PART 1: UNJUST ENRICHMENT AND REFUND OF TAX

Doctrine of Unjust Enrichment:
The doctrine of unjust enrichment means no person can be unjustly enriched at expense of another person. In indirect taxes, the tax/duty burden passes on to the person who ultimately consumes goods or services. Since the law authorises recovery of indirect taxes (Goods and Services tax, excise duty, customs, sales/purchases tax) from consumers, therefore, it is always presumed that incidence of tax/duty has been passed.

Therefore, if any refund becomes due to the supplier/importer, then, since supplier/importer has recovered the tax/duty from the consumers, thus, to be fair, refund should be made to consumers.

However, it is not possible to locate individual consumer and pay refund to them. Also without authority of law Government cannot retain the excess tax/duty. Therefore, Section 54(8) of CGST Act, 2017 has been introduced which provides that any refund due to a recipient shall be transferred to Consumer Welfare Refund and will be used for the purpose of protection and welfare of the consumers. The refund shall be granted to the supplier only when he proves that incidence of tax/duty has not been passed to any other person or in certain other specified cases.

Situations leading to Refund Claims:
A claim for refund may arise in the following situations —

(1) Goods and/or services are exported or, goods and/or services supplied to an SEZ developer/unit, on payment of IGST and refund of such IGST paid on them is claimed as per provision of Section 16(3)(b) of IGST Act.

(2) Unutilised input tax credit (ITC) in the following cases:
   (a) Zero rated supplies (i.e. export/supply to SEZ developer/unit)
   (b) Accumulated ITC on account of inverted duty structure.

(3) Tax paid on the supply of goods regarded as deemed exports may be claimed by recipient.

(4) Refund of any balance in the electronic cash ledger after payment of tax, interest, penalty, fee or any other amount payable under this Act or the rules made there under may be claimed as per provision of Section 49(6) of the CGST Act, 2017.

(5) Refund on account of issuance of refund vouchers for taxes paid on advances against which goods or services have not been supplied, may be claimed as per provision of Section 31(3) of the CGST Act, 2017.
(6) **Refund of tax wrongly collected and paid** to the Government [i.e. CGST & SGST paid by treating the supply as intra-State supply which is subsequently held as inter-State supply and vice versa] as per Section 77 of the CGST Act, 2017 and Section 19 of the IGST Act, 2017.

(7) The IGST paid by tourist leaving India on any supply of goods taken out of India by him as per Section 15 of IGST Act, 2017.

(8) **Tax becomes refundable** as a consequence of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any court.

(9) On **finalization of provisional assessment**, if any tax becomes refundable to assessee (on account of assessed tax on final assessment being less than the tax deposited by the assessee) as per Section 60 of CGST Act, 2017.

(10) **Refund of taxes on purchase made by UN bodies or embassies etc.** as per Section 54(2) of CGST Act, 2017.

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**PART 2: REFUND OF TAX - SECTION 54**

**Refund of tax [Section 54]:**

- **Application of refund to be made in prescribed form within 2 years from relevant date [Section 54(1)]:** Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application electronically in prescribed form before the expiry of 2 years from the relevant date.

- **Refund of balance in the electronic cash ledger - Can be claimed in return furnished u/s 39:** A registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of Section 49(6), may claim such refund in the return furnished under Section 39 in Form GSTR-3/Form GSTR-4/Form GSTR-7, in such manner as may be prescribed.

"**Relevant date" means—

<table>
<thead>
<tr>
<th>Case</th>
<th>Relevant date</th>
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<tbody>
<tr>
<td>(a)</td>
<td></td>
</tr>
<tr>
<td>(i)</td>
<td>the date on which the ship or the aircraft in which such goods are loaded, leaves India; or</td>
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<tr>
<td>(ii)</td>
<td>the date on which such goods pass the frontier; or</td>
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<td>(iii)</td>
<td>the date of despatch of goods by</td>
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<tr>
<td>(b)</td>
<td>Supply of goods regarded as deemed exports where a refund of tax paid is available in respect of the goods</td>
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<td>-------------------------------------------------</td>
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<tr>
<td>(c)</td>
<td>Services exported out of India where a refund of tax paid is available in respect of services themselves or, as the case may be, the inputs or input services used in such services and (i) the supply of services had been completed prior to the receipt of such payment (ii) payment for the services had been received in advance prior to the date of issue of the invoice</td>
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<tr>
<td>(d)</td>
<td>Where the tax becomes refundable as a consequence of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any court</td>
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<tr>
<td>(e)</td>
<td>Refund of unutilised input tax credit under clause (ii) of the first proviso to Section 54(3) i.e. on account of inverted duty structure</td>
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<tr>
<td>(f)</td>
<td>Where tax is paid provisionally under this Act or the rules made thereunder</td>
</tr>
<tr>
<td>(g)</td>
<td>A person, other than the supplier</td>
</tr>
<tr>
<td>(h)</td>
<td>Other cases</td>
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</tbody>
</table>

**Documentary evidences to be furnished [Section 54(4)]:**

The application shall be accompanied by —

(a) such **documentary evidence** as may be prescribed to establish that a refund is due to the applicant; and 

(b) such **documentary or other evidence** (including the documents referred to in Section 33) as the applicant may furnish to establish that the amount of tax and interest, if any, paid on such tax or any other amount paid in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such tax and interest had not been passed on to any other person.

**Documentary evidences not required if refund claim is less than Rs. 2 lakh**: Where the amount claimed as refund is less than Rs. 2,00,000, it shall not be necessary for the applicant to furnish any documentary and other evidences but he may file a declaration, based on the documentary or other evidences available with him,
certifying that the incidence of such tax and interest had not been passed on to any other person.

**Order of Refund - Sum to be credited to fund (Section 54(5))**:
If, on receipt of any such application, the proper officer is satisfied that the whole or part of the amount claimed as refund is refundable, he may make an order accordingly and the amount so determined shall be credited to the Consumer Welfare Fund.

**Time limit for sanction of refund - 60 days from date of Refund Application (Section 54(7))**:
The proper officer shall issue the refund order within 60 days from the date of receipt of application complete in all respects.
The time limit of 60 days shall be counted from the date of filing claim for refund as mentioned in the acknowledgment received for refund claim (Section 54(7) read with Rule 90(1) and 90(2)).

**Refund of State tax in prescribed manner (Section 54(8A))**:
The Government may disburse the refund of the State tax in such manner as may be prescribed. [Inserted by the Finance (No. 2) Act, 2019, with effect from 01-09-2019]

**No refund below Rs. 1,000 (Section 54(14))**:
No refund shall be paid to an applicant, if the amount is less than Rs. 1,000. The limit of Rs. 1,000 shall apply for each tax head separately and not cumulatively. Further, the limit would not apply in cases of refund of excess balance in the electronic cash ledger. - Circular No. 59/33/2018 GST dated 04-09-2018.

**Refund [Explanation 1]**: "Refund" includes -
(a) refund of tax paid on zero-rated supplies of goods or services or both or on input or input services used in making such zero-rated supplies, or
(b) refund of tax on the supply of goods regarded as deemed exports, or
(c) refund of unutilised input tax credit as provided under Section 54(3).

**Application for refund of tax, interest, penalty, fees or any other amount (Rule 89)**:
(1) **E-refund application (Rule 89(1))**:
Any person, except the persons covered under notification issued under Section 55, claiming refund of any tax, interest, penalty, fees or any other amount paid by him, other than refund of integrated tax paid on goods exported out of India, may file an application electronically in FORM GST RFD-01 through the common portal.

**Refund of amount in electronic cash ledger can be Claimed through Return** : Any claim for refund relating to balance in the electronic cash ledger in accordance with the provisions of Section 49(6) may be made through the return furnished for the relevant tax period in FORM GSTR-3B or FORM GSTR-4 or FORM GSTR-7, as the
case may be. Presently, the application for refund of balance in the Electronic Cash Ledger is also being filed in Form GST RFD-01A. While filing refund application, the applicant needs to select the reason of refund as 'Refund on account of excess balance in cash ledger'. Thereafter, the balance amount available in Electronic Cash Ledger is auto-populated in said refund application. The applicant enters the amount of refund to be claimed and Electronic Cash Ledger is debited for the amount claimed as refund.

Supplies of goods/ Services to SEZ - Filing requirements of Refund Application: In respect of supplies to a Special Economic Zone unit or a Special Economic Zone developer, the application for refund shall be filed by the -

(a) supplier of goods after such goods have been admitted in full in the Special Economic Zone for authorised operations, as endorsed by the specified officer of the Zone;

(b) supplier of services along with such evidence regarding receipt of services for authorised operations as endorsed by the specified officer of the Zone.

Deemed export - Recipient/ Supplier to file application: In respect of supplies regarded as deemed exports, the application may be filed by, —

(a) the recipient of deemed export supplies; or

(b) the supplier of deemed export supplies in cases where the recipient does not avail of input tax credit on such supplies and furnishes an undertaking to the effect that the supplier may claim the refund.

Refund of advance tax to be claimed in last return by NRTP: Refund of any amount, after adjusting the tax payable by the applicant out of the advance tax deposited by Non resident taxable person under Section 27 at the time of registration, shall be claimed in the last return required to be furnished by him.

(2) Documentary evidences which are to be furnished along with refund application [Rule 89(2)]:

The application shall be accompanied by any of the following documentary evidences in Annexure 1 in Form GST RFD-01, as applicable, to establish that a refund is due to the applicant, namely:-

(a) Details of Appellate order giving rise to refund: The reference number of the order and a copy of the order passed by the proper officer or an appellate authority or Appellate Tribunal or court resulting in such refund or reference number of the payment of the amount specified in Section 107(6) and Section 112(8) claimed as refund (i.e. amount to be deposited at the time of filing of appeal before Appellate Authority or Appellate Tribunal).

(b) Details of shipping bill for export: A statement containing the number and date of shipping bills or bills of export and the number and the date of the relevant export invoices, in a case where the refund is on account of export of goods. It is important to note that realization of convertible foreign exchange is
one of the conditions for export of services whereas in case of export of goods, realization of consideration is not a pre-condition. Consequently, documentary evidence in the form of a statement containing no. and date of relevant BRCs/FIRCs are not required here.

(c) Bank realisation certificate in case of export of services: In case of a statement containing the number and date of invoices and the relevant Bank Realisation Certificates or Foreign Inward Remittance Certificates, as the case may be, in a case where the refund is on account of the export of services.

(d) Endorsement in case of supplies of goods to SEZ: A statement containing the number and date of invoices as provided in Rule 46 along with the evidence regarding goods admitted in full for authorized operations as endorsed by the specified officer of SEZ in case of supply of goods made to a SEZ unit or a SEZ developer.

(e) Endorsement in case of supplies of services to SEZ: A statement containing the number and date of invoices, the evidence regarding the endorsement by specified officers of SEZ and the details of payment, along with the proof thereof, made by the recipient to the supplier for authorised operations as defined under the SEZ Act, 2005, in a case where the refund is on account of supply of services made to a SEZ unit or a SEZ developer.

(f) Declaration that tax has not been collected from SEZ unit/ developer: A declaration to the effect that tax has not been collected from the Special Economic Zone unit or the Special Economic Zone developer, in a case where the refund is on account of supply of goods or services or both made to a Special Economic Zone unit or a Special Economic Zone developer;

(g) Invoice details in case of deemed exports: A statement containing the number and date of invoices along with such other evidence as may be notified in this behalf, in a case where the refund is on account of deemed exports;

(h) Invoice details etc. in case of refund of ITC: A statement containing the number and the date of the invoices received and issued during a tax period in a case where the claim pertains to refund of any unutilised input tax credit under Section 54(3) where the credit has accumulated on account of the rate of tax on the inputs being higher than the rate of tax on output supplies, other than nil-rated or fully exempt supplies;

(i) Details of final assessment order giving rise to refund: The reference number of the final assessment order and a copy of the said order in a case where the refund arises on account of the finalisation of provisional assessment;

(j) Details of transaction where nature of supply changes: A statement showing the details of transactions considered as intra-State supply but which is subsequently held to be inter-State supply;

(k) Statement of excess tax payment: A statement showing the details of the amount of claim on account of excess payment of tax;

(l) Declaration that incidence of tax not passed on if refund amount is upto Rs. 2,00,000: A declaration to the effect that the incidence of tax, interest or any
other amount claimed as refund has not been passed on to any other person, in a case where the amount of refund claimed does not exceed Rs. 2,00,000.

CA/CMA certificate if refund claimed exceeds Rs. 2,00,000: However, where the amount of refund claimed exceeds Rs. 2 lakh, a Certificate in Annexure 2 of Form GST RFD-01 by a Chartered Accountant or a Cost Accountant to the effect that there is no unjust enrichment in the case of the applicant [i.e. incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person.]

(m) No certificate/declaration required: A certificate is not required to be furnished in respect of cases covered under Section 54(8)(a)/(b)/(c)/(d)/(f) i.e. -

(i) refund of tax paid on export of goods or services or both or on inputs or input services used in making such exports;

(ii) refund of unutilised ITC in case of zero rated supplies or accumulated ITC on account of inverted duty structure;

(iii) refund of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued, or where a refund voucher has been issued. The expression "invoice" referred here means invoice conforming to the provisions contained in Section 31.

(iv) refund of tax in pursuance of Section 77, i.e. tax paid on a transaction treating it as an intra-State supply, but which is subsequently held to be an inter-State supply or vice-versa.

