificate or any other document, as the case may be. |
| What is the time limit for rectification? | No rectification can be made after a period of six months from the date of issue of such decision/ order/ notice/ certificate/ any other document.<br>However, such time limit does not apply in cases where the rectification is purely in the nature of correction of a clerical or arithmetical error or mistake, arising from any accidental slip or omission. |
| What type of precautions should be taken at the time of rectification? | Principles of natural justice should be followed by the authority carrying out such rectification, if such rectification adversely affects any person. |

## 11. ROUNDING OFF OF TAX ETC. [SECTION 170]

### Amounts covered

The principle of rounding off laid out in section 170 applies to:

- ❑ tax
- ❑ interest
- ❑ penalty
- ❑ fine
- ❑ any other sum payable under the provisions of the Act
- ❑ refund
- ❑ any other sum due under the provisions of the Act.

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It may be noted that this provision does not apply to tax invoices. Thus, it is not required to round up figures in tax invoices. Only consolidated payment to Government has to be rounded off.

**Rounding off principle**

| | |
|---|---|
| Amount contains part of a rupee consisting of paise, and such part is fifty paise or more | Increase to one rupee |
| Amount contains part of a rupee consisting of paise, and such part is less than fifty paise | Ignore such part |

# Delegation of Powers

## 12. POWER OF GOVERNMENT TO MAKE RULES & REGULATIONS [SECTIONS 164 & 165]

Section 164 empowers the Government to make rules on the recommendations of the GST Council for carrying out the provisions of the Act.

The following are noteworthy in this regard:

- The Government may make rules for all or any of the matters which by the Act are required to be, or may be, prescribed or in respect of which provisions are to be or may be made by rules.
- The rules may also be issued with retrospective effect but not from a date earlier than the date on which the provisions of the Act have come into force.
- The rules may provide for a penalty not exceeding ₹ 10,000 for committing breach of any rule.

Section 165 empowers the Board to make regulations consistent with the Act and the rules made thereunder to carry out the provisions of the Act.

Thus, while the rule making power lies with the Government, the regulation making power has been delegated to the CBIC (Board).

**The Central Government and the Board have been vested with the similar powers of making rules and regulations respectively under sections 22 & 23 of the IGST Act also.**

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## 13. LAYING OF RULES, REGULATIONS AND NOTIFICATIONS [SECTION 166]

Section 166 provides that the following delegated legislation under the Act shall be laid before each house of the Parliament, while it is in session, for a total period of 30 days which may be comprised in one session, or in two or more successive sessions:

- every rule made by the Government
- every regulation made by the Board
- every notification issued by the Government

If both the Houses agree that

- any modification be made in the rule / regulation / notification; or
- rule or regulation or notification should not be made,

the rule or regulation or notification shall thereafter have effect only in such modified form or be of no effect, as the case may be. However, any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation or notification.

**Similar provisions relating to laying of rules, regulations and notification etc. have also been prescribed under section 24 of the IGST Act.**




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## 14. DELEGATION OF POWERS [SECTION 167]

Section 167 prescribes that the powers conferred on any authority/officer can also be exercised by another authority/officer, if the Commissioner so directs by way of notification, subject to such conditions as may be specified in the notification.

Many notifications have been issued under this provision to delegate powers to lower officers, officers of State Government (by Central Government) and officers of Central Government (by State Government).

## 15. POWER TO ISSUE INSTRUCTIONS OR DIRECTIONS [SECTION 168]

Section 168 empowers the Board (CBIC) to issue orders, instructions or directions to the CGST officers for the purpose of uniformity in the implementation of the Act.

All officers and all other persons employed in the implementation of the Act observe and follow such orders, instructions or directions.

The binding nature of such orders, instructions and directions has been a matter of debate and scrutiny. The general understanding that prevails now is that a circular is binding on the officers, but not on the assessee. However, in case such circular states something contrary to the law, the law shall prevail over the circular.

The meaning of Commissioner for the purposes of following provisions is Commissioner or Joint Secretary posted in the Board and such Commissioner or Joint Secretary shall exercise the powers specified in these said sections with the approval of the Board:

| Section | Particulars |
|---|---|
| Section 2(91) | Meaning of 'proper officer' |
| Section 5(3) | Delegation of powers by Commissioner |
| Section 25(9)(b) | Notification of person or class of persons for grant of Unique Identity Number |
| Section 35(3) | Notification of class of taxable persons required to maintain additional accounts or documents |

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| | |
|---|---|
| Section 35(4) | Notification of class of taxable persons permitted to maintain accounts in a prescribed manner where the Commissioner considers that such persons are not in a position to keep and maintain accounts in accordance with the general provisions |
| Section 37(1) | Details of outward supplies (extension of time limit) |
| Section 39(6) | Return (extension of time limit) |
| Section 44 | Annual return |
| Sub-sections (4) and (5) of section 52 | Statement for tax collection at source and Annual Statement by Electronic Commerce Operator (extension of time limit) |
| Section 143(1) except second proviso thereof | Job-work procedure (except extension of time limits of 1 year and 3 years) |
| Section 158(3)(l) | Exceptions to bar on disclosure of information by public servant |
| Section 167 | Delegation of powers |

## 16. POWER OF GOVERNMENT TO EXTEND TIME LIMIT IN SPECIAL CIRCUMSTANCES [SECTION 168A]

The Government is empowered to extend the time limits provided under the CGST Act in respect of actions which cannot be completed or complied with due to force majeure. Here, force majeure means war, epidemic, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the implementations of provisions of the CGST Act. This power can also be exercised retrospectively.

