MISCELLANEOUS PROVISIONS

The words ‘the Act’ wherever used in the Chapter refer to CGST Act, unless otherwise specified.

LEARNING OUTCOMES

After studying this Chapter, you will be able to–

- understand and explain the miscellaneous provisions relating to documents namely, presumption as to documents in certain cases, admissibility of micro films, facsimile copies of documents and computer printouts as documents and as evidence etc.

- understand and explain the miscellaneous provisions relating to furnishing, collection and publication of information namely, bar on disclosure of information, disclosure of information by a public servant, publication of information in respect of person in certain cases etc.

- understand and explain the miscellaneous provisions relating to removal of difficulties, delegation of powers, omission repeal and saving and other provisions

- understand and explain the provisions relating to anti-profiteering measure including the constitution of Anti-Profiteering Authority, its duties, orders, process followed by it etc.

- appreciate and explain the provisions relating to administration of CGST and IGST.
1. INTRODUCTION

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

<table>
<thead>
<tr>
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<th>Section</th>
<th>Particulars</th>
</tr>
</thead>
<tbody>
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<td>Documents</td>
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<td>Presumption as to documents in certain cases</td>
</tr>
<tr>
<td></td>
<td>145</td>
<td>Admissibility of micro films, facsimile copies of documents and computer printouts as documents and as evidence</td>
</tr>
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<td>Furnishing, collection and publication of information</td>
<td>150</td>
<td>Obligation to furnish information return¹</td>
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<td></td>
<td>151</td>
<td>Power to collect statistics</td>
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<td></td>
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<td>Assessment proceedings, etc., not to be invalid on certain grounds</td>
</tr>
<tr>
<td></td>
<td>161</td>
<td>Rectification of errors apparent on the face of record</td>
</tr>
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<td></td>
<td>170</td>
<td>Rounding off of tax, etc.</td>
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</table>

¹ Section 150 is discussed in Chapter 13: Returns in Module 2 of this Study Material.
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<thead>
<tr>
<th>Section</th>
<th>Description</th>
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<td>Removal of difficulties</td>
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<td>173</td>
<td>Amendment of Act 32 of 1994</td>
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<td>Repeal and saving</td>
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<td>143</td>
<td>Job work procedure&lt;sup&gt;2&lt;/sup&gt;</td>
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<td>Common Portal</td>
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<td>Deemed Exports&lt;sup&gt;3&lt;/sup&gt;</td>
</tr>
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<td>148</td>
<td>Special procedure for certain processes</td>
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<td>Burden of proof</td>
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<td>Persons deemed to be public servants</td>
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<tr>
<td>157</td>
<td>Protection of action taken under this Act</td>
</tr>
<tr>
<td>162</td>
<td>Bar on jurisdiction of civil courts</td>
</tr>
<tr>
<td>163</td>
<td>Levy of fee</td>
</tr>
</tbody>
</table>

<sup>2</sup> Section 143 is discussed in Chapter 16: Job Work in this Module of the Study Material.

<sup>3</sup> Section 147 is discussed in Chapter 14: Import and Export under GST in this Module of the Study Material.
### Chapter VIII of the IGST Act: Apportionment of Tax and Settlement of Funds & Chapter IX of the IGST Act: Miscellaneous

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
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<td>169</td>
<td>Service of notice in certain circumstances</td>
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<td>171</td>
<td>Anti-profiteering measure</td>
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<td>Transfer of input tax credit</td>
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<tr>
<td>19</td>
<td>Tax wrongfully collected and paid to Central Government or State Government</td>
</tr>
<tr>
<td>20</td>
<td>Application of provisions of Central Goods and Services tax Act</td>
</tr>
<tr>
<td>25</td>
<td>Removal of difficulties</td>
</tr>
<tr>
<td>22</td>
<td>Power to make rules</td>
</tr>
<tr>
<td>23</td>
<td>Power to make regulations</td>
</tr>
<tr>
<td>24</td>
<td>Laying of rules, regulations and notifications</td>
</tr>
<tr>
<td>21</td>
<td>Import of services made on or after the appointed day</td>
</tr>
</tbody>
</table>

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

**Miscellaneous provisions under CGST Act have also been made applicable to IGST Act vide section 20 of the IGST Act.**
Presumption generally means ‘an act of accepting that something is true until it is proved not true’. Section 144 lays down presumptions that are observed by the Court when certain documents (given below in the diagram) are submitted as evidence by the prosecution in a proceeding under the GST Act against any person.

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

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

- truth of the contents of the document
- that the signature which purports to be in the handwriting of any particular person is in that person’s handwriting
- execution or attestation in the document has been executed or attested by the person by whom it purports to have been so executed or attested
This implies that in case of such documents, if the said person claims that the document is not true or not signed or handwritten by him or not attested or executed by him, the burden of proof in respect of the same shall lie on him.

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

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

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

#### Deemed documents

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

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

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

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

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

- **A statement** contained in a document and included in a printed material produced by a computer;
Information stored electronically in any device or media, including any hard copies made of such information.