(v) the tax or interest borne by such other class of applicants as the Government may, on the recommendations of the Council, by notification, specify.

Explanation: Where the amount of tax has been recovered from the recipient, it shall be deemed that the incidence of tax has been passed on to the ultimate consumer.

Acknowledgment of refund application.

Acknowledgment [Rule 90]:

(1) Claim for refund from the electronic cash ledger - E-acknowledgment for refund [Rule 90(1)]:

Where the application relates to a claim for refund from the electronic cash ledger, an acknowledgement in FORM GST RFD-02 shall be made available to the applicant through the common portal electronically, clearly indicating the date of filing of the claim for refund.

The time period specified in Section 54(7) shall be counted from such date of filing.

(2) Refund claim other than claim for refund from the electronic cash ledger - Scrutiny by proper officer [Rule 90(2)]:
(a) The application for refund, other than claim for refund from electronic cash ledger, shall be forwarded to the proper officer.

(b) The proper officer shall, within a period of 15 days of filing of the said application, scrutinize the application for its completeness.

(c) Where the application is found to be complete in terms of Rule 89, an acknowledgement in FORM GST RFD-02 shall be made available to the applicant through the common portal electronically, clearly indicating the date of filing of the claim for refund.

(d) The time period specified in Section 54(7) shall be counted from such date of filing.

Refund acknowledgment clearly indicates the date of filing of the claim for refund. Refund order is required to be issued within 60 days from the date of filing claim for refund as mentioned in said acknowledgment.

(3) Communication of deficiencies [Rule 90(3)]:
Where any deficiencies are noticed, the proper officer shall communicate the deficiencies to the applicant in FORM GST RFD-03 through the common portal electronically, requiring him to file a fresh refund application after rectification of such deficiencies.

(4) Communication of deficiencies in SGST rules - Deemed communication under these rules [Rule 90(4)]:
Where deficiencies have been communicated in FORM GST RFD-03 under the State Goods and Service Tax Rules, 2017, the same shall also deemed to have been communicated under this rule along with the deficiencies communicated under Rule 90(3).

Explain the manner of sanctioning refund.
Order sanctioning refund [Rule 92] [Amended by Notification No. 31/2019-CT dated 28-06-2019 w.e.f. 24-09-2019]:
(1) Order of final refund [Rule 92(1)]:
Where, upon examination of the application, the proper officer is satisfied that a refund is due and payable to the applicant,

- he shall make an order in FORM GST RFD-06 sanctioning the amount of refund to which the applicant is entitled,
- mentioning therein the amount, if any, refunded to him on a provisional basis under Section 54(6), amount adjusted against any outstanding demand under the Act or under any existing law and the balance amount refundable.

Amount of refund completely adjusted against any outstanding demand: In cases where the amount of refund is completely adjusted against any outstanding demand under the Act or under any existing law, an order giving details of the adjustment shall be issued in Part A of FORM GST RFD-07.
REFUNDS

(2) Issuance of notice if refund not admissible - Sanction or rejection of refund claim [Rule 92(3)]:
Where the proper officer is satisfied, for reasons to be recorded in writing, that the whole or any part of the amount claimed as refund is not admissible or is not payable to the applicant, he shall issue a notice to the applicant, requiring him to furnish a reply within a period of 15 days of the receipt of such notice and after considering the reply, make an order in sanctioning the amount of refund in whole or part, or rejecting the said refund claim and the said order shall be made available to the applicant electronically and the provisions of Rule 92(1) shall, mutatis mutandis, apply to the extent refund is allowed.

Opportunity of being heard before rejection: No application for refund shall be rejected without giving the applicant an opportunity of being heard.

(3) E-payment of final refund [Rule 92(4)]:
Where the proper officer is satisfied that the amount refundable is payable to the applicant under Section 54(8), he shall make an order and issue a payment order for the amount of refund and the same shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund oil the basis of a consolidated payment advice.

Section 54(8) lists the circumstances in which the refundable amount is to be paid to the applicant instead of being credited to the Consumer Welfare Fund.
However, the order shall not be required to be revalidated by the proper officer.
The payment order shall be required to be revalidated where the refund has not been disbursed within the same financial year in which the said payment order was issued.

(4) Disbursement on basis of consolidated payment advice [Rule 92(4A)]:
The Central Government shall disburse the refund based on the consolidated payment advice issued as above.

(5) Refund to be credited to Consumer Welfare Fund [Rule 92(5)]:
Where the proper officer is satisfied that the amount refundable is not payable to the applicant under Section 54(8), he shall make an order in FORM GST RFD-06 and issue a payment order in FORM GST RFD-05, for the amount of refund to be credited to the Consumer Welfare Fund.
Five cases where refundable amount shall be paid to the applicant, instead of being credited to Consumer Welfare Fund under CGST Act, 2017.

(1) **Circumstances under which the refund would be granted to the applicant [Section 54(8)]:**

The principle of unjust enrichment is applicable in all cases of refund except in the following cases where the refundable amount shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to—

(a) refund of tax paid on export of goods or services or both or on inputs or input services used in making such exports;

Thus, the principle of unjust enrichment shall not apply only in case of export of goods or services. In other words the supply of goods or services to SEZ units or to a developer shall be covered by the said principle. Thus, the person applying the refund on account of zero-rated supplies to SEZ units or developer shall prove that he has borne the burden of tax and has not collected the same from such SEZ units or developer.

(b) refund of unutilised ITC in case of zero rated supplies or accumulated ITC on account of inverted duty structure;

(c) refund of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued, or where a refund voucher has been issued;

(d) refund of tax in pursuance of Section 77 i.e. CGST paid instead of IGST or vice versa;

(e) the tax and interest, if any, or any other amount paid by the applicant, if he had not passed on the incidence of such tax and interest to any other person; or

(f) the tax or interest borne by such other class of applicants as the Government may, on the recommendations of the Council, by notification, specify.

(2) **Refund to be granted only as per this Section [Section 54(9)]:**

Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the Appellate Tribunal or any court or in any other provision’s of this Act or the rules made thereunder or in any other law for the time being in force, no refund shall be made except in accordance with the provisions of Section 54(8).

**Provisions of withholding of refund under GST law.**

(1) **Withholding of refund/ Deduction of dues from refund [Section 54(10)]:**

Where any refund is due of unutilised ITC in case of zero rated supplies or accumulated ITC on account of inverted duty structure to a registered person who has defaulted in furnishing any return or who is required to pay any tax, interest or penalty, which has not been stayed by any court, Tribunal or Appellate Authority by the specified date, the proper officer may—
(a) withhold payment of refund due until the said person has furnished the return or paid the tax, interest or penalty, as the case may be;
(b) deduct from the refund due, any tax, interest, penalty, fee or any other amount which the taxable person is liable to pay but which remains unpaid under this Act or under the existing law.

**Specified date [Explanation]:** "Specified date" shall mean the last date for filing an appeal under this Act.

(2) **Withholding of refund till disposal of Appeal [Section 54(11)]:**
Where an order giving rise to a refund is the subject matter of an appeal or further proceedings or where any other proceedings under this Act is pending and the Commissioner is of the opinion that grant of such refund is likely to adversely affect the revenue in the said appeal or other proceedings on account of malfeasance or fraud committed, he may, after giving the taxable person an opportunity of being heard, withhold the refund till such time as he may determine.

(3) **Order withholding refund [Rule 92(2)]:**
Where the proper officer or the Commissioner is of the opinion that the amount of refund is liable to be withheld, he shall pass an order in Part B of FORM GST RFD-07 informing him the reasons for withholding of such refund.

(4) **Interest on withheld refund [Section 54(12)]:**
Where a refund is withheld under Section 54(11), the taxable person shall, notwithstanding anything contained in Section 56, be entitled to interest at such rate not exceeding 6% as may be notified on the recommendations of the Council, if as a result of the appeal or further proceedings he becomes entitled to refund. *[Interest @ 6% per annum has been notified vide Notification No. 13/2017-CT dated 28-6-2017 w.e.f. 1-7-2017.]*
PART 3: REFUND OF ADVANCE TAX

Provisions relating to refund of the amount of advance tax deposited by a casual Taxable Person/Non Resident Taxable [Section 54(13)]:
The amount of advance tax deposited by a casual taxable person or a non-resident taxable person under Section 27(2), shall not be refunded unless such person has, in respect of the entire period for which the certificate of registration granted to him had remained in force, furnished all the returns required under Section 39.

As per Rule 89(1) of the CGST Rules, 2017, refund of any amount, after adjusting the tax payable by the applicant out of the advance tax deposited by him under Section 27 at the time of registration, shall be claimed in the last return required to be furnished by him.

PART 4: REFUND OF ITC

(1) Rund of ITC can be claimed at the end of tax period:
Registered person may claim refund of any unutilised input tax credit at the end of any tax period.

(2) Cases when refund of un-utilised ITC is allowed:
(a) Zero rated supplies made without payment of tax.

"Zero rated supply" means any of the following supplies of goods or services or both, namely:-
(i) export of goods or services or both; or
(ii) supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit. [Section 2(23) read with Section 16 of IGST Act, 2017]

In such cases, refund of unutilised ITC at the end of any tax period, of amount determined under rule 89(4), shall be granted to the applicant and the the electronic credit ledger shall be debited by the applicant by an amount equal to the refund so claimed.

(b) Inverted duty structure:
Where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council.
Suppliers who supply goods to merchant exporters at the concessional rate of 0.1% [0.05% CGST and 0.05% SGST/UTGST or 0.1% IGST, as the case may be], under Notification no. 40/2017 CT (R) dated 23-10-2017/Notification No. 41/2017-IT (R) dated 23-10-2017, subject to certain conditions specified in said notifications, are also eligible for refund on account of inverted tax structure.
(3) **Cases where refund of ITC is not Admissible:**

However, refund is not eligible in the following cases—

(a) Refund of unutilized ITC shall not be allowed if the goods exported out of India are subjected to export duty.; or

(b) Refund of ITC shall not be allowed if the supplier of goods or services or both avails of drawback in respect of CGST or claims refund of the IGST paid on such supplies.

While claiming refund of accumulated ITC in case of zero rated supplies without payment of tax, a supplier can avail drawback of only basic customs duty and cannot claim drawback of any of the taxes under GST (Central Tax, Integrated Tax, State/Union Territory Tax). In other words, a supplier availing drawback of only basic customs duty shall be eligible for refund of unutilized ITC of central tax/ State tax/ Union territory tax/ integrated tax/ compensation cess under the said provision. It is further clarified that refund of eligible credit on account of State tax shall be available even if the supplier has **availed of drawback in respect of central tax.** [Circular No. 24/24/2017 GST dated 21-12-2017 and Circular No. 37/11/2018 GST dated 15-03-2018].

(c) If the supplier of goods or services or both claims **refund of output tax** paid under IGST Act.

"Drawback" in relation to any goods manufactured in India and exported, means the rebate of duty, tax or cess chargeable on any imported inputs or on any domestic inputs or input services used in the manufacture of such goods. [Section 2(42)]

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<tr>
<th>Notification No. 15/2017-CT (Rate) dated 28-06-2017 w.e.f. 01-07-2017</th>
<th>Construction Services not eligible for refund of unutilized ITC under CGST Act.</th>
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<tr>
<td></td>
<td>The Central Government has notified that no refund of unutilised ITC shall be allowed under Section 54(3) of CGST Act, in case of supply of services specified in sub-item (b) of item 5 of Schedule II of the CGST Act i.e. Construction Services.</td>
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20.13
PART 5: REFUND IN CASE OF ZERO RATED SUPPLY

Explain the manner of calculating the maximum amount of refund in case of zero rated supply of goods or services.

Refund in case of Zero rated supplies [Rule 89(4)]:
In the case of zero-rated supply of goods or services or both without payment of tax under bond or letter of undertaking in accordance with the provisions of Section 16(3) of the IGST Act, 2017, refund of input tax credit shall be granted as per the following formula-

\[
\text{Refund amount} = \frac{(\text{Turnover of zero-rated supply of goods} + \text{Turnover of zero-rated supply of services})}{\text{Adjusted Total Turnover}} \times \text{Net ITC}
\]

Where, —

(A) "Refund amount" means the maximum refund that is admissible;

(B) "Net ITC" means input tax credit availed on inputs and input services during the relevant period other than the input tax credit availed for which refund is claimed under Rule 89(4A) or (4B) or both;

(C) "Turnover of zero-rated supply of goods" means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking, other than the turnover of supplies in respect of which refund is claimed under Rule 89(4A) or (4B) or both;

(D) "Turnover of zero-rated supply of services" means the value of zero-rated supply of services made without payment of tax under bond or letter of undertaking, calculated in the following manner, namely:-

Zero-rated supply of services is the aggregate of the payments received during the relevant period for zero-rated supply of services and zero-rated supply of services where supply has been completed for which payment had been received in advance in any period prior to the relevant period reduced by advances received for zero-rated supply of services for which the supply of services has not been completed during the relevant period;

(E) Adjusted Total Turnover" means the sum total of the value of -

(a) the turnover in a State or a Union territory, as defined under section 2(112), excluding the turnover of services; and

(b) the turnover of zero-rated supply of services determined in terms of (D) above and non-zero-rated supply of services, excluding -

(i) the value of exempt supplies other than zero-rated supplies; and

(ii) the turnover of supplies in respect of which refund is claimed under rule 89(4A)/(4B) or both, if any, during the relevant period.
(F) "Relevant period" means the period for which the claim has been filed. Circular No. 37/11/2018 GST dated 15-03-2018 has clarified that the relevant period has been defined in the context of the refund claim and is not linked to a tax period. The exporter, at his option, may file refund claim for one calendar month/quarter or by clubbing successive calendar months/quarters. The calendar month(s)/quarter(s) for which refund claim has been filed, however, cannot spread across different financial years.