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# Omission, Repeal and Saving

## 17. OMISSION AND REPEAL OF EARLIER LAWS [SECTIONS 173 AND 174]

### Amendment of Act 32 of 1994 [Section 173]

Chapter V of the Finance Act, 1994 laid down the provisions for service tax. Since service tax has been subsumed in GST, such provisions are no more required and hence have been omitted and are not in force.

### Repeal and saving [Section 174]

The following legislations stand repealed from July 1, 2017, i.e. the date of commencement of the CGST Act:

- The Central Excise Act, 1944 (except in respect of goods included in Entry 84 of Union List – petroleum crude, high speed diesel, motor spirit, natural gas, aviation turbine fuel, tobacco and tobacco products)
- The Medicinal and Toilet Preparations (Excise Duties) Act, 1955
- The Additional Duties of Excise (Goods of Special Importance) Act, 1957
- The Additional Duties of Excise (Textiles and Textile Articles) Act, 1978
- The Central Excise Tariff Act, 1985

**The repeal under section 174 or amendment under section 173 shall not:**

- ❑ revive anything not in force or existing at the time of such amendment or repeal - **No new effect**
- ❑ affect the previous operation of the amended Act or repealed Acts and orders or anything duly done or suffered thereunder - **No effect on previous position**
- ❑ affect any right, privilege, obligation, or liability acquired, accrued or incurred under the previous law - **No effect on rights or liabilities under previous law**

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Any tax exemption granted as an incentive against investment through a notification shall not continue as privilege if the said notification is rescinded on or after the appointed day.

- affect any duty, tax surcharge, fine, penalty, interest as are due or may become due or any forfeiture or punishment incurred or inflicted in respect of any offence or violation committed against the provisions of the previous law - **No effect on tax etc. due under previous law**
- affect any investigation inquiry, verification, adjudication and assessment proceedings, recovery proceedings, other legal proceedings or tax, penalty etc. and any such proceedings that may be instituted, continued or enforced and tax, penalty etc. that may be levied or imposed as if these Acts had not been so amended or repealed - **No effect on legal proceedings and tax, penalty etc. under previous law**
- affect any proceedings including that relating to an appeal, review or reference, instituted before, on or after the appointed day under the previous law - **No effect on any appellate proceeding under previous law.**
- The provisions of section 6 of the General Clauses Act, 1897 with regard to the effect of repeal will apply for repeal provided under section 174.

Section 6 of the General Clauses Act, 1897 is given hereunder:

***Effect of repeal.*** *Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not*

*(a) revive anything not in force or existing at the time at which the repeal takes effect; or*

*(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or*

*(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or*

*(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or*

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(e) *affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.*

# Other Provisions

## 18. COMMON PORTAL [SECTION 146]

Section 146 enables the Government to notify the GST Common Portal on recommendation of the GST Council for facilitating the following:

- Registration
- Payment of Tax
- Furnishing of returns
- Computation and settlement of integrated tax
- Electronic way bill
- Other functions and prescribed purposes

CBIC has notified www.gst.gov.in as the GST common portal to carry out the above stated functions. However, the Common GST Electronic Portal for furnishing electronic way bill is www.ewaybillgst.gov.in. Further, Invoice Registration Portal (IRP) is the website for uploading/reporting of e-invoices by the notified persons for whom e-invoicing is mandatory.

## 19. SPECIAL PROCEDURE FOR CERTAIN PROCESSES [SECTION 148]

Section 148 is an enabling provision for prescribing special procedures for certain processes. The following are noteworthy in this regard:

- Such procedures shall be prescribed by way of a notification issued by the Government, on recommendations of the GST Council.

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- The conditions and safeguards and the classes of registered persons to whom such procedures will be applicable shall be stated in the notification itself.
- The special procedures may be prescribed with regard to the following matters:
  - Registration
  - Filing of returns
  - Payment of tax
  - Administration

Some notifications issued by the Government under this section are:

| Notification No. | Description |
|---|---|
| *Notification No. 66/2017 CT dated 15.11.2017* | Seeks to exempt all taxpayers from payment of tax on advances received in case of supply of goods |
| *Notification No. 04/2018 CT dated 25.01.2018* | Seeks to provide special procedure with respect to payment of tax by registered person supplying service by way of construction against transfer of development rights and *vice versa*. |

*Note: The above list is illustrative and not exhaustive.*

## 20. GOODS AND SERVICES TAX COMPLIANCE RATING [SECTION 149]

As per section 149, every registered person may be assigned a compliance rating based on the record of compliance in respect of specified parameters. Such ratings shall not be permanent and will be revised from time to time. The ratings shall be intimated to the taxable person and will also be placed in the public domain.

A prospective client will be able to see the compliance ratings of suppliers and take a decision as to whether to deal with a particular supplier or not. This will create healthy competition amongst taxable persons.