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

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

Certification

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

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

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

shall constitute evidence of any matter stated in the certificate.

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

Furnishing, Collection and Publication of Information

4. POWER TO COLLECT STATISTICS & BAR ON DISCLOSURE OF INFORMATION [SECTIONS 151 & 152]

Section 151 lays down as under:

If the Commissioner considers necessary to do so, he may direct that statistics be collected relating to any matter dealt with, by or in connection with the Act.
It may be noted that the statistics can be collected only for the purpose of better administration of the Act.

Upon such notification being issued, the Commissioner, or any person authorized by the Commissioner in this behalf may call upon all concerned persons to furnish such information or returns as may be specified therein relating to any matter in respect of which statistics is to be collected.

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

No information of any individual return with respect to any matter given for the purpose of sections 150 or 151 shall, without the previous consent in writing of the concerned person or his authorised agent, be published in such manner as to enable any particulars to be identified as referring to a particular person.

No such information shall be used for the purpose of any proceedings under the Act.

**Confidentiality**

Except for the purposes of prosecution under this Act, or any other Act, no person who is not engaged in the collection of statistics under the Act or of compilation or computerization thereof for the purposes of the Act, shall be permitted to see or have access to any information or any individual return referred to in section 151.

**Exception reporting**

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

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

Section 158 lays down the provisions for disclosure of information as also maintaining the confidentiality of the same and related penal provisions in the event of contravention of the same.
(i) **Information/ documents to be treated as confidential [Section 158(1)]**

The following shall be treated as confidential:

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

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

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

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

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

- **For prosecution:** Any particulars in respect of any such statement, return, accounts, documents, evidence, affidavit or deposition, for the purpose of any prosecution under the Indian Penal Code or the Prevention of Corruption Act, 1988, or the Act, or any other law for the time being in force; or

- **For carrying out the objects of the Act:** Any particulars to the Central Government or the State Government or to any person acting in the implementation of the Act, for the purpose of carrying out the object of the Act; or

- **For service of notice or recovery of demand:** Any particulars when such disclosure is occasioned by the lawful exercise under the Act of any process for the service of any notice or the recovery of any demand; or

- **For furnishing to Court in a proceeding where Government is a party:** Any particulars to a Civil Court in any suit or proceeding, to which the Government or any authority under the Act is a party, which relates to any matter arising out of any proceeding under the Act or under any other law for the time being in force authorising any such authority to exercise any powers thereunder; or

- **For audit of tax receipts or refunds:** Any particulars to any officer appointed for the purpose of audit of tax receipts or refunds of the tax imposed by the Act; or
For inquiry into the conduct of GST officer: Any particulars where such particulars are relevant the purposes of any inquiry into the conduct of any GST officer, to any person or persons appointed as an inquiry officer under any relevant law; or

For enabling levy/realisation of any tax or duty: Any such particulars to an officer of the Central Government/ by a public servant/ statutory authority/ State Government, as may be necessary for the purpose of enabling that Government to levy or realise any tax or duty; or

By lawful exercise of powers: Any particulars, when such disclosure is occasioned by the lawful exercise by a public servant or any other statutory authority, of his or its powers under any law for the time being in force; or

For inquiry into a charge of misconduct by any professional: Any particulars relevant to any inquiry into a charge of misconduct in connection with any proceedings under the Act against a practising advocate, a tax practitioner, a practising cost accountant, a practising chartered accountant, a practising company secretary to the authority empowered to take disciplinary action against the members practising the profession of a legal practitioner, a cost accountant, a chartered accountant or a company secretary, as the case may be; or

For data entry on automated system: Any particulars to any agency appointed for the purposes of data entry on any automated system or for the purpose of operating, upgrading or maintaining any automated system where such agency is contractually bound not to use or disclose such particulars except for the aforesaid purposes; or

For any other law: Any particulars to an officer of the Government as may be necessary for the purposes of any other law in force in India; and

In public interest: Any information relating to any class of taxpayers or class of transactions for publication, if, in the opinion of the Commissioner, it is desirable in the public interest, to publish such information.

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

Section 158(2) overrides the provisions contained in the Indian Evidence Act, 1872. It states that Court shall not require any GST officer to produce before it or to give evidence before it in respect of the particulars referred to in section 158(1). However, this restriction will not apply in respect of disclosures mentioned under sub-section (3).
### 6. PUBLICATION OF INFORMATION IN RESPECT OF PERSONS IN CERTAIN CASES [SECTION 159]