Refund of ITC on inputs and input services other than those for which benefit of Deemed Exports Claimed [Rule 89(4A)]:
In case of supplies received on which the supplier has availed the benefit of Notification No. 48/2017 CT dated 18-10-2017 (i.e., where supplier has claimed refund of tax paid on deemed exports), refund of input tax credit, availed in respect of other inputs or input services used in making zero-rated supply of goods or services or both, shall be granted.

[Note: In case of deemed exports, refund application can be made either by the recipient of deemed export supplies or by the supplier of deemed export supplies if the recipient does not claim ITC on such goods and gives an undertaking that the supplier may claim the refund.]

Refund of Input tax credit in Specified Situations [Rule 89(4B)]:
In case of supplies received on which the supplier has availed the benefit of Notification No. 40/2017-CT (R) dated 23-10-2017/ Notification No. 41/2017-IT (R) dated 23-10-2017 [concessional rate of tax @ 0.1% (0.05% CGST + 0.05% SGST & 0.1% IGST) for supply of goods made to merchant exporters for export] or Notification No. 78/2017-Cus dated 13-10-2017/Notification No. 79/2017-Cus dated 13-10-2017 [imports of goods by EOU/Advance Authorisation/EPCG schemes], or all of them, refund of input tax credit, availed in respect of inputs received under the said notifications for export of goods and the input tax credit availed in respect of other inputs or input services to the extent used in making such export of goods, shall be granted.

Amount refunded as ITC to be debited in Electronic Credit Ledger [Rule 89(3)]:
Where the application relates to refund of input tax credit, the electronic credit ledger shall be debited by the applicant by an amount equal to the refund so claimed.
PART 6: REFUND IN CASE OF INVERTED TAX STRUCTURE

Refund of ITC on account of inverted duty structure [Rule 89(5)]:
In the case of refund on account of inverted duty structure, refund of input tax credit shall be granted as per the following formula—

\[
\text{Maximum Refund Amount} = \left( \frac{\text{(Turnover of inverted rated supply of goods and services)}}{\text{Adjusted Total Turnover}} \right) \times \text{Net ITC} - \text{Tax payable on such inverted rated supply of goods and services}
\]

Where, —

- "Net ITC" shall mean input tax credit availed on inputs during the relevant period other than the input tax credit availed for which refund is claimed under Rule 89(4A)/(4B) or both; and

- "Adjusted Total turnover" shall have the same meaning as assigned to it in Rule 89(4) i.e. Adjusted Total Turnover means the sum total of the value of -
  (a) the turnover in a State or a Union territory, as defined under section 2(112), excluding the turnover of services; and
  (b) the turnover of zero-rated supply of services determined in terms of clause (D) above and non-zero-rated supply of services, excluding -
    (i) the value of exempt supplies other than zero-rated supplies; and
    (ii) the turnover of supplies in respect of which refund is claimed under rule 89(4A)/(4B) or both, if any, during the relevant period.

- Relevant period means the period for which the claim has been filed.

Time Limit for making refund application:
A person claiming refund is required to file an application before the expiry of 2 years from the relevant date. The term 'relevant date' as explained in the Explanation to Section 54 of the CGST Act, inter alia, stipulates that in case of refund of unutilized ITC on account of inverted duty structure, relevant date is the due date for furnishing of return under section 39 for the period in which such claim for refund arises.

Amount refunded as ITC to be debited in electronic credit ledger [Rule 89(3)]:
Where the application relates to refund of input tax credit, the electronic credit ledger shall be debited by the applicant by an amount equal to the refund so claimed.
PART 7: PROVISIONAL REFUND

When can provisional refund be granted under GST law. Explain the procedure for grant of provisional refund.

(A) Provisional refund of 90% of the amount claimed in case of zero-rated supply of goods or services or both [Section 54(6)]:

- Notwithstanding anything contained in Section 54(5),
- the proper officer may,
- in the case of any claim for refund on account of zero-rated supply of goods or services or both made by registered persons, other than such category of registered persons as may be notified by the Government on the recommendations of the Council,
- refund on a provisional basis, 90% of the total amount so claimed, excluding the amount of input tax credit provisionally accepted,
- in such manner and subject to such conditions, limitations and safeguards as may be prescribed, and
- thereafter make an order under Section 54(5) for final settlement of the refund claim after due verification of documents furnished by the applicant.
- The remaining 10% can be refunded later after due verification of documents furnished by the applicant

(B) Grant of provisional refund [Rule 91] [Amended by Notification No. 31/2019-CT dated 28-06-2019 and Notification No. 49/2019 w.e.f. 24-09-2019]:

(1) Conditions for grant of Provisional Refund [Rule 91(1)] : The provisional refund in accordance with the provisions of Section 54(6) shall be granted subject to the condition that the person claiming refund has, during any period of 5 years immediately preceding the tax period to which the claim for refund relates, not been prosecuted for any offence under the Act or under an existing law where the amount of tax evaded exceeds Rs. 2.5 crores.

(2) Sanction of Provisional Refund [Rule 91(2)] : The proper officer, after scrutiny of the claim and the evidence submitted in support thereof and on being prima facie satisfied that the amount claimed as refund under Rule 91(1) is due to the applicant in accordance with the provisions of Section 54(6), shall make an order in FORM GST RFD-04, sanctioning the amount of refund due to the said applicant on a provisional basis within a period not exceeding 7 days from the date of the acknowledgement under Rule 90(1)/(2). However, the order issued in FORM GST RFD-04 shall not be required to be revalidated by the proper officer.

(3) E-payment of provisional refund [Rule 91(3)] : The proper officer shall issue a payment order in FORM GST RFD-05 for the amount sanctioned under Rule 91(2) and the same shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as
specified in the application for refund on the basis of a consolidated payment advice.

However, the payment order in FORM GST RFD-05 shall be required to be revalidated where the refund has not been disbursed within the same financial year in which the said payment order was issued.

(4) Disbursement of refund [Rule 91(4)]: The Central Government shall disburse the refund based on the consolidated payment advice issued as above.

Credit of the amount of rejected refund claim [Rule 93]:

(1) Re-credit of amount to electronic credit ledger on communication of deficiencies [Rule 93(1)]:

Where any deficiencies have been communicated under Rule 90(3), the amount debited under Rule 89(3) shall be re-credited to the electronic credit ledger.

(2) Re-credit of amount to electronic credit ledger on rejection of refund [Rule 93(2)]:

Where any amount claimed as refund is rejected under Rule 92, either fully or partly, the amount debited, to the extent of rejection, shall be re-credited to the electronic credit ledger by an order made in FORM GST PMT-03.

Deemed rejection [Explanation]: A refund shall be deemed to be rejected, if the appeal is finally rejected or if the claimant gives an undertaking in writing to the proper officer that he shall not file an appeal.

PART 8: REFUND IN CERTAIN CASES. - SECTION 55

Refund to UN Bodies, Embassies etc.

• Supplies made to UN bodies and embassies may be exempted from payment of GST as per international obligations.
• However, this exemption has been operationalized by way of a refund mechanism.
• So, a taxable person making supplies to such bodies would charge the tax due and remit the same to Government account.
• However, the UN bodies and other entities notified under Section 55 of the CGST Act, 2017 can claim refund of the taxes paid by them on their purchases.
• The claim has to be made before the expiry of 6 months from the last day of the quarter in which such supply was received.

(1) Refund in certain cases [Section 55]:

The Government may, on the recommendations of the Council, by notification, specify -

➢ any specialised agency of the United Nations Organisation, or
➢ any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947,
Consulate or Embassy of foreign countries, and any other person or class of persons as may be specified in this behalf, who shall, subject to such conditions and restrictions as may be prescribed, be entitled to claim a refund of taxes paid on the notified supplies of goods or services or both received by them.

In exercise of above power, following persons have been notified, subject to fulfilment of specified conditions:

(i) United Nations or a specified international organization**; and
(ii) Foreign diplomatic mission or consular post in India, or diplomatic agents or career consular officers posted therein

**"Specified international organisation" means an international organisation declared by the Central Government in pursuance of section 3 of the United Nations (Privileges and Immunities Act) 1947, to which the provisions of the Schedule to the said Act apply. [Notification No. 16/2017-CT (R) dated 28-6-2017 w.e.f. 1-7-2017]

Further, in exercise of said power, Canteen Stores Department (CSD), under the Ministry of Defence, has been notified as a person who shall be entitled to claim a refund of 50% of the applicable CGST/IGST paid by it on all inward supplies of goods received by it for the purposes of subsequent supply of such goods to the Unit Run Canteens of the CSD or to the authorized customers of the CSD. Notification No. 6/2017-CT (R) dated 28-6-2017 w.e.f. 1-7-2017

(2) Time Limit for filing Refund Claim [Section 54(2)]:

The above mentioned persons may make an application for such refund, in such form and manner as may be prescribed, once in every quarter, but before the expiry of 6 months from the last day of the quarter in which such supply was received. Extension of due date for filing of application for refund u/s 55 by Notified Agencies : The Central Government vide Notification No. 20/2018-CT date 28-03-2018 has notified that specified persons under Section 55 shall make an application for refund of tax paid by it on inward supplies of goods or services or both, to the jurisdictional tax authority, in such form and manner as specified, before the expiry of 18 months from the last date of the quarter in which such supply was received.

Manner of refund of tax

Refund of tax to certain persons [Rule 95]:

(1) Quarterly E-application for refund:

Any person eligible to claim refund of tax paid by him on his inward supplies as per notification issued under Section 55 shall apply for refund in FORM GST RFD-10
once in every quarter, electronically on the common portal or otherwise, along with a statement of the inward supplies of goods or services or both in FORM GSTR-11.

(2) **Acknowledgment:**
An acknowledgement for the receipt of the application for refund shall be issued in FORM GST RFD-02.

(3) **Conditions to be Satisfied for Sanction of Refund:**
The refund of tax paid by the applicant shall be available if-

(a) the inward supplies of goods or services or both were received from a registered person against a tax invoice;
(b) name and GSTIN or UIN of the applicant is mentioned in the tax invoice; and
(c) such other restrictions or conditions as may be specified in the notification are satisfied.

(4) **Provisions of Rule 92 applicable:**
The provisions of Rule 92 shall, *mutatis mutandis*, apply for the sanction and payment of refund under this rule.

(5) **Treaty/ International agreement to prevail over the rules in case of inconsistency:**
Where an express provision in a treaty or other international agreement, to which the President or the Government of India is a party, is inconsistent with the provisions of this Chapter, such treaty or international agreement shall prevail.

**PART 9: INTEREST ON REFUND – SECTION 56**

**Section 56: Interest on delayed refunds.**

(1) **Interest not exceeding 6%, if refund is not paid within 60 days from receipt of application:** If -

➢ any tax ordered to be refunded under Section 54(5) to any applicant, and
➢ such tax is not refunded within 60 days from the date of receipt of application under Section 54(1),
➢ interest at such rate not exceeding 6% as may be specified in the notification issued by the Government on the recommendations of the Council shall be payable in respect of such refund
➢ from the date immediately after the expiry of 60 days from the date of receipt of application under the said sub-Section till the date of refund of such tax.

[Interest @ 6% p.a. has been notified vide Notification No. 13/2017-CT dated 28-6-2017 w.e.f. 1-7-2017.]
(2) **Refund as a consequence of adjudicating/ appellate authority order - Interest not exceeding 9%, if refund is not paid within 60 days from receipt of application:**

Where -

- any claim of refund arises from an order passed by an adjudicating authority or Appellate Authority or Appellate Tribunal or court which has attained finality, and
- the same is **not refunded within 60 days** from the date of receipt of application filed consequent to such order,
- interest at **such rate not exceeding 9%** as may be notified by the Government on the recommendations of the Council shall be payable in respect of such refund,
- from the date immediately **after the expiry of 60 days** from the date of receipt of application till the date of refund.

**Interest @ 9% p.a. has been notified vide Notification No. 13/2017-CT dated 28-6-2017 w.e.f. 1-7-2017.**

(3) **Refund as a consequence of appellate order - Appellate order deemed to be order passed u/s 54(5):**

Where any order of refund is made by an Appellate Authority, Appellate Tribunal or any court against an order of the proper officer under Section 54(5), the order passed by the Appellate Authority, Appellate Tribunal or by the court shall be deemed to be an order passed under Section 54(5). **[Explanation]**

(4) **Order sanctioning interest on delayed refunds [Rule 94]:**

- Where any interest is due and payable to the applicant under Section 56, the proper officer shall make an order along with a **payment order** in FORM GST RFD-05.
- Such order shall specify therein:
  1. the amount of refund which is delayed,
  2. the period of delay for which interest is payable and
  3. the amount of interest payable,

- Such interest shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund.
PART 10: CONSUMER WELFARE FUND – SECTION 57 AND 58

Section 57: Consumer Welfare Fund.