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## 21. POWER TO TAKE SAMPLES [SECTION 154]

Section 154 authorizes the Commissioner, or an officer authorized by him to take samples of goods from the possession of any taxable person, where he considers it necessary. Such officer shall provide a receipt for any samples so taken.

## 22. BURDEN OF PROOF [SECTION 155]

'Burden of proof' normally refers to the obligation to prove one's assertion. Section 155 lays down that where any person claims that he is eligible for input tax credit under this Act, the burden of proving such claim shall lie on such person.

Thus, where a presumption is raised that a person is not eligible for input tax credit then the onus shall be on such person to rebut the same.

## 23. PERSONS DEEMED TO BE PUBLIC SERVANTS [SECTION 156]

Section 156 deems all persons discharging functions under the Act as public servants within the meaning of section 21 of the Indian Penal Code, 1860. This means that such persons shall qualify as public servants for the purpose of Indian Penal Code, wherever applicable.

## 24. PROTECTION OF ACTION TAKEN UNDER THIS ACT [SECTION 157]

Section 157 grants immunity to the following persons against legal proceedings for anything done or intended to be done in good faith:

- ❑ President of the Appellate Tribunal
- ❑ State President of the Appellate Tribunal
- ❑ Members of the Appellate Tribunal
- ❑ Officers or other employees of the Appellate Tribunal
- ❑ Any other person authorised by the Appellate Tribunal

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- Any officer appointed or authorised under the Act

It provides immunity from personal liability for decisions, acts, or omissions that are made within the scope of their official duties, and not made in a wanton or reckless manner.

## 25. BAR ON JURISDICTION OF CIVIL COURTS [SECTION 162]

Taxes are a civil liability. The basic rule is that every dispute which is civil in nature can be tried by the Civil Court. However, since tax laws generally provide a specific machinery for assessment, appeals and recovery etc, in terms of a special legislation, the jurisdiction of civil courts is barred in matters relating to tax laws.

Therefore, as per section 162, no civil court shall have jurisdiction to deal with or decide any question arising from or relating to anything done or purported to be done under the Act. However, this bar does not apply in case of appeals to High Court and Supreme Court as provided under sections 117 and 118 respectively.

## 26. LEVY OF FEE [SECTION 163]

Section 163 provides that a copy of any order or document can be provided to any person on an application made by him for that purpose after paying a prescribed fee.

## 27. SERVICE OF NOTICE IN CERTAIN CIRCUMSTANCES [SECTION 169]

Any notice, decision, order, summons, or any other communication under the Act and the related rules are to be served on the assessee in accordance with the provisions of section 169.

### Modes of service [Section 169(1)]

Sub-section (1) of section 169 provides that a notice, decision, order, summons, or any other communication can be served by any one of the following methods:

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(a) **Giving/tendering directly:** By giving or tendering it directly or by a messenger including a courier to the addressee or the taxable person or to his manager or authorised representative or an advocate or a tax practitioner holding authority to appear in the proceedings on behalf of the taxable person or to a person regularly employed by him in connection with the business, or to any adult member of family residing with the taxable person; or

(b) **Registered post/speed post/courier:** By registered post or speed post or courier with acknowledgement due, to the person for whom it is intended or his authorised representative, if any, at his last known place of business or residence; or

(c) **Email:** By sending a communication to his e-mail address provided at the time of registration or as amended from time to time; or

(d) **At common portal:** By making it available on the common portal; or

(e) **Publication in newspaper:** By publication in a newspaper circulating in the locality in which the taxable person or the person to whom it is issued is last known to have resided, carried on business or personally worked for gain; or

(f) **Affixing at place of business etc:** If none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence and if such mode is not practicable for any reason, then by affixing a copy thereof on the notice board of the office of the concerned officer or authority who or which passed such decision or order or issued such summons or notice.

### Deemed date of serving [Section 169(2)]

Every decision/order/summons/notice/communication shall be deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed in the manner provided in sub-section (1).

### Deemed date of receipt [Section 169(3)]

When a decision, order, summons, notice or any communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit unless the contrary is proved.

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## 28. APPLICATION OF PROVISIONS OF CENTRAL GOODS AND SERVICES TAX ACT [SECTION 20 OF THE IGST ACT]

The following provisions of CGST Act apply to IGST Act also-

(i) scope of supply;

(ii) composite supply and mixed supply;

(iii) time and value of supply;

(iv) input tax credit;

(v) registration;

(vi) tax invoice, credit and debit notes;

(vii) accounts and records;

(viii) returns, other than late fee;

(ix) payment of tax;

(x) tax deduction at source [TDS rate under IGST – 2%];

(xi) collection of tax at source [TCS rate under IGST – not exceeding 2%];

(xii) assessment;

(xiii) refunds;

(xiv) audit;

(xv) inspection, search, seizure and arrest;

(xvi) demands and recovery;

(xvii) liability to pay in certain cases;

(xviii) advance ruling;

(xix) appeals and revision;

(xx) presumption as to documents;

(xxi) offences and penalties;

(xxii) job work;

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(xxiii) electronic commerce;

(xxiv) transitional provisions; and

(xxv) miscellaneous provisions including the provisions relating to the imposition of interest and penalty

**When the tax involved is IGST, the rate of TDS shall be 2% and the rate of TCS shall not exceed 2%. Presently, the notified rate for TCS in case of IGST is *0.5%*.**

**Where the penalty is leviable under the CGST Act and the SGST/UTGST Act, the penalty leviable under the IGST Act shall be the sum total of the said penalties.**

The words and expressions used and not defined in the IGST Act but defined in the CGST Act shall have the same meaning as assigned to them in the said Act. Similarly, the words and expressions used and not defined in the CGST Act but defined in the IGST Act shall have the same meaning as assigned to them in the said Act.

## 29. APPORTIONMENT OF TAX AND SETTLEMENT OF FUNDS [CHAPTER VIII OF THE IGST ACT]



Since central tax (CGST) and state tax (SGST) are separate taxes levied concurrently on a transaction, the same are identifiable and can be transferred to the CGST account and SGST account of the concerned State Governments respectively. However, this is not possible in case of integrated tax (IGST). Therefore, it becomes necessary to apportion IGST into components that can be transferred to CGST account and SGST account of the State Governments concerned.

### Apportionment of tax and settlement of funds [Section 17 of the IGST Act]

Section 17 of the IGST Act prescribes the provisions for such apportionment of IGST and settlement of funds between the Central Government and the State Governments.

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## A. Apportionment of IGST paid on supplies where ITC cannot be availed [Section 17(1)]

Sub-section (1) of section 17 lays down that in respect of the IGST paid on the following supplies of goods and/or services, the IGST shall be apportioned:

(a) inter-State supply to an unregistered person or to a registered person paying tax under composition scheme;

(b) inter-State supply where the registered person is not eligible for input tax credit;

(c) inter-State supply made in a financial year to a registered person, where he does not avail of the input tax credit within the specified period and thus the tax remains in the integrated tax account after expiry of the due date for furnishing of annual return for such year in which the supply was made;

(d) import by an unregistered person or by a registered person paying tax under composition scheme;

(e) import where the registered person is not eligible for input tax credit;

(f) import made in a financial year by a registered person, where he does not avail of the said credit within the specified period and thus the tax remains in the integrated tax account after expiry of the due date for furnishing of annual return for such year in which the supply was received.

### Methodology of apportionment [Section 17(2)]

The IGST paid on the supplies mentioned above shall be apportioned as under:

I. The amount of tax calculated at the rate equivalent to the CGST on similar intra-State supply shall be apportioned to the Central Government.

II. The balance amount of IGST remaining in the integrated tax account shall be apportioned to the State where such supply takes place and to the Central Government if such supply takes place in a Union territory.

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III. If the place of such supply made by any taxable person cannot be determined separately, the balance amount shall be apportioned to each of the States/Central Government (in relation to Union territories) in proportion to the total supplies made by such taxable person to each of such States/Union territories in a financial year.

IV. If the taxable person making such supplies is not identifiable, the said balance amount shall be apportioned to all States and the Central Government in proportion to the amount collected as SGST/UTGST by the respective State/ the Central Government during the immediately preceding financial year.

**Apportionment of interest, penalty and compounding amount realised in connection with the IGST [Section 17(3)]**

The interest, penalty and compounding amount realised in connection with the IGST shall also be apportioned in the similar manner.

**Transfer of apportioned tax to the accounts of Central/State Governments [Section 17(4)]**

The Central Government shall transfer the amount apportioned to it to the CGST account or UTGST account, as the case may be, and the amount apportioned to the State Government(s) to the SGST account of the respective States.

## B. Apportionment of IGST in respect of B2B supplies wherein ITC is taken by the recipients [Section 17(2A)]

Amount of IGST in respect of B2B supplies wherein ITC is taken by the recipients [i.e. IGST not apportioned above] may, for the time being, on the recommendations of the GST Council, be apportioned at the rate of 50% to the Central Government and 50% to the State Governments/Union territories on ad hoc basis. Such amount shall be adjusted against the amount apportioned under sub-sections (2) and (3).

IGST apportioned to a State/Central Government on account of a Union territory, if subsequently found to be refundable to any person and refunded to such person, shall be reduced from the amount to be apportioned under this section, to such State/ Central Government on account of such Union territory.

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# 30. ADMINISTRATION UNDER GST

The provisions regarding administrative set up under CGST and IGST laws, are contained in Chapter II – Administration [Sections 3 to 6] of the CGST Act, 2017 and Chapter II - Administration [Sections 3 and 4] of the IGST Act, 2017 respectively. State GST laws also prescribe identical provisions in relation to administration. These provisions have been discussed below:

## A. Officers under CGST Act [Section 3 of the CGST Act]

The Government has appointed the following classes of officers and the officers subordinate to them for the purposes of CGST Act, namely:

(a) Principal Chief Commissioners of Central Tax or Principal Directors General of Central Tax

(b) Chief Commissioners of Central Tax or Directors General of Central Tax

(c) Principal Commissioners of Central Tax or Principal Additional Directors General of Central Tax

(d) Commissioners of Central Tax or Additional Directors General of Central Tax

(e) Additional Commissioners of Central Tax or Additional Directors of Central Tax

(f) Joint Commissioners of Central Tax or Joint Directors of Central Tax

(g) Deputy Commissioners of Central Tax or Deputy Directors of Central Tax

(h) Assistant Commissioners of Central Tax or Assistant Directors of Central Tax

(i) Commissioner of Central Tax (Audit)

(j) Commissioner of Central Tax (Appeals)

(k) Additional Commissioner of Central Tax (Appeals)

(l) Joint Commissioner of Central Tax (Appeals)

Further, the officers appointed under the Central Excise Act, 1944 shall be deemed to be the officers appointed under the provisions of CGST Act.