The Government shall constitute a Fund, to be called the Consumer Welfare Fund and there shall be credited to the Fund,—

(a) the amount referred to in sub-section (5) of section 54;

(b) any income from investment of the amount credited to the Fund; and

(c) such other monies received by it,

in such manner as may be prescribed.

Amounts to be credited to/paid from Consumer Welfare Fund [Rule 97 of the CGST Rules, 2017]:

(a) All amounts of duty/central tax/ integrated tax/Union territory tax/cess and income from investment along with other monies specified in Section 12C(2) of the Central Excise Act, 1944, Section 57 of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017, Section 21 of the UTGST Act, 2017 and Section 12 of the GST (Compensation to States) Act, 2017 shall be credited to the Fund.

However, an amount equivalent to 50% of the amount of integrated tax determined under Section 54(5) of the CGST Act, 2017, read with Section 20 of the IGST Act, 2017, shall be deposited in the Fund.

An amount equivalent to 50% of the amount of compensation cess determined under section 54(5) of the CGST Act, read with section 11 of the GST (Compensation to States) Act, shall be deposited in the Fund. [Second Proviso to rule 97(1)]

(b) Where any amount, having been credited to the Fund, is ordered or directed to be paid to any claimant by the proper officer, appellate authority or court, the same shall be paid from the Fund.

Section 58: Utilisation of Fund.

(i) Utilisation for Welfare of Consumers: All sums credited to the Fund shall be utilised by the Government for the welfare of the consumers in such manner as may be prescribed.

(ii) Account and Records: The Government or the authority specified by it shall maintain proper and separate account and other relevant records in relation to the Fund and prepare an annual statement of accounts in such form as may be prescribed in consultation with the Comptroller and Auditor-General of India.
Accounts of the Fund maintained by the Central Government shall be subject to audit by the Comptroller and Auditor General of India.

(iii) **Constitution of Standing Committee [Rule 97(4)]:** The Government shall, by an order, constitute a Standing Committee who shall make recommendations for proper utilisation of the money credited to the Consumer Welfare Fund for welfare of the consumers.

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**PART 11: CIRCULARS**


**Clarification on refund amount for claim of refund of accumulated ITC on account of inverted duty structure:**

Where there are multiple inputs attracting different rates of tax, in the formula provided in rule 89(5) of the CGST Rules, the term "Net ITC" covers the ITC availed on all inputs in the relevant period, irrespective of their rate of tax.

The calculation of refund of accumulated ITC on account of inverted tax structure, in cases where several inputs are used in supplying the final product/output, can be clearly understood with help of the following example:

(i) Suppose a manufacturing process involves the use of an input A (attracting 5% GST) and input B (attracting 18% GST) to manufacture output Y (attracting 12% GST).

(ii) The refund of accumulated ITC in the situation at (i) above, will be available under section 54(3) of the CGST Act read with rule 89(5) of the CGST Rules, which prescribes the formula for the maximum refund amount permissible in such situations.

(iii) Further assume that the claimant supplies the output Y having value of Rs. 3,000/- during the relevant period for which the refund is being claimed. Therefore, the turnover of inverted rated supply of goods and services will be Rs. 3,000/-. Since the claimant has no other outward supplies, his adjusted total turnover will also be Rs. 3,000/-. 

(iv) If we assume that Input A, having value of Rs. 500/- and Input B, having value of Rs. 2,000/-, have been purchased in the relevant period for the manufacture of Y, then Net ITC shall be equal to Rs. 385/- (Rs. 25/- and Rs. 360/- on Input A and Input B respectively).

(v) Therefore, multiplying Net ITC by the ratio of turnover of inverted rated supply of goods and services to the adjusted total turnover will give the figure of Rs. 385/-. 

(vi) From this, if we deduct the tax payable on such inverted
rated supply of goods or services, which is Rs. 360/-, we get the maximum refund amount, as per rule 89(5) of the CGST Rules which is Rs. 25/-.

<table>
<thead>
<tr>
<th>Circular No. 79/53/2018-GST dated 31-12-2018</th>
<th>Clarification on refund of accumulated ITC of input services and capital goods arising on account of inverted duty structure:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>It is clarified that both the law and the related rules clearly prevent the refund of tax paid on input services and capital goods as part of refund of input tax credit accumulated on account of inverted duty structure.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Circular No. 79/53/2018-GST dated 31-12-2018</th>
<th>Clarification on the term &quot;input&quot;.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>On certain occasions, ITC on stores and spares, packing materials, materials purchased for machinery repairs, printing and stationery items, is not considered as part of Net ITC on the grounds that these are not directly consumed in the manufacturing process and therefore, do not qualify as input. There are also instances where stores and spares charged to revenue are considered as capital goods and therefore the ITC availed on them is not included in Net ITC, even though the value of these goods has not been capitalized in his books of account by the claimant.</td>
</tr>
<tr>
<td></td>
<td>Clarification: It is clarified that input tax credit of the GST paid on inputs shall be available to a registered person as long as he/she uses or intends to use such inputs for the purposes of his/her business and there is no specific restriction on the availment of such ITC anywhere else in the GST Act. The GST paid on inward supplies of stores and spares, packing materials etc. shall be available as ITC as long as these inputs are used for the purpose of the business and/or for effecting taxable supplies, including zero-rated supplies, and the ITC for such inputs is not restricted under section 17(5) of the CGST Act. Further, capital goods have been clearly defined in section 2(19) of the CGST Act as goods whose value has been capitalized in the books of account and which are used or intended to be used in the course or furtherance of business. Stores and spares, the expenditure on which has been charged as a revenue expense in the books of account, cannot be held to be capital goods.</td>
</tr>
</tbody>
</table>

Fabric processor being service supplier is entitled to refund of unutilised ITC on account of inverted duty structure [Circular No. 48/22/2018-GST dated 14-06-2018]

<table>
<thead>
<tr>
<th>Issue</th>
<th>Clarification</th>
</tr>
</thead>
<tbody>
<tr>
<td>Whether independent fabric processors (job workers) in the textile sector supplying job work</td>
<td>Notification No. 5/2017-CT (Rate) dated 28-06-2017 specifies the goods in respect of which refund of unutilized input tax credit (ITC) on account of inverted duty structure under section 54(3) of the CGST Act shall not be allowed</td>
</tr>
</tbody>
</table>
services are eligible for refund of unutilized input tax credit on account of inverted duty structure under section 54(3) of the CGST Act, 2017, even if the goods (fabrics) supplied are covered under notification No. 5/2017-CT (Rate) dated 28-06-2017? where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies of such goods. However, in case of fabric processors, the output supply is the supply of job work services and not of goods (fabrics).

Hence, it is clarified that the fabric processors shall be eligible for refund of unutilized ITC on account of inverted duty structure under section 54(3) of the CGST Act even if the goods (fabrics) supplied to them are covered under notification No. 5/2017-CT (Rate) dated 28-06-2017.

PART 12: PROBLEMS

Q1 - From the following information you are required to determine the maximum amount of refund admissible on account of inverted duty structure.

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Rs.</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) Input tax credit availed on inputs</td>
<td>3,60,000</td>
</tr>
<tr>
<td>(ii) Input tax credit availed on input services</td>
<td>36,000</td>
</tr>
<tr>
<td>(iii) Turnover of inverted rated supply of goods (taxable @ 5%)</td>
<td>30,00,000</td>
</tr>
<tr>
<td>(iv) Turnover of other supplies of goods</td>
<td>10,00,000</td>
</tr>
</tbody>
</table>

Solution: The maximum amount of refund admissible on account of inverted duty structure is computed as under (amount in Rs.):

| (i) Net ITC i.e. input tax credit availed on inputs during the relevant period [Rs. 3,60,000] | 3,60,000 |
| (ii) Turnover of inverted rated supply of goods | 30,00,000 |
| (iii) Adjusted Total Turnover [Turnover of inverted rated supply of goods + Turnover of other supplies of goods] [Rs. 30,00,000 + Rs. 10,00,000] | 40,00,000 |
| (iv) Tax payable on such inverted rated supply of goods [Rs. 30,00,000 × 5%] | 1,50,000 |
| (v) Maximum refund = [(Item (ii) + Item (iii))] × Item (i)] - [Item (iv)] | 1,20,000 |

Q2 - Super Engineering Works, a registered supplier in Haryana, is engaged in supply of taxable goods within the State. Given below are the details of the turnover and applicable GST rates of the final products manufactured by Super Engineering Works as also the input tax credit (FTC) availed on inputs used in manufacture of each of the final products and GST rates applicable on the same, during a tax period:

<table>
<thead>
<tr>
<th>Products</th>
<th>Turnover*(Rs.)</th>
<th>Output Rates</th>
<th>GST</th>
<th>ITC availed (Rs.)</th>
<th>Input Rates</th>
<th>GST</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>5,00,000</td>
<td>5%</td>
<td>18%</td>
<td>54,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>B</td>
<td>3,50,000</td>
<td>5%</td>
<td>18%</td>
<td>54,000</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Determine the maximum amount of refund of the unutilized input tax credit that Super Engineering Works is eligible to claim under section 54(3)(ii) of the CGST Act, 2017 provided that Product B is notified as a product, in respect of which no refund of unutilised input tax credit shall be allowed under said section.

Solution

In the given case, the rates of tax on inputs used in Products A and B (18% each) are higher than rates of tax on output supplies of Products A and B (5% each). However, Product B is notified as a product, in respect of which no refund of unutilised ITC shall be allowed under section 54(3) (ii) of the CGST Act, 2017. Therefore, only Product A is eligible for refund under section 54(3)(ii).

In the case of refund on account of inverted duty structure, refund of input tax credit shall be granted as per the following formula—

\[
\text{Maximum Refund Amount} = \left( \frac{\text{Turnover of inverted rated supply of goods and services}}{\text{Adjusted Total Turnover}} \right) \times \text{Net ITC} - \text{Tax payable on such inverted rated supply of goods and services}
\]

The maximum amount of refund admissible on account of inverted duty structure (amount in Rs.) :

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) Net ITC i.e. input tax credit availed on inputs during the relevant period</td>
<td>1,18,000</td>
</tr>
<tr>
<td>[Net ITC availed during the relevant period needs to be considered irrespective of whether the ITC pertains to inputs eligible for refund of inverted rated supply of goods or not] i.e. Rs. 54,000 + Rs. 54,000 + Rs. 10,000</td>
<td></td>
</tr>
<tr>
<td>(ii) Turnover of inverted rated supply of goods</td>
<td>5,00,000</td>
</tr>
<tr>
<td>(iii) Adjusted Total Turnover [Turnover of inverted rated supply of goods + Turnover of other supplies of goods] i.e. Rs. 5,00,000 + Rs. 3,50,000 + Rs. 1,00,000</td>
<td>9,50,000</td>
</tr>
<tr>
<td>(iv) Tax payable on such inverted rated supply of goods [Rs. 5,00,000 \times 5%]</td>
<td>25,000</td>
</tr>
<tr>
<td>(v) Maximum refund = [(Item (ii) + Item (iii)) \times Item (i)] - [Item (iv)]</td>
<td>37,105</td>
</tr>
</tbody>
</table>

Q3 - Kailash Global (P) Ltd. supplies various goods in domestic and international markets. It is engaged in both manufacturing and trading of goods. The company is registered under GST in the State of Kamataka. The company exports goods without payment of tax under letter of undertaking in accordance with the provisions of section 16(3)(a) of the IGST Act, 2017.

The company has made the following supplies during a tax period:
The ITC available for the above tax period is as follows:

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Particulars</th>
<th>(Rs.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i)</td>
<td>On inputs (including Rs. 50,000 on export of exempt supplies)</td>
<td>3,50,000</td>
</tr>
<tr>
<td>(ii)</td>
<td>On capital goods</td>
<td>1,20,000</td>
</tr>
<tr>
<td>(iii)</td>
<td>On input services (including Rs. 18,000 on outdoor catering)</td>
<td>2,00,000</td>
</tr>
</tbody>
</table>

Determine the maximum amount of refund admissible to Kailash Global (P) Ltd. for the given tax period. *(RTP May 2019)*

**Solution: Computation of maximum amount of refund admissible to Kailash Global (P) Ltd. (amount in Rs.):**

<table>
<thead>
<tr>
<th>Particulars</th>
<th>(Rs.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exports of product 'A' to UK</td>
<td>Nil</td>
</tr>
<tr>
<td>Domestic supplies of taxable product 'B' during the period</td>
<td>75,000</td>
</tr>
<tr>
<td>Supply of goods to Export Oriented Unit</td>
<td>Nil</td>
</tr>
<tr>
<td>Export of exempt supplies</td>
<td>1,14,000</td>
</tr>
<tr>
<td><strong>Total refund claim admissible</strong></td>
<td><strong>1,89,000</strong></td>
</tr>
</tbody>
</table>

**Working Notes:**

1. **Refund of unutilized ITC is not allowed if the goods exported out of India are subjected to export duty:**

   Export of goods is a zero rated supply in terms of section 16(1)(a) of the IGST Act, 2017. Further, Kailash Global (P) Ltd. exports goods without payment of tax under letter of undertaking in accordance with the provisions of section 16(3) (a) of the IGST Act, 2017. Therefore, as per clause (i) of first proviso to section 54(3) of the CGST Act, 2017, a registered person may claim refund, of any unutilised ITC in the case of zero rated supply at the end of any tax period. However, second proviso to section 54(3) lays down that refund of unutilized ITC is not allowed if the goods exported out of India are subjected to export duty.