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## B. Appointment of officers under CGST Act [Section 4 of the CGST Act]

The Board may, in addition to the officers as may be notified by the Government under section 3 above, appoint such persons as it may think fit to be the officers under CGST Act [Section 4(1)].

Without prejudice to the provisions of section 4(1), the Board may, by order, authorise any officer referred to in clauses (a) to (h) of section 3 to appoint officers of central tax below the rank of Assistant Commissioner of central tax for the administration of CGST Act [Section 4(2)].

## C. Powers of officers under CGST Act [Section 5 of the CGST Act]

Subject to such conditions and limitations as the Board may impose, an officer of central tax may exercise the powers and discharge the duties conferred or imposed on him under CGST Act [Section 5(1)].

An officer of central tax may exercise the powers and discharge the duties conferred or imposed under CGST Act on any other officer of central tax who is subordinate to him [Section 5(2)].

The Commissioner may, subject to such conditions and limitations as may be specified in this behalf by him, delegate his powers to any other officer who is subordinate to him [Section 5(3)].

Notwithstanding anything contained in this section, an Appellate Authority shall not exercise the powers and discharge the duties conferred or imposed on any other officer of central tax [Section 5(4)].

## D. Authorisation of officers of State tax or Union territory tax as proper officer in certain circumstances [Section 6 of the CGST Act]

Without prejudice to the provisions of CGST Act, the officers appointed under the SGST Act or the UTGST Act are authorised to be the proper officers for the purposes of CGST Act, subject to such conditions as the Government shall, on the recommendations of the Council, by notification, specify [Section 6(1)].

Subject to the conditions specified in the notification issued under section 6(1):

(a) where any proper officer issues an order under CGST Act, he shall also issue an order under the SGST Act or the UTGST Act, as authorised by

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the SGST Act or the UTGST Act, as the case may be, under intimation to the jurisdictional officer of SGST or UTGST;

(b) where a proper officer under the SGST Act or the UTGST Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under CGST Act on the same subject matter [Section 6(2)].

Any proceedings for rectification, appeal and revision, wherever applicable, of any order passed by an officer appointed under CGST Act shall not lie before an officer appointed under the SGST Act or the UTGST Act [Section 6(3)].

### E. Appointment of officers under IGST Act [Section 3 of the IGST Act]

The Board may appoint such central tax officers as it thinks fit for exercising the powers under IGST Act.

### F. Authorisation of officers of State tax or Union territory tax as proper officer in certain circumstances [Section 4 of the IGST Act]

Without prejudice to the provisions of IGST Act, the officers appointed under the SGST Act or the UTGST Act are authorised to be the proper officers for the purposes of IGST Act, subject to such exceptions and conditions as the Government shall, on the recommendations of the Council, by notification, specify.

## 31. SPECIAL PROCEDURE FOR CORPORATE DEBTORS UNDERGOING THE CORPORATE INSOLVENCY RESOLUTION PROCESS

As per Insolvency Bankruptcy Code (IBC), 2016, once an entity defaults certain threshold amount, Corporate Insolvency Resolution Process (CIRP) gets triggered and the management of such entity (Corporate Debtor) and its assets vest with an interim resolution professional (IRP) or resolution professional (RP). The IRP/RP continues to run the business and operations of the said entity as a going concern and is responsible for compliance with all the laws till the insolvency proceeding is over and an order is passed by the National Company Law Tribunal (NCLT). The definitions of the terms, corporate debtor, CIRP, IRP and RP can be referred from IBC, 2016.

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The Government has prescribed special procedure under section 148 of the CGST Act for the corporate debtors who are undergoing CIRP under the provisions of IBC and the management of whose affairs are being undertaken by IRP/RP. *Notification No. 11/2020 CT dated 21.03.2020* as amended issued under section 148 read with *Circular No. 138/08/2020 GST* provides as under:

The corporate debtor who is undergoing CIRP is to be treated as a distinct person of the corporate debtor and shall be liable to take a new registration in each State or Union territory where the corporate debtor was registered earlier, within thirty days of the appointment of the IRP/RP. However, corporate debtors who have not defaulted in furnishing statements (GSTR-1) and returns under GST would not be required to obtain a separate registration with effect from the date of appointment of IRP/RP.

The new registration by IRP/RP shall be required only once, and in case of any change in IRP/RP after initial appointment under IBC, it would be deemed to be change of authorized signatory and it would not be considered as a distinct person on every such change after initial appointment.

The IRP/RP will be liable to furnish returns, make payment of tax and comply with all the provisions of the GST law during CIRP period.

## 32. MANNER OF DETERMINATION OF COMMENCEMENT AND TERMINATION OF TIME [SECTION 9 OF THE GENERAL CLAUSES ACT, 1897]

Section 9 of the General Clauses Act, 1897 lays down the provision relating to commencement and termination of time. It stipulates that in any Central Act or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word from, and, for the purpose of including the last in a series of days or any other period of time, to use the word to.

In simple words, while computing time, the rule is to exclude the first day and to include the last day. Courts have held that the word "from" is akin to "after" and

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that the word "from" if used for the purpose of and in reference to the computation of time, as for example, from a stated date, that stated date is *prima facie* excluded from computation. Although on some occasions, Courts have a taken a view that the question as to whether the stated date should or should not be so excluded, should be decided according to the context in which the word "from" occurs.

It is worthwhile to mention here that the Supreme Court, in case of *M/s. Econ Antri Ltd v. M/s. Rom Industries Ltd. & Anr,* had also taken a similar view on this point and decided that while computing the period of limitation, the day on which the offence is committed/ date of cause of action has to be excluded.

Another point which needs a mention here is that section 3(35) of the General Clauses Act, 1897 defines the expression "month" to mean a month reckoned according to the British calendar. Further, *Allahabad High Court in case of CCus & CEx. v. Ashok Kumar Tiwari 2015 (37) STR 727 (All.)* has held that where the legislature has stipulated the period of limitation in terms of months, such a stipulation can only mean a calendar month and not 30 days.

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## TEST YOUR KNOWLEDGE

1. *Briefly explain how the GST compliance rating score is determined.*
2. *When shall the particulars relating to any proceedings or prosecution be published under GST laws? Discuss the relevant provisions.*
3. *Explain the provisions relating to rectification of errors apparent on the face of record under section 161.*
4. *State the various modes of service of a notice, decision, order, summons, or any other communication under the CGST Act, on the taxable person or any other person to whom it is intended.*
5. *Section 158(1) lays down that the information obtained by a public servant from the record of any proceeding under the CGST Act is confidential and cannot be disclosed.*

   *Is there any exception to this rule? Discuss in brief.*
6. *Explain the scope of circulars and instructions issued by the Board.*
7. *'The time limits provided under the CGST Act cannot be extended.'*

   *Do you agree with the statement? Give your views with reference to section 168A.*



## ANSWERS

**1.** As per section 149(2), the GST compliance rating score may be determined on the basis of such parameters as may be prescribed.

**2.** When the Commissioner/authorised officer is of opinion that it is necessary or expedient in the public interest to publish the name of any person and any other particulars relating to any proceedings or prosecution under the CGST Act in respect of such person, it may cause to be published such name and particulars [Section 159(1)].

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No publication under this section shall be made in relation to any penalty imposed under the CGST Act until the time for presenting an appeal to the Appellate Authority under section 107 has expired without an appeal having been presented or the appeal, if presented, has been disposed of [Section 159(2)].

**3.** Section 161 lays down that any authority, who has passed or issued any decision or order or notice or certificate or any other document, may rectify any error which is apparent on the face of record in such decision or order or notice or certificate or any other document, either on its own motion or where such error is brought to its notice by any GST officer or by the affected person within a period of three months from the date of issue of such decision or order or notice or certificate or any other document, as the case may be.

However, no such rectification shall be made after a period of six months from the date of issue of such decision or order or notice or certificate or any other document. Further, the said period of six months shall not apply in such cases where the rectification is purely in the nature of correction of a clerical or arithmetical error, arising from any accidental slip or omission.

Principles of natural justice should be followed by the authority carrying out such rectification, if it adversely affects any person.

**4.** Section 169(1) provides that any decision, order, summons, notice or other communication under the CGST Act and the rules made thereunder can be served by any one of the following methods:

(a) Giving/tendering directly including by a courier to the addressee or authorised representative or to any adult member of family residing with the taxable person; or

(b) By Registered post/speed post/courier with acknowledgement due at the last known place of business or residence; or

(c) By Email to the e-mail address provided at the time of registration or as amended from time to time; or

(d) By making the same available at common portal; or

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(e) Publication in newspaper circulating in the locality in which the addressee is last known to have resided, carried on business or personally worked for gain; or

(f) If none of the above modes is practicable then by Affixing at last known place of business or residence and if such mode is not practicable for any reason, then by affixing a copy thereof on the notice board of the office of the concerned officer or authority concerned.

**5.** Yes, the confidential information can be disclosed by the public servant for certain specific purposes in terms of section 158(3). Such specific purposes are given in brief hereunder:

(i) For prosecution

(ii) For carrying out the objects of the CGST Act

(iii) For service of notice or recovery of demand

(iv) For furnishing information to Court in a proceeding where Government is a party

(v) For audit of tax receipts or refunds

(vi) For inquiry into the conduct of a GST officer

(vii) For enabling levy, realisation of any tax or duty

(viii) In lawful exercise of powers

(ix) For enquiry into a charge of misconduct by any professional

(x) For data entry on automated system

(xi) For fulfilling the requirement under any other law and in public interest.

**6.** Section 168 empowers the Board (CBIC) to issue orders, instructions or directions to the CGST officers for the purpose of uniformity in the implementation of the CGST Act. All officers and all other persons employed in the implementation of the Act observe and follow such orders, instructions or directions.

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The binding nature of such orders, instructions and directions has been a matter of debate and scrutiny. The general understanding that prevails now is that a circular is binding on the officers, but not on the assessee. However, in case such circular states something contrary to the law, the law shall prevail over the circular.