2. **Refund of unutilised ITC is allowed in case of inverted duty structure:**

   Rule 89(5) of the CGST Rules, 2017 stipulates that in the case of refund on account of inverted duty structure, refund of ITC is granted as per the following formula -
**Maximum Refund**

\[
\text{Maximum Refund} = \frac{\text{Turnover of inverted rated supply of goods and services} \times \text{Net ITC}}{\text{Adjusted Total Turnover}} - \text{Tax payable on such inverted rated supply of goods and services}
\]

where—

The maximum amount of refund admissible on account of inverted duty structure (amount in Rs.) :

- (i) Net ITC i.e. input tax credit availed on inputs during the relevant period [Net ITC availed during the relevant period needs to be considered irrespective of whether the ITC pertains to inputs eligible for refund of inverted rated supply of goods or not] = 3,50,000
- (ii) Turnover of inverted rated supply of goods = 10,00,000
- (iii) Adjusted Total Turnover i.e. Rs. 7,00,000 + Rs. 10,00,000 + Rs. 5,00,000 + Rs. 6,00,000 = 28,00,000
- (iv) Tax payable on such inverted rated supply of goods [Rs. 10,00,000 \times 5\%] = 50,000
- (v) Maximum refund = \left[\frac{\text{Item (ii)}}{\text{Item (iii)}}\right] \times \text{Item (i)} - \text{Item (iv)} = 75,000

(3) Supply of goods to EOU - refund admissible to supplier only when disclaimer received from recipient:

As per section 2(39) of the CGST Act, 2017, deemed exports means such supplies of goods as may be notified under section 147 of the CGST Act, 2017. Supplies to EOU is notified as deemed export under section 147 vide Notification No. 48/2017-CT dated 18-10-2017. In respect of supplies regarded as deemed exports, the application of refund can be filed by the supplier of deemed export supplies only in cases where the recipient does not avail of ITC on such supplies and furnishes an undertaking to the effect that the supplier may claim the refund [Third proviso to rule 89(1) of the CGST Rules, 2017]. Therefore, since in the given case, the recipient is claiming ITC, Kailash Global (P) Ltd. (supplier of deemed exports) cannot claim refund of ITC.

(4) Refund of ITC on account of zero rated supply:

\[
\text{Refund Amount} = \frac{\text{Turnover of zero-rated supply of goods} + \text{Turnover of zero-rated supply of services}}{\text{Adjusted Total Turnover}} - \text{Net ITC}
\]

where—

The maximum amount of refund admissible on account of Zero-rated supply (amount in Rs.) :

- (i) Net ITC i.e. input tax credit availed on inputs and input services during the relevant period [Rs. 3,50,000 + Rs. 2,00,000 - Rs. 18,000] = 5,32,000
- (ii) Turnover of zero-rated supply of goods i.e. value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking = 6,00,000
<table>
<thead>
<tr>
<th>(iii)</th>
<th>Adjusted Total Turnover [Same as discussed above]</th>
<th>28,00,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>(iv)</td>
<td>Maximum refund = [(Item (ii) + Item (iii)) × Item (i)]</td>
<td>1,14,000</td>
</tr>
</tbody>
</table>

***************************************************************************
PART 1: ASSESSMENT

Assessment [Section 2(11)]: "Assessment" means determination of tax liability under this Act and includes-
- self-assessment,
- re-assessment,
- provisional assessment,
- summary assessment, and
- best judgment assessment.

Self assessment [Section 59]:
Every registered person shall self assess the taxes payable under this act and furnish a return for each tax period as specified under Section 39.

Provisional assessment [Section 60 read with Rule 98 of CGST Rules, 2017]:
The relevant provisions are discussed as under -

(1) Provisional assessment - When resorted [Section 60(1)]:
Provisional assessment can be resorted, where the taxable person is unable to determine —
- the value of goods or services or both, or
- the rate of tax applicable thereto.

Request of provisional assessment in writing: The taxable person may furnish an application in prescribed form stating therein reasons for payment of tax on a provisional basis along with the documents in support of his request, electronically through the common portal, either directly or through a Facilitation Centre notified by the Commissioner.

Notice seeking additional information: The proper officer may, on receipt of the application, issue a notice in prescribed form requiring the registered person to furnish additional information or documents in support of his request and the applicant shall file a reply to the notice, and may appear in person before the said officer if he so desires.

Passing of order for provisional assessment - Within 90 days of receipt of application: The proper officer shall pass an order,—
- within a period not later than 90 days from the date of receipt of such request,
- allowing payment of tax on provisional basis
- at such rate or on such value as may be specified by him.
(2) **Execution of bond by Taxable Person [Section 60(2)]:**

The payment of tax on provisional basis may be allowed,—
- if the **taxable person executes a bond** in such form as may be prescribed, and
- with such surety or security **not exceeding 25% of the amount covered in the bond** as the proper officer may deem fit,
- binding the taxable person for payment of the difference between the amount of tax as may be finally assessed and the amount of tax provisionally assessed.

**Bond under SGST/IGST valid for CGST:** A bond furnished to the proper officer under the State Goods and Services Tax Act/Integrated Goods and Services Tax Act shall be deemed to be a bond furnished under the provisions of this Act and the rules made thereunder.

**Amount will be total of all GST and cess:** The term "amount" shall include the amount of integrated tax, central tax, State tax or Union territory tax and cess payable in respect of such transaction.

(3) **Final assessment within 6 months [Section 60(3)]:**

The proper officer shall,—
- **within a period not exceeding 6 months** from the date of the communication of the order issued under Section 60(1),
- pass the final assessment order after taking into account such information as may be required for finalizing the assessment.

**Extension of time limit:** The period specified of 6 months, on sufficient cause being shown and for reasons to be recorded in writing, be extended—
- by the Joint Commissioner or Additional Commissioner for a **further period not exceeding 6 months,** and
- by the Commissioner for such **further period not exceeding 4 years.**

Thus, a provisional assessment can remain provisional for a **maximum of 5 years.**

**Notice seeking information for finalization:** For finalization of assessment, proper officer shall issue a notice in prescribed form, calling for such information and records, as may be required and shall issue a final assessment order specifying the amount payable by the registered person or the amount refundable, if any.

(4) **Interest payable if final amount is more than provisional amount [Section 60(4)]:**

The registered person shall be liable to pay interest—
- on any tax payable on the supply of goods or services or both under provisional assessment but not paid on the due date specified under Section 39(7) or the rules made thereunder,
- at the rate specified under Section 50(1) *i.e. 18% p.a.,*
- **from the first day after the due date** of payment of tax in respect of the said supply of goods or services or both **till the date of actual payment,**
whether such amount is paid before or after the issuance of order for final assessment.

(5) **Interest on amount of refund [Section 60(5)]:**

Where the registered person is entitled to a refund consequent to the order of final assessment under Section 60(3), subject to the provisions of Section 54(8), interest shall be paid on such refund as provided in Section 56 i.e. if tax becomes refundable consequent to the order of final assessment, the registered person shall be paid interest at the rate specified under Section 56 from the date immediately after the expiry of 60 days from the date of receipt of application in accordance with the provisions of Section 54(1) till the date of refund of such tax.

In simple words, in case any tax amount becomes refundable subsequent to finalization of the provisional assessment, then interest (subject to the eligibility of refund and absence of unjust enrichment) at the specified rate will be payable to the supplier.

(6) **Release of security:**

The applicant may file an application for release of security furnished after issue of final assessment order. The proper officer shall release the security after ensuring that applicant has paid the amount specified in final assessment order and issue an order within a period of 7 working days from the date of receipt of the application.

**Q1 - Interest on Provisional assessment:** Kulbhushan & Sons has entered into a contract to supply two consignments of certain taxable goods. However, since it is unable to determine the value of the goods to be supplied by it, it applies for payment of tax on such goods on a provisional basis along with the required documents in support of its request.

On 12-01-2020, the Assistant Commissioner of Central Tax issues an order allowing payment of tax on provisional basis indicating the value on the basis of which the assessment is allowed on provisional basis and the amount for which the bond is to be executed and security is to be furnished.

Kulbhushan & Sons complies with the same and supplies both the consignments of goods on 25-01-2020 thereafter paying the tax on provisional basis in respect of both the consignments on 19-02-2020.

Consequent to the final assessment order passed by the Assistant Commissioner of Central Tax on 21-03-2020, a tax of Rs. 1,80,000 becomes due on 1st consignment whereas a tax of Rs. 4,20,000 becomes refundable on 2nd consignment.

Kulbhushan & Sons pays the tax due on 1st consignment on 09-04-2020 and applies for the refund of the tax on 2nd consignment same day. Tax was actually refunded to it on 05-06-2020.
Determine the interest payable and receivable, if any, by Kulbhushan & Sons in the above case.

**Solution:** Computation of the amount of interest payable on finalisation of assessment: Section 60(4) of the CGST Act, 2017 stipulates that where the tax liability as per the final assessment is higher than under provisional assessment i.e. tax becomes due consequent to order of final assessment, the registered person shall be liable to pay interest on tax payable on supply of goods but not paid on the due date, at the rate specified under section 50(1) [18% p.a.], from the first day after the due date of payment of tax in respect of the goods supplied under provisional assessment till the date of actual payment, whether such amount is paid before/after the issuance of order for final assessment.

In the given case, due date for payment of tax on goods cleared on 25-01-2020 under provisional assessment is 20-02-2020. Kulbhushan & Sons is liable to pay following interest in respect of 1st consignment:

<table>
<thead>
<tr>
<th>Due date of payment of tax under provisional assessment</th>
<th>20-02-2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>Actual date of payment of tax</td>
<td>09-04-2020</td>
</tr>
<tr>
<td>Period of delay in days</td>
<td>49 days</td>
</tr>
<tr>
<td>GST Payable</td>
<td>1,80,000</td>
</tr>
<tr>
<td>Rate of Interest</td>
<td>18% p.a.</td>
</tr>
<tr>
<td><strong>Interest payable [Rs. 1,80,000 x 18% x 48/366] (Leap year) (Rounded off)</strong></td>
<td>4,249</td>
</tr>
</tbody>
</table>

**Interest on refund:** Further, section 60(5) of the CGST Act, 2017 stipulates that where the tax liability as per the final assessment is less than in provisional assessment i.e. tax becomes refundable consequent to the order of final assessment, the registered person shall be paid interest at the rate specified under section 56 [6% p.a.] from the date immediately after the expiry of 60 days from the date of receipt of application under section 54(1) till the date of refund of such tax.

However, since in the given case, refund has been made (05-06-2020) within 60 days from the date of receipt of application of refund (09-04-2020), interest is not payable to Kulbhushan & Sons on tax refunded in respect of 2nd consignment.

**Scrutiny of returns [Section 61 read with Rule 99 of CGST Rules, 2017]:**

(1) **Scrutiny of returns - Discrepancies to be informed and explanations to be sought [Section 61(1)]:**

The proper officer may—

- scrutinize the return and related particulars furnished by the registered person
- to verify the correctness of the return, and
- inform him of the discrepancies noticed, if any, in such manner as may be prescribed, and
- seek his explanation thereto.
(2) **Issue of notice [Rule 99]:**

In case any discrepancy is found during scrutiny of return, proper officer shall issue a notice to the said person informing him of such discrepancy and seeking his explanation thereto within such time, **not exceeding 30 days from the date of service of the notice**, or such further period as may be permitted by him and also, where possible, quantifying the amount of tax, interest and any other amount payable in relation to such discrepancy.

(3) **Reply to notice [Rule 99]:**

The registered person to whom notice is issued may -

- accept the discrepancy as mentioned in the notice and pay the tax, interest and any other amount arising from such discrepancy and inform the same or furnish an explanation for the discrepancy to the proper officer or
- submit his explanation regarding non-acceptance of discrepancy within a period of 30 days of being informed by the proper officer or such further period as may be permitted by him.

(4) **Explanations found acceptable - No further action [Section 61(2)]:**

In case the explanation is found acceptable, the registered person shall be informed accordingly and no further action shall be taken in this regard.

(5) **Explanations not found acceptable - Audit, Inspection or notice by proper officer [Section 61(3)]:**

In case-

- no satisfactory explanation is furnished within a period of 30 days of being informed by the proper officer or such further period as may be permitted by him; or
- where the registered person, after accepting the discrepancies, fails to take the corrective measure in his return for the month in which the discrepancy is accepted,

the proper officer may take recourse to any of the following provisions, namely:-

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

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

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

(d) initiate **proceeding for determination of tax and other dues** under Section 73 or 74 of the Act.
Assessment of non-filers of returns [Section 62 read with Rule 100 of CGST Rules, 2017]:

(1) **Best judgment assessment of non-filers [Section 62(1)]:**
Notwithstanding anything to the contrary contained in Section 73 or Section 74, where a registered person-

- fails to furnish the return under Section 39 (monthly/quarterly) or under Section 45 (final return), and
- a notice under Section 46 has been issued by proper officer to the defaulting taxable person requiring him to furnish the return **within a period of 15 days** and taxable person fails to file return within the given time;

the proper officer may proceed to assess the tax liability of said person to the best of his judgment taking into account all the relevant material which is available or which he has gathered.