**7.** The statement is not correct.

The Government has power to extend the time limits provided under the CGST Act. However, such powers are not unbridled powers. Section 168A empowers the Government to extend the time limits only when the actions cannot be completed or complied with due to *force majeure*. Here, force majeure means war, epidemic, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the implementations of provisions of the CGST Act. This power can also be exercised retrospectively.

***Note: Although the erstwhile Indian Penal Code, 1860 (IPC) and the Code of Criminal Procedure, 1973 (CrPC) both statutes were repealed and replaced by the Bharatiya Nyaya Sanhita, 2023 (BNS) and the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) respectively with effect from 1st July 2024,* certain provisions, rules and forms under the GST law continue to contain references to the erstwhile IPC and CrPC.**

***Accordingly, in this Study Material, references to the provisions of the Indian Penal Code, 1860 (IPC) and the Code of Criminal Procedure, 1973 (CrPC) have been retained wherever they appear in the context of GST law.***

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# ANNEXURE

## Anti-profiteering Measure [Section 171]

GST seeks to eliminate the cascading of taxes through seamless flow of credit. Accordingly, GST regime was expected to result in an increased flow of input tax credit across the supply chain. In such a scenario, the concern that benefit of such increased input tax credit might not be passed on by certain entities to the consumers was not unreasonable. This concern was addressed by the anti-profiteering measure under GST law. The anti-profiteering mechanism ensures that the benefit of reduction in GST rates or increase in input tax credit (ITC) was passed on to the customer.

Section 171 contains the anti-profiteering provisions which makes it mandatory that any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices.

However, it is important to note that sunset clause has been introduced in section 171 with effect from 01.04.2025. When GST law was introduced in July, 2017, Central Government had constituted the National Anti-Profiteering Authority (NAA) to handle the cases relating to anti-profiteering. NAA was operational until November 2022. Thereafter, w.e.f. 01.12.2022, the Competition Commission of India (CCI) was empowered to examine the anti-profiteering cases till 30.09.2024. With effect from 01.10.2024, the jurisdiction was transferred from the Competition Commission of India (CCI) to the Principal Bench of GSTAT. However, with effect from 01.04.2025, GSTAT has stopped accepting any new requests[5]. GSTAT's Principal Bench is presently issuing final orders on the pending matters[6].

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*[5] Notification No. 19/2024 CT dated 30.09.2024 provides that with effect from 01.04.2025, GSTAT shall not accept any request for examination as to whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by that registered person.*

*[6] Notification No. 18/2024 CT dated 30.09.2024 has empowered Principal Bench of the Appellate Tribunal, constituted under section 109(3) to examine whether ITC availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods and/or services supplied by that registered person.*

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***Consequently, the provisions relating to anti-profiteering mechanism are discussed hereunder only for the information of the students and not relevant for the examination purpose.***

## Anti-profiteering Authority

The Central Government may, on recommendations of the Council, by notification, constitute an Authority*, or empower an existing Authority constituted under any law for the time being in force, to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him:

***"Authority" includes the "Appellate Tribunal"**.

The term "request for examination" mean the written application filed by an applicant requesting for examination as to whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods and/or services supplied by him.

Chapter XV: Anti-profiteering of CGST Rules, 2017 prescribe the provisions relating to functions of the authority, orders of the authority etc. These provisions continue to govern applications filed before 1st April, 2025 that remain pending

### Functions of the Authority

The authority shall discharge the following functions, namely:-

(i) to determine whether the reduction in tax rate or the benefit of input tax credit has been passed on by the seller to the buyer (hereinafter collectively referred to as 'benefit') by reducing the prices

(ii) to identify the taxpayer who has not passed on the benefit

(iii) to order

  (a) reduction in prices

  (b) return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest @ 18% from the date of collection of the higher amount till the date of the return of such amount or recovery of the amount not returned, as

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the case may be, in case the eligible person does not claim return of the amount or is not identifiable, and depositing the same in the Consumer Welfare Fund;

(c) imposition of penalty

(d) cancellation of registration

(iv) to furnish a performance report to the GST Council by the 10th day of the month succeeding each quarter.

## Process followed by the Authority [applicable to applications filed before 1st April, 2025]

**Application to the Authority:** All applications from interested parties on issues of local nature or those forwarded by Standing Committee shall first be examined by the State Level Screening Committee. On being satisfied that the supplier has not passed on the benefit, the Screening Committee within 2 months from the date of receipt of a written application (further extendable up to 1 month for reasons to be recorded in writing as may be allowed by the Authority) will forward the application with its recommendations to the Standing Committee on Anti-profiteering.

If the Standing Committee is satisfied that there is a prima facie evidence to show that the supplier has not passed on the benefit, it shall refer the matter to the Director General of Anti-Profiteering (DGAP) for a detailed investigation within 2 months from the date of receipt of a written application (further extendable up to 1 month for reasons to be recorded in writing as may be allowed by the Authority).

**Investigation:** The DGAP shall conduct investigation and collect evidence necessary to determine undue profiteering and before initiation of the investigation, issue a notice to the interested parties (and to such other persons as deemed fit for a fair enquiry into the matter).

The evidence or information presented to the DGAP by one interested party can be made available to the other interested parties, participating in the proceedings. The evidence provided will be kept confidential and the provisions of section 11 of the Right to Information Act, 2005, shall apply *mutatis mutandis* to the disclosure of any information which is provided on a confidential basis.

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The DGAP can seek opinion of any other agency or statutory authorities in the discharge of his duties. The Authority, DGAP, or an officer authorised by him will have the power to summon any person either to give evidence or to produce a document or any other thing. He will also have same powers as that of a civil court and every such inquiry will be deemed to be a judicial proceeding.

The DGAP will complete the investigation within a period of 6 months or within such extended period not exceeding a further period of 3 months for reasons to be recorded in writing as allowed by the Authority. Upon completion of the investigation, the DGAP will furnish to the Authority, a report of its findings along with the relevant records.

### Order of the Authority

Where the Authority determines that a registered person has not passed on the benefit, the Authority may order-

(a) reduction in prices;

(b) return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest @ 18% from the date of collection of the higher amount till the date of the return of such amount or recovery of the amount including interest not returned, as the case may be

(c) the deposit of an amount equivalent to 50% of the amount determined under the above clause along with interest @ 18% from the date of collection of the higher amount till the date of deposit of such amount in the Consumer Welfare Fund of Centre and the remaining 50% of the amount in the Consumer Welfare Fund of the concerned State*, where the eligible person does not claim return of the amount or is not identifiable

*State or Union Territory in respect of which the authority passes an order

(d) imposition of penalty as specified under the Act; and

(e) cancellation of registration under the Act.

If the report of the DGAP recommends that there is contravention or even non-contravention of the provisions of section 171 or these rules, but the Authority is

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of the opinion that further investigation or inquiry is called for in the matter, it may, for reasons to be recorded in writing, refer the matter to the DGAP to cause further investigation or inquiry in accordance with the provisions of the Act and these rules.

Where upon receipt of the report of the DGAP, the Authority has reasons to believe that there has been contravention of the provisions of section 171 in respect of goods and/or services other than those covered in the said report, it may, for reasons to be recorded in writing, within a period of six months, direct the DGAP to cause investigation or inquiry with regard to such other goods and/or services.

Such investigation or enquiry shall be deemed to be a new investigation or enquiry and all the provisions of rule 129 shall mutatis mutandis apply to such investigation or enquiry.

The following are noteworthy in this regard:

- Any order passed by the Authority shall be immediately complied with by the registered person failing which action shall be initiated to recover the amount.
- The Authority will pass order within 6 months from the date of the receipt of the report from the DGAP.
- An opportunity of being heard will be given, if the interested parties request for it in writing.
- Authority can now seek a clarification from DGAP on the Investigation report submitted by it during the process of determining as to whether the benefit has been passed on to the recipient by way of commensurate reduction in prices.
- Period of interest will be calculated from the date of collection of higher amount till the date of return of such amount.
- If the eligible person (i.e. the buyer) does not claim the return of the amount or the person is unidentifiable then the amount must be deposited to the Consumer Welfare Fund along with applicable interest.

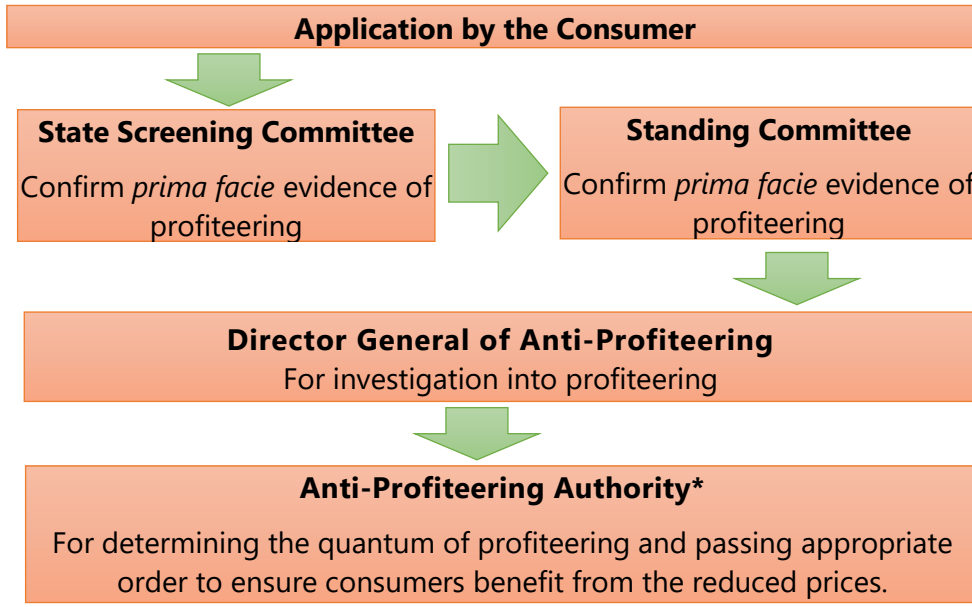
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## Penalty for profiteerings

A registered person who is found to have profiteered is liable to pay a penalty of 10% of such profiteered amount if the profiteered amount is not deposited within 30 days of the date of passing of the order by the Authority.

Here, "profiteered" means the amount determined on account of not passing the benefit to the recipient by way of commensurate reduction in the price of the goods or services or both.

Note: For the purposes of this section, the expression "Authority" includes the "Appellate Tribunal".




** Authority includes the Appellate Tribunal.*

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