(2) **Time limit for Assessment Order:**
The order of Best Judgment assessment shall be issued by Proper Officer in the FORM GST ASMT-13 and a summary thereof shall be uploaded electronically in FORM GST

The Assessment Order shall be issued by Proper Officer within a period of 5 years from the date specified under Section 44 for furnishing of the annual return for the financial year to which the tax not paid relates.

**Example:** If a person defaults in filing of return for any tax period falling in F.Y. 2019-20, period of 5 years shall be reckoned from the due date of filing of Annual Return for F.Y. 2019-20 i.e. 31-12-2020. Accordingly, Best judgment Assessment can be made by Proper Officer on or before 31-12-2025.

(3) **Valid return furnished within 30 days of service of assessment order - Best judgment assessment shall stand withdrawn [Section 62(2)]:**
Where the registered person furnishes a **valid return within 30 days** of the service of the assessment order under Section 62(1), the said assessment order shall be deemed to have been withdrawn but the liability for payment of interest under Section 50(1) or for payment of late fee under Section 47 shall continue.
**Best judgment assessment of unregistered persons:**

(1) **BJA**

Notwithstanding anything to the contrary contained in Section 73 or Section 74, where a taxable person-

- **fails to obtain registration** even though liable to do so; or
- **whose registration has been cancelled** under Section 29(2), for any of the following reason, namely-
  - (a) a registered person has contravened such provisions of the Act or the rules made thereunder as may be prescribed; or
  - (b) a person paying tax under composition levy under Section 10 has not furnished returns for 3 consecutive tax periods; or
  - (c) any registered person, other than composition supplier, has not furnished returns for a continuous period of 6 months; or
  - (d) any person who has taken voluntary registration under Section 25(3) has not commenced business within 6 months from the date of registration; or
  - (e) registration has been obtained by means of fraud, wilful misstatement or suppression of facts,

but who was liable to pay tax, the proper officer may proceed to assess the tax liability of said unregistered person to the best of his judgment for the relevant tax periods.

(2) **Issue of Notice [Rule 100(2)]:**

Before making the assessment, proper officer shall issue a notice to a taxable person containing the grounds on which the assessment is proposed to be made on best judgment basis and shall be given **15 days' time to furnish his reply**, if any. The summary of the show cause notice shall be uploaded electronically in form **GST DRC-01** on the common portal.

**Opportunity of being heard**: However, no such assessment order shall be passed without giving the person an opportunity of being heard.

(3) **Time limit for Assessment Order:**

The assessment order shall be issued by proper officer **within a period of 5 years** from the due date for furnishing the annual return for the financial year to which non-payment of tax relates. The summary of the assessment order shall be uploaded electronically on the common portal in form **GST DRC-07**.

**Example**: If the liability of a person to take registration arises at any time in the financial year 2019-20 for the reason that his turnover crosses the prescribed threshold limit, period of 5 years shall be reckoned from the due date of filing of Annual Return for financial year 2019-20. i.e., 31-12-2020. Accordingly, Best judgment Assessment can be made by proper officer on or before 31-12-2025.
SUMMARY ASSESSMENT

(1) When Summary Assessment/Protective assessment can be made [Section 64(1)]:

Summary Assessment can be initiated to protect the interest of revenue with the previous permission of Additional Commissioner/Joint Commissioner when:

- the proper officer has evidence that a taxable person has incurred a liability to pay tax under the Act, and
- the proper officer has sufficient grounds to believe that delay in passing an assessment order may adversely affect the interest of revenue.

Taxable person not ascertainable - Person in charge of goods deemed to be the taxable person: Where the taxable person to whom the liability pertains is not ascertainable and such liability pertains to supply of goods, the person in charge of such goods shall be deemed to be the taxable person liable to be assessed and liable to pay tax and any other amount due under this Section.

The summary of the assessment order shall be uploaded electronically on the common portal in Form GST DRC-07.

(2) Withdrawal of summary assessment order if the same is found to be erroneous:

The Summary Assessment Order may be withdrawn by Additional Commissioner/Joint Commissioner, -

(a) on an application filed by taxable person for withdrawal of the summary assessment order within 30 days from the date of receipt of order; or

(b) on his own motion, where he finds such order to be erroneous and may instead follow the procedures laid down in Section 73 or Section 74 to determine the tax liability of such taxable person. [Section 64(2)]
"Audit" means the examination of records, returns and other documents maintained or furnished by the registered person under this Act or the rules made thereunder or under any other law for the time being in force to verify the correctness of turnover declared, taxes paid, refund claimed and input tax credit availed, and to assess his compliance with the provisions of this Act or the rules made thereunder. [Section 2(13)]

How many types of audit are prescribed under GST Act. Briefly explain each one of them.(5 Marks, Nov. 2018)

Ans: GST is a trust based taxation regime wherein the assessee is required to self-assess his returns and determine tax liability without any intervention by the tax official. Therefore a tax regime that relies on self-assessment has to put in place a robust audit mechanism to measure and ensure compliance of the provisions of law by the taxable person.

Types of Audit: GST envisages three types of Audit.

(1) **Mandatory Audit by CA/CMA**: The first audit is by a chartered accountant or a cost accountant. Every registered person whose aggregate turnover during a financial year exceeds Rs. 2 crore has to get his accounts audited by a chartered accountant or a cost accountant and furnish a copy of audited annual accounts and a reconciliation statement, duly certified, in **FORM GSTR-9C**.

(2) **Departmental Audit**: In the second type which is the normal audit, the Commissioner or any officer authorised by him, can undertake audit of any registered person for such period, at such frequency and in such manner as may be prescribed.

(3) **Special Audit**: The third type of audit is called the Special Audit. In Special Audit the registered person can be directed to get his records including books of account examined and audited by a chartered accountant or a cost accountant during any stage of scrutiny, inquiry, investigation or any other proceedings; depending upon the complexity of the case.

**Audit by tax authorities.**

Audit by tax authorities [Section 65 read with Rule 101 of CGST Rules, 2017]:

(1) **Commissioner or authorised officer to conduct audit of registered person** [Section 65(1)]:

The **Commissioner or any officer authorised by him**, by way of a general or a specific order, may undertake audit of any registered person for a financial year or part thereof or multiples thereof.
(2) **Place of audit [Section 65(2)]:**

The officers may conduct audit at the **place of business** of the registered person or **in their office**.

(3) **15 days prior notice for conduct of audit [Section 65(3)]:**

The registered person shall be informed by way of a notice **not less than 15 working days** prior to the conduct of audit in such manner as may be prescribed.

(4) **Time period for concluding audit - 3 months [Section 65(4)]:**

The audit shall be completed **within a period of 3 months** from the date of commencement of the audit.

**Extension by Commissioner - For further 6 months:** Where the Commissioner is satisfied that audit in respect of such registered person **cannot be completed within 3 months**, he may, for the reasons to be recorded in writing, extend the period by a **further period not exceeding 6 months**.

*Explanation* - "Commencement of audit" shall mean-

- the date on which the records and other documents, called for by the tax authorities, are made available by the registered person, or
- the actual institution of audit at the place of business, **whichever is later**.

(5) **Manner of conducting audit [Rule 101]:**

The proper officer authorised to conduct audit of the records and the books of account of the registered person shall, with the assistance of the team of officers and officials accompanying him, verify the documents on the basis of which the books of account are maintained and the returns and statements furnished under the provisions of the Act and the rules made thereunder, the correctness of the turnover, exemptions and deductions claimed, the rate of tax applied in respect of the supply of goods or services or both, the input tax credit availed and utilised, refund claimed, and other relevant issues and record the observations in his audit notes.

(6) **Providing necessary facilities for verification and furnishing of information [Section 65(5)]:**

During the course of audit, the proper officer may require the registered person,—

(i) to afford him the necessary facility to verify the books of account or other documents as he may require;

(ii) to furnish such information as he may require and

(iii) to render assistance for timely completion of the audit.

The proper officer may inform the registered person of the discrepancies noticed, if any, as observations of the audit and the said person may file his reply and the proper officer shall finalise the findings of the audit after due consideration of the reply furnished.
(7) **Findings of audit to be informed to taxable person within 30 days of audit [Section 65(6)]**: 

The proper office shall finalise the findings of the audit after due consideration of the reply furnished by registered person to audit observation brought to his notice during the course of audit.

On conclusion of audit, the proper officer shall, **within 30 days**, inform the registered person, whose records are audited, about the findings, his rights and obligations and the reasons for such findings.

(8) **Tax liability identified - Initiation of action against taxable person [Section 65(7)]**: 

Where the audit conducted under Section 65(1) results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the proper officer may initiate action u/s 73 or Section 74.

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**SPECIAL AUDIT**

**Ans: Special audit [Section 66]**: The provisions of Special Audit are as under-

<table>
<thead>
<tr>
<th>Section</th>
<th>Particulars</th>
<th>Description</th>
</tr>
</thead>
</table>
| 66(1)   | Special audit if value not correctly declared / excess input tax credit availed | Authority who can order this audit: Any officer not below the rank of Assistant Commissioner with the prior approval of the Commissioner direct such registered person by a communication in writing to get his records including books of account examined.  
**Reasons for audit**: Audit can be ordered if such officer at any stage of scrutiny, inquiry, investigation or any other proceedings before him, having regard to the nature and complexity of the case and the interest of revenue, is of the opinion that the registered person has – 
  (i) not correctly declared the value, or  
  (ii) availed credit which is not within the normal limits.  
**Audit to be conducted**: Audit is to conducted by a Chartered Accountant or a Cost Accountant as may be nominated by the Commissioner.  
- "Chartered accountant" means a chartered accountant as defined in Section 2(1)(b) of the Chartered Accountants Act, 1949. [Section 2(23)]  
- "Cost accountant" means a cost accountant as defined in Section 2(1)(b) of the Cost and Works Accountants Act, 1959. [Section 2(35)] |
66(2) **Time period of audit**
The chartered accountant or cost accountant so nominated shall,-
- within the period of 90 days,
- submit a report of such audit duly signed and certified by him
- to the said Assistant Commissioner
- mentioning therein such other particulars as may be specified.

**Extension for further period of 90 days**:
The Assistant Commissioner may,-
- on an application made to him in this behalf by–
  - the registered person, or
  - the chartered accountant or cost accountant, or
- for any material and sufficient reason, extend the said period by a further period of 90 days.

66(3) **Accounts to be audited even already audited**
The provisions of this Section shall have effect notwithstanding that the accounts of the registered person have been audited under any other provisions of this Act or any other law for the time being in force.

66(4) **Opportunity of being heard**
The registered person shall be given an opportunity of being heard in respect of any material gathered on the basis of special audit under this Section which is proposed to be used in any proceedings against him under this Act or the rules made there-under.

66(5) **Expenses to be borne by the department**
The expenses of the examination and audit of records under this Section, including the remuneration of such chartered accountant or cost accountant, shall be determined and paid by the Commissioner and such determination shall be final.

66(6) **Tax liability identified - Initiation of action against taxable person**
Where the special audit conducted under this Section results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the proper officer may initiate action under Section 73 or Section 74.
PART 1: ADVANCE RULING

Section 95: Definitions.

(a) “advance ruling” means
a decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (2) of section 100, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant;

(b) “Appellate Authority” means
the Appellate Authority for Advance Ruling referred to in section 99;

(c) “applicant” means
any person registered or desirous of obtaining registration under this Act;

(d) “application” means
an application made to the Authority under sub-section (1) of section 97;

(e) “Authority” means
the Authority for Advance Ruling referred to in section 96.

Section 96: Authority for advance ruling.

Subject to the provisions of this Chapter, for the purposes of this Act, the Authority for advance ruling constituted under the provisions of a State Goods and Services Tax Act or Union Territory Goods and Services Tax Act shall be deemed to be the Authority for advance ruling in respect of that State or Union territory.

Rule 103: Qualification and appointment of members of the Authority for Advance Ruling

The Government shall appoint officers not below the rank of Joint Commissioner as member of the Authority for Advance Ruling.
Section 97: Application for advance ruling.

(1) **Application**
An applicant desirous of obtaining an advance ruling under this Chapter may make an application in such form (FORM GST ARA-1) and manner and accompanied by such fee (five thousand rupees) as may be prescribed, stating the question on which the advance ruling is sought.

(2) **Questions**
The question on which the advance ruling is sought under this Act, shall be in respect of,—

(a) classification of any goods or services or both;
(b) applicability of a notification issued under the provisions of this Act;
(c) determination of time and value of supply of goods or services or both;
(d) admissibility of input tax credit of tax paid or deemed to have been paid;
(e) determination of the liability to pay tax on any goods or services or both;
(f) whether applicant is required to be registered;
(g) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.

Rule 104: Form and manner of application to the Authority for Advance Ruling
(1) An application for obtaining an advance ruling under sub-section (1) of section 97 of the Act shall be made on the common portal in FORM GST ARA-1 and shall be accompanied by a fee of five thousand rupees, to be deposited in the manner specified in section 49 of the Act.

(2) The application referred to in sub-rule (1), the verification contained therein and all relevant documents accompanying such application shall be signed in the manner specified in rule Registration.19.

Section 98: Procedure on receipt of application.

(1) **Forward of application**
- On receipt of an application, the Authority shall cause a copy thereof to be forwarded to the concerned officer and, if necessary, call upon him to furnish the relevant records:
- Provided that where any records have been called for by the Authority in any case, such records shall, as soon as possible, be returned to the said concerned officer.
(2) **Acceptance or rejection of application**

- The Authority may, after examining the application and the records called for and after hearing the applicant or his authorised representative and the concerned officer or his authorised representative, by order, either admit or reject the application:

  - Provided that the Authority shall not admit the application where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of this Act:

  - Provided further that no application shall be rejected under this sub-section unless an opportunity of hearing has been given to the applicant:

  - Provided also that where the application is rejected, the reasons for such rejection shall be specified in the order.

(3) A copy of every order made under sub-section (2) shall be sent to the applicant and to the concerned officer.

(4) **Judgment**

Where an application is admitted under sub-section (2), the Authority shall, after examining such further material as may be placed before it by the applicant or obtained by the Authority and after providing an opportunity of being heard to the applicant or his authorized representative as well as to the concerned officer or his authorised representative, pronounce its advance ruling on the question specified in the application.

(5) **Deferment in opinion**

Where the members of the Authority differ on any question on which the advance ruling is sought, they shall state the point or points on which they differ and make a reference to the Appellate Authority for hearing and decision on such question.

(6) **Time limit**

The Authority shall pronounce its advance ruling in writing within ninety days from the date of receipt of application.

(7) A copy of the advance ruling pronounced by the Authority duly signed by the members and certified in such manner as may be prescribed shall be sent to the applicant, the concerned officer and the jurisdictional officer after such pronouncement.

**Rule 105: Certification of copies of the advance rulings pronounced by the Authority**

A copy of the advanced ruling shall be certified to be a true copy of its original by any member of the Authority for Advance Ruling.
PART 2: APPEAL UNDER ADVANCE RULING

Section 99: Appellate Authority for Advance Ruling.

Subject to the provisions of this Chapter, for the purposes of this Act, the Appellate Authority for Advance Ruling constituted under the provisions of a State Goods and Services Tax Act or a Union Territory Goods and Services Tax Act shall be deemed to be the Appellate Authority in respect of that State or Union territory.

Section 100: Appeal to Appellate Authority.

(1) Who can appeal?
The concerned officer, the jurisdictional officer or an applicant aggrieved by any advance ruling pronounced under sub-section (4) of section 98, may appeal to the Appellate Authority.

(2) Time limit for filing the appeal
- Every appeal under this section shall be filed within a period of thirty days from the date on which the ruling sought to be appealed against is communicated to the concerned officer, the jurisdictional officer and the applicant:
- Provided that the Appellate Authority may, if it is satisfied that the appellant was prevented by a sufficient cause from presenting the appeal within the said period of thirty days, allow it to be presented within a further period not exceeding thirty days.

(3) Form of appeal
Every appeal under this section shall be in such form, accompanied by such fee and verified in such manner as may be prescribed.

Rule 106: Form and manner of appeal to the Appellate Authority for Advance Ruling

(1) An appeal against the advance ruling issued under sub-section (6) of section 98 of the Act shall be made by an applicant on the common portal in FORM GST ARA-2 and shall be accompanied by a fee of ten thousand rupees, to be deposited in the manner specified in section 49 of the Act.

(2) An appeal against the advance ruling issued under sub-section (6) of section 98 of the Act shall be made by the concerned officer or the jurisdictional officer referred to in section 100 on the common portal in FORM GST ARA-3 and no fee shall be payable by the said officer for filing the appeal.

(3) The appeal referred to in sub-rule (1) or sub-rule (2), the verification contained therein and all relevant documents accompanying such appeal shall be signed,
(a) in case of concerned officer or jurisdictional officer, by an officer authorized in writing by such officer; and (b) in the case of an applicant, in the manner specified in rule Registration.

Section 101: Orders of Appellate Authority.

(1) ORDER
The Appellate Authority may, after giving the parties to the appeal or reference an opportunity of being heard, pass such order as it thinks fit, confirming or modifying the ruling appealed against or referred to.

(2) TIME LIMIT
The order referred to in sub-section (1) shall be passed within a period of ninety days from the date of filing of the appeal under section 100 or a reference under sub-section (5) of section 98.

(3) Deferment in opinion
Where the members of the Appellate Authority differ on any point or points referred to in appeal or reference, it shall be deemed that no advance ruling can be issued in respect of the question under the appeal or reference.

(4) FORWARD COPY
A copy of the advance ruling pronounced by the Appellate Authority duly signed by the Members and certified in such manner as may be prescribed shall be sent to the applicant, the concerned officer, the jurisdictional officer and to the Authority after such pronouncement.

Rule 107: Certification of copies of the advance rulings pronounced by the Authority
A copy of the advance ruling pronounced by the Appellate Authority for Advance Ruling and duly signed by the Members shall be sent to-
(a) the applicant and the appellant;
(b) the concerned officer of central tax and State / Union territory tax;
(c) the jurisdictional officer of central tax and State / Union territory tax; and
(d) the Authority,
in accordance with the provisions of sub-section (4) of section 101 of the Act.
Section 102: Rectification of advance ruling.

- The Authority or the Appellate Authority may amend any order passed by it under section 98 or section 101, so as to rectify any error apparent on the face of the record,
- if such error is noticed by the Authority or the Appellate Authority on its own accord, or is brought to its notice by the concerned officer, the jurisdictional officer, the applicant or the appellant
- within a period of six months from the date of the order:
- Provided that no rectification which has the effect of enhancing the tax liability or reducing the amount of admissible input tax credit shall be made unless the applicant or the appellant has been given an opportunity of being heard.

Section 103: Applicability of advance ruling.

(1) The advance ruling pronounced by the Authority or the Appellate Authority under this Chapter shall be binding only—
   (a) on the applicant who had sought it in respect of any matter referred to in sub-section (2) of section 97 for advance ruling;
   (b) on the concerned officer or the jurisdictional officer in respect of the applicant.

(2) The advance ruling referred to in sub-section (1) shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.

Section 104: Advance ruling to be void in certain circumstances.

(1) Where the Authority or the Appellate Authority finds that advance ruling pronounced by it under sub-section (4) of section 98 or under sub-section (1) of section 101 has been obtained by the applicant or the appellant by
   - fraud or
   - suppression of material facts or
   - misrepresentation of facts,
   it may, by order, declare such ruling to be void ab-initio and thereupon all the provisions of this Act or the rules made thereunder shall apply to the applicant or the appellant as if such advance ruling had never been made:

Provided that no order shall be passed under this sub-section unless an opportunity of being heard has been given to the applicant or the appellant.

Explanation: The period beginning with the date of such advance ruling and ending with the date of order under this sub-section shall be excluded while computing the period specified in sub-sections (2) and (10) of section 73 or sub-sections (2) and (10) of section 74.
Section 105: Powers of Authority and Appellate Authority.

(1) The Authority or the Appellate Authority shall, for the purpose of exercising its powers regarding—
   (a) discovery and inspection;
   (b) enforcing the attendance of any person and examining him on oath;
   (c) issuing commissions and compelling production of books of account and other records, have all the powers of a civil court under the Code of Civil Procedure, 1908.

(2) The Authority or the Appellate Authority shall be deemed to be a civil court for the purposes of section 195, but not for the purposes of Chapter XXVI of the Code of Criminal Procedure, 1973, and every proceeding before the Authority or the Appellate Authority shall be deemed to be a judicial proceedings within the meaning of sections 193 and 228, and for the purpose of section 196 of the Indian Penal Code.

Section 106: Procedure of Authority and Appellate Authority.

The Authority or the Appellate Authority shall, subject to the provisions of this Chapter, have power to regulate its own procedure.
PART 1: APPEAL TO APPELLATE AUTHORITY

Section 107: Appeals to Appellate Authority.

(1) **Who can appeal and time for filing application**
- Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority
- may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person.

(2) **Appeal by commissioner**
- The Commissioner may, on his own motion, or upon request from the Commissioner of State tax or the Commissioner of Union territory tax,
- call for and examine the record of any proceedings in which an adjudicating authority has passed any decision or order under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act,
- for the purpose of satisfying himself as to the legality or propriety of the said decision or order and
- may, by order, direct any officer subordinate to him to apply to the Appellate Authority
- within six months from the date of communication of the said decision or order for the determination of such points arising out of the said decision or order as may be specified by the Commissioner in his order.

(3) **Treatment of appeal by commissioner**
- Where, in pursuance of an order under sub-section (2), the authorised officer makes an application to the Appellate Authority,
- such application shall be dealt with by the Appellate Authority as if it were an appeal made against the decision or order of the adjudicating authority and
- such authorised officer were an appellant and the provisions of this Act relating to appeals shall apply to such application.

(4) **Extension of time for filing appeal**
- The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months or six months, as the case may be, allow it to be presented within
a further period of one month.

(5) **Form of appeal**

Every appeal under this section shall be in such form and shall be verified in such manner as may be prescribed.

(6) **Pre deposit**

No appeal shall be filed under sub-section (1), unless the appellant has paid—
(a) **In full**, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and
(b) a sum equal to ten per cent. of the remaining amount of tax in dispute arising from the said order, in relation to which the appeal has been filed.

(7) **Stay order**

Where the appellant has paid the amount under sub-section (6), the recovery proceedings for the balance amount shall be deemed to be stayed.

(8) The Appellate Authority shall give an opportunity to the appellant of being heard.

(9) **Adjournment**

- The Appellate Authority may, if sufficient cause is shown at any stage of hearing of an appeal, grant time to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing:
- Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.

(10) **Ground of appeal**

- The Appellate Authority may, at the time of hearing of an appeal, allow an appellant to add any ground of appeal not specified in the grounds of appeal, if it is satisfied that the omission of that ground from the grounds of appeal was not wilful or unreasonable.

(11) **Order of appellate authority**

- The Appellate Authority shall, after making such further inquiry as may be necessary, pass such order, as it thinks just and proper, confirming, modifying or annulling the decision or order appealed against
- but shall not refer the case back to the adjudicating authority that passed the said decision or order:
- Provided that an order enhancing any fee or penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund or input tax credit shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order:
Provided further that where the Appellate Authority is of the opinion that any tax has not been paid or short-paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised, no order requiring the appellant to pay such tax or input tax credit shall be passed unless the appellant is given notice to show cause against the proposed order and the order is passed within the time limit specified under section 73 or section 74.

(12) The order of the Appellate Authority disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for such decision.

(13) Time limit
- The Appellate Authority shall, where it is possible to do so, hear and decide every appeal within a period of one year from the date on which it is filed:
- Provided that where the issuance of order is stayed by an order of a court or Tribunal, the period of such stay shall be excluded in computing the period of one year.

(14) On disposal of the appeal, the Appellate Authority shall communicate the order passed by it to the appellant, respondent and to the adjudicating authority.

(15) A copy of the order passed by the Appellate Authority shall also be sent to the jurisdictional Commissioner or the authority designated by him in this behalf and the jurisdictional Commissioner of State tax or Commissioner of Union Territory Tax or an authority designated by him in this behalf.

(16) Every order passed under this section shall, subject to the provisions of section 108 or section 113 or section 117 or section 118 be final and binding on the parties.

RULE 108: Appeal to the Appellate Authority

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

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

(3) A certified copy of the decision or order appealed against shall be submitted within seven days of filing the appeal under sub-rule (1) and a final acknowledgement, indicating appeal number shall be issued thereafter in FORM GST APL-02 by the Appellate Authority or an officer authorised by him in this behalf:
- Provided that where the certified copy of the decision or order is submitted within
seven days from the date of filing the FORM GST APL-01, the date of filing of the appeal shall be the date of issue of provisional acknowledgement and where the said copy is submitted after seven days, the date of filing of the appeal shall be the date of submission of such copy.

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

RULE 109: Application to the Appellate Authority

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

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

Section 108: Powers of Revisional Authority.

(1) Basic provision

- Subject to the provisions of section 121 and any rules made thereunder, the Revisional Authority may, on his own motion, or upon information received by him or on request from the Commissioner of State tax, or the Commissioner of Union territory tax,
- call for and examine the record of any proceedings, and
- if he considers that any decision or order passed under this Act or under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by any officer subordinate to him is erroneous in so far as it is prejudicial to the interest of revenue and
- is illegal or improper or
- has not taken into account certain material facts,
- whether available at the time of issuance of the said order or not or in consequence of an observation by the Comptroller and Auditor General of India,
- he may, if necessary, stay the operation of such decision or order for such period as he deems fit and
- after giving the person concerned an opportunity of being heard and after making such further inquiry as may be necessary,
- pass such order, as he thinks just and proper, including enhancing or modifying or annulling the said decision or order.

(2) No power to revise

- The Revisional Authority shall not exercise any power under sub-section (1), if—
  (a) the order has been subject to an appeal under section 107 or section 112 or section 117 or section 118; or
  (b) the period specified under sub-section (2) of section 107 has not yet expired or more than three years have expired after the passing of the decision or order sought to be revised; or
  (c) the order has already been taken for revision under this section at an earlier stage; or
  (d) the order has been passed in exercise of the powers under sub-section (1):

- Provided that the Revisional Authority may pass an order under sub-section (1) on any point which has not been raised and decided in an appeal referred to in clause (a) of sub-section (2), before the expiry of a period of one year from the date of the order in such appeal or before the expiry of a period of three years referred to in clause (b) of that sub-section, whichever is later.
(3) **Every order passed** in revision under sub-section (1) shall, subject to the provisions of section 113 or section 117 or section 118, be final and **binding on the parties**.

(4) **Extension of time limit**
- If the said **decision** or **order** involves an issue on which the Appellate Tribunal or the High Court has given its decision in some **other proceedings** and an appeal to the **High Court** or the **Supreme Court** against such decision of the Appellate Tribunal or the High Court is **pending**,
- the **period** spent between the date of the **decision** of the **Appellate Tribunal** and the date of the **decision** of the **High Court** or
- the date of the **decision** of the **High Court** and the date of the **decision** of the **Supreme Court**
- shall be **excluded** in computing the **period of limitation** referred to in clause (b) of sub-section (2) where proceedings for revision have been initiated by way of issue of a notice under this section.

(5) **Extension of time limit**
- Where the **issuance of an order** under sub-section (1) is **stayed** by the order of a court or Appellate Tribunal, the period of such stay shall be **excluded** in computing the **period of limitation** referred to in clause (b) of sub-section (2).

(6) **Definition**
For the purposes of this section, the term,—
(i) “**record**” shall include all records relating to any proceedings under this Act available at the time of examination by the Revisional Authority;
(ii) “**decision**” shall include intimation given by any officer lower in rank than the Revisional Authority.
PART 3: APPEAL TO APPELLATE TRIBUNAL

Section 111: Procedure before Appellate Tribunal.

(1) PRINCIPAL OF NATURAL JUSTICE

• The Appellate Tribunal shall not, while disposing of any proceedings before it or an appeal before it, be bound by the procedure laid down in the Code of Civil Procedure, 1908,
• but shall be guided by the principles of natural justice and subject to the other provisions of this Act and the rules made thereunder,
• the Appellate Tribunal shall have power to regulate its own procedure.

(2) SAME POWER AS THAT OF CIVIL COURT

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

• summoning and enforcing the attendance of any person and examining him on oath;
• requiring the discovery and production of documents;
• receiving evidence on affidavits;
• subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or a copy of such record or document from any office;
• issuing commissions for the examination of witnesses or documents;
• dismissing a representation for default or deciding it ex parte;
• setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and
• any other matter which may be prescribed.

(3) EXECUTION FOR ITS ORDER

• Any order made by the Appellate Tribunal may be enforced by it in the same manner as if it were a decree made by a court in a suit pending therein, and
• it shall be lawful for the Appellate Tribunal to send for execution of its orders to the court within the local limits of whose jurisdiction,—
  (a) in the case of an order against a company, the registered office of the company is situated; or
  (b) in the case of an order against any other person, the person concerned voluntarily resides or carries on business or personally works for gain.

(4) LEGALITY

All proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228, and for the purposes of
section 196 of the Indian Penal Code, and the Appellate Tribunal shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

Section 112: Appeals to Appellate Tribunal.

(1) Who can appeal and time for filing application
   - Any person aggrieved by an order passed against him under section 107 or section 108 of this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act
   - may appeal to the Appellate Tribunal against such order within three months from the date on which the order sought to be appealed against is communicated to the person preferring the appeal.

(2) Rejection of application
   - The Appellate Tribunal may, in its discretion, refuse to admit any such appeal where the tax or input tax credit involved or the difference in tax or input tax credit involved or the amount of fine, fee or penalty determined by such order, does not exceed fifty thousand rupees.

(3) Appeal by commissioner
   - The Commissioner may, on his own motion, or upon request from the Commissioner of State tax or Commissioner of Union territory tax, call for and examine the record of any order passed by the Appellate Authority or the Revisional Authority under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act
   - for the purpose of satisfying himself as to the legality or propriety of the said order and may,
   - by order, direct any officer subordinate to him to apply to the Appellate Tribunal within six months from the date on which the said order has been passed for determination of such points arising out of the said order as may be specified by the Commissioner in his order.

(4) Treatment of appeal by commissioner
   - Where in pursuance of an order under sub-section (3) the authorised officer makes an application to the Appellate Tribunal,
   - such application shall be dealt with by the Appellate Tribunal as if it were an appeal made against the order under sub-section (11) of section 107 or under sub-section (1) of section 108 and the provisions of this Act shall apply to such application,
   - as they apply in relation to appeals filed under sub-section (1).
(5) **Filing of MOCO**

- On **receipt of notice** that an appeal has been preferred under this section, the **party against whom the appeal has been preferred** may,
- notwithstanding that **he may not have appealed against** such order or any part thereof, file, within **forty-five days** of the receipt of notice, a **memorandum of cross objections**

(6) **Extension of time limit**

- The Appellate Tribunal may **admit** an appeal within three months **after** the **expiry** of the period referred to in sub-section (1), or
- **permit** the filing of a **memorandum** of cross-objections within **forty-five days** **after** the **expiry** of the period referred to in sub-section (5) if it is satisfied that
  - there was **sufficient cause for not presenting it within that period**.

(7) An appeal to the Appellate Tribunal **shall be in such form**, verified in such manner and shall be accompanied by such fee, as may be prescribed.

(8) **Pre deposit**

- No appeal shall be filed under sub-section (1), unless the appellant has paid—
  - **in full**, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, **as is admitted by him**, and
  - a sum equal to **twenty per cent.** of the **remaining amount** of tax in dispute, in addition to the amount paid under sub-section (6) of section 107, arising from the said order, in relation to which the appeal has been filed.

(9) **Stay order**

Where the appellant has paid the amount as per sub-section (8), the recovery proceedings for the balance amount **shall be deemed to be stayed** till the disposal of the appeal.

(10) Every application made before the Appellate Tribunal,—

- (a) in an **appeal for rectification** of error or for any other purpose; or
- (b) for **restoration of an appeal** or an application, shall be accompanied by such **fees** as may be prescribed.

**RULE 110: Appeal to the Appellate Tribunal**

(1) An appeal to the Appellate Tribunal under sub-section (1) of section 112 of the Act shall be filed along with the **supporting documents** either electronically or otherwise as may be notified by the Registrar, in **FORM GST APL-05**, on the common portal and a provisional acknowledgement shall be issued to the appellant immediately.
(2) A memorandum of cross-objections to the Appellate Tribunal under sub-section (5) of section 112 of the Act shall be filed either electronically or otherwise as may be notified by the Registrar, in FORM GST APL-06.

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

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

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

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

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

**RULE 111: Application to the Appellate Tribunal**

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

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

**Section 113: Orders of Appellate Tribunal.**

(1) **PASSING OF ORDER**

- The Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the decision or order appealed against or
- may refer the case back to the Appellate Authority, or the Revisional Authority or to the original adjudicating authority, with such directions as it may think fit, for a
fresh adjudication or decision after taking additional evidence, if necessary.

(2) ADJOURNMENT
- The Appellate Tribunal may, if sufficient cause is shown, at any stage of hearing of an appeal, grant time to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing:
- Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.

(3) RECITICATION OF MISTAKE
- The Appellate Tribunal may amend any order passed by it under sub-section (1) so as to rectify any error apparent on the face of the record,
- if such error is noticed by it on its own accord, or is brought to its notice by the Commissioner or the Commissioner of State tax or the Commissioner of the Union territory tax or the other party to the appeal
- within a period of three months from the date of the order:
- Provided that no amendment which has the effect of enhancing an assessment or reducing a refund or input tax credit or otherwise increasing the liability of the other party, shall be made under this sub-section, unless the party has been given an opportunity of being heard.

(4) TIME LIMIT FOR ORDER
The Appellate Tribunal shall, as far as possible, hear and decide every appeal within a period of one year from the date on which it is filed.

(5) FORWARD COPY OF ORDER
The Appellate Tribunal shall send a copy of every order passed under this section to the
- Appellate Authority or
- the Revisional Authority, or
- the original adjudicating authority, as the case may be,
- the appellant and
- the jurisdictional Commissioner or
- the Commissioner of State tax or the Union territory tax.

(6) APPEAL AGAINST
Save as provided in section 117(HC) or section 118(SC), orders passed by the Appellate Tribunal on an appeal shall be final and binding on the parties.
PART 4: APPEAL TO APPELLATE HIGH COURT

Section 117 : Appeal to High Court.

(1) APPEAL AGAINST ORDER OF
- Any person aggrieved by any order passed by the State Bench or Area Benches of the Appellate Tribunal may file an appeal to the High Court and
- the High Court may admit such appeal, if it is satisfied that the case involves a substantial question of law.

(2) TIME LIMIT
- An appeal under sub-section (1) shall be filed within a period of one hundred and eighty days from the date on which the order appealed against is received by the aggrieved person and
- it shall be in such form, verified in such manner as may be prescribed:
- Provided that the High Court may entertain an appeal after the expiry of the said period if it is satisfied that there was sufficient cause for not filing it within such period.

(3) HIGH COURT PROCEDURE
- Where the High Court is satisfied that a substantial question of law is involved in any case,
- it shall formulate that question and the appeal shall be heard only on the question so formulated, and
- the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question:
- Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question.

(4) The High Court shall decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit.

(5) The High Court may determine any issue which—
- has not been determined by the State Bench or Area Benches; or
- has been wrongly determined by the State Bench or Area Benches, by reason of a decision on such question of law as herein referred to in sub-section (3).

(6) Where an appeal has been filed before the High Court, it shall be heard by a Bench of not less than two Judges of the High Court, and shall be decided in accordance
with the opinion of such Judges or of the majority, if any, of such Judges.

(7) Where there is no such majority, the Judges shall state the point of law upon which they differ and the case shall, then, be heard upon that point only, by one or more of the other Judges of the High Court and such point shall be decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it.

(8) Where the High Court delivers a judgment in an appeal filed before it under this section, effect shall be given to such judgment by either side on the basis of a certified copy of the judgment.

(9) Save as otherwise provided in this Act, the provisions of the Code of Civil Procedure, 1908, relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under this section.

**RULE 114: Appeal to the High Court**

(1) An appeal to the High Court under sub-section (1) of section 117 of the Act shall be filed in FORM GST APL-08.

(2) The grounds of appeal and the form of verification as contained in FORM GST APL-08 shall be signed in the manner specified in rule Registration.
PART 5: APPEAL TO SUPREME COURT

Section 118: Appeal to Supreme Court.

(1) **APPEAL AGAINST**

An appeal shall lie to the Supreme Court—
- from any **order passed** by the National Bench or Regional Benches of the Appellate Tribunal; or
- from any judgment or **order passed by the High Court** in an appeal made under section 117 in any case which, on its own motion or on an application made by or on behalf of the party aggrieved, immediately after passing of the judgment or order, the High Court certifies to be a fit one for appeal to the Supreme Court.

(2) The provisions of the **Code of Civil Procedure, 1908**, relating to appeals to the Supreme Court shall, so far as may be, apply in the case of appeals under this section as they apply in the case of appeals from decrees of a High Court.

(3) Where the judgment of the High Court is varied or reversed in the appeal, effect shall be given to the order of the Supreme Court in the manner provided in section 117 in the case of a judgment of the High Court.

Section 119: Sums due to be paid notwithstanding appeal, etc.

Notwithstanding that an **appeal has been preferred** to the High Court or the Supreme Court, **sums due to the Government** as a result of an **order passed** by the
- National or Regional Benches of the Appellate Tribunal under sub-section (1) of section 113 or
- an order passed by the State Bench or Area Benches of the Appellate Tribunal under sub-section (1) of section 113 or
- an order passed by the High Court under section 117, as the case may be, **shall be payable in accordance with the order so passed**.

Section 120: Appeal not to be filed in certain cases.

(1) The Board may, on the recommendations of the Council, from time to time, issue orders or instructions or directions fixing such monetary limits, as it may deem fit, for the purposes of regulating the filing of appeal or application by the officer of the central tax under the provisions of this Chapter.

(2) Where, in pursuance of the orders or instructions or directions issued under sub-section (1), the officer of the central tax has not filed an appeal or application against any decision or order passed under the provisions of this Act, it shall not
preclude such officer of the central tax from filing appeal or application in any other case involving the same or similar issues or questions of law.

(3) Notwithstanding the fact that no appeal or application has been filed by the officer of the central tax pursuant to the orders or instructions or directions issued under sub-section (1), no person, being a party in appeal or application shall contend that the officer of the central tax has acquiesced in the decision on the disputed issue by not filing an appeal or application.

(4) The Appellate Tribunal or court hearing such appeal or application shall have regard to the circumstances under which appeal or application was not filed by the officer of the central tax in pursuance of the orders or instructions or directions issued under sub-section (1).

Section 121: Non-appealable decisions and orders.

Notwithstanding anything to the contrary in any provisions of this Act, no appeal shall lie against any decision taken or order passed by an officer of central tax if such decision taken or order passed relates to any one or more of the following matters, namely:—

a) an order of the Commissioner or other authority empowered to direct transfer of proceedings from one officer to another officer; or

b) an order pertaining to the seizure or retention of books of account, register and other documents; or

c) an order sanctioning prosecution under this Act; or

d) an order passed under section 80.
PART 6: APPEAL RULES

Appellate Authority or Appellate Tribunal

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

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

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

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

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

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

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

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

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

(3) The Appellate Authority or the Appellate Tribunal shall not take any evidence produced under sub-rule (1) unless the adjudicating authority or an officer authorised in this behalf by the said authority has been allowed a reasonable opportunity -

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

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

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

**RULE 113: Order of Appellate Authority or Appellate Tribunal**

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

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

**RULE 115: Demand confirmed by the Court**

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

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