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

<table>
<thead>
<tr>
<th>What type of information can be published?</th>
<th>The name of any person and any other particulars relating to any proceedings or prosecutions under the Act in respect of such person.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Who can publish such information?</td>
<td>Commissioner, or any other officer authorised by him in this behalf.</td>
</tr>
<tr>
<td>What is the manner of publication of information?</td>
<td>The information shall be published in such manner as the Commissioner/authorised officer thinks fit.</td>
</tr>
<tr>
<td>When can the information be published?</td>
<td>Such information shall be published if Commissioner/any other officer authorised by him in this behalf is of the opinion that it is necessary/expedient in public interest to do so.</td>
</tr>
<tr>
<td>Is there any additional information which can be published?</td>
<td>In cases of firm, company or association of persons, names of the partners of the firm, directors, managing agents, secretaries and treasurers or managers of the company, or the members of the association, as the case may be may also be published, if in the opinion of the Commissioner/authorised officer, circumstances of the case justify it.</td>
</tr>
</tbody>
</table>
| What is the limitation on publication of information relating to penalty? | No publication under this section shall be made in relation to any penalty imposed under the Act:  
  • until the time for presenting an appeal to the Appellate Authority under section 107 has expired (three months extendable to further one month) without an appeal having been presented; or  
  • the appeal, if presented, has been disposed of. |
7. TAKING ASSISTANCE FROM AN EXPERT [SECTION 153]

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

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

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

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

<table>
<thead>
<tr>
<th>Which proceedings are covered under this provision?</th>
</tr>
</thead>
</table>

| The following proceedings done, accepted, made, issued, initiated, or purported to have been done, accepted, made, issued, initiated in pursuance of any provisions of the Act are covered: |
| Assessment |
| Re-assessment |
| Adjudication |
| Review |
| Revision |
| Appeal |
| Rectification |
| Notice |
| Summons |
| Other proceedings |
On which grounds, will such proceedings be not held as invalid?

Such proceedings shall not be held invalid for mere reason of:

- Mistake
- Defect
- Omission

if such proceedings are in substance and effect in conformity with or according to the intents, purposes and requirements of the Act or any earlier law.

When will the service of any notice, order, or communication be not called in question?

The service of any notice, order, or communication shall not be called in question if:

- the notice, order or communication has already been acted upon by the person to whom it is issued or
- where such service has not been called in question at or in the earliest proceedings commenced, continued or finalised pursuant to such notice, communication or order.

9. **RECTIFICATION OF ERRORS APPARENT ON THE FACE OF RECORD [SECTION 161]**

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

Which documents are covered under section 161?

- Decision
- Order
- Any notice
- Certificate
- Any other document

Who can rectify the errors apparent on the face of record?

- Any authority who has passed or issued any decision or order or notice or certificate or any other document may rectify any error which is apparent on the face of record in such documents.
### Goods and Services Tax

<table>
<thead>
<tr>
<th>What type of mistakes or errors can be rectified?</th>
<th>Errors or mistakes which are apparent on the face of record may be rectified. Rectification can only be of error apparent from record. It is a settled law that a decision on a debatable point of law is not a mistake apparent from the record.</th>
</tr>
</thead>
<tbody>
<tr>
<td>When does the Authority rectify the mistakes/errors?</td>
<td>The authority may rectify the mistake/error:</td>
</tr>
<tr>
<td></td>
<td>• <em>suo moto</em></td>
</tr>
<tr>
<td></td>
<td>• when such error or mistake is brought to its notice by a GST officer</td>
</tr>
<tr>
<td></td>
<td>• when such error or mistake is brought to notice by the affected person within a period of 3 months from the date of issue of such decision or order or notice or certificate or any other document, as the case may be</td>
</tr>
<tr>
<td>What is the time limit for rectification?</td>
<td>No rectification can be done after a period of six months from the date of issue of such decision/order/notice/certificate/any other document. However, such time limit does not apply in cases where the rectification is purely in the nature of correction of a clerical or arithmetical error or mistake, arising from any accidental slip or omission.</td>
</tr>
<tr>
<td>What type of precautions should be taken at the time of rectification?</td>
<td>Principles of natural justice should be followed by the authority carrying out such rectification, if such rectification adversely affects any person.</td>
</tr>
</tbody>
</table>

### 10. Rounding Off of Tax Etc. [Section 170]

**Amounts covered**

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

- [ ] tax
- [ ] interest
- [ ] penalty
- [ ] fine

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MISCELLANEOUS PROVISIONS

- any other sum payable under the provisions of the Act
- refund
- any other sum due under the provisions of the Act.

Rounding off principle

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

11. REMOVAL OF DIFFICULTIES [SECTION 172]

Section 172 lays down the procedure that may be followed by the Government in case of any difficulty in giving effect to any provision of the Act. In such cases, the Central Government may, on the recommendations of the GST Council, by general or special order published in the Gazette, make such provisions not inconsistent with the provisions of the Act or the rules or regulations made thereunder, as may be necessary or expedient for the purpose of removing the said difficulty.

The time limit for making such order shall be 3 years from the date of commencement of the Act. Every order so made shall be laid, as soon as may be, after it is made, before the Parliament.

Similar provisions relating to removal of difficulty have also been prescribed under section 25 of the IGST Act.

Some of the orders issued by the Government under this section are:

<table>
<thead>
<tr>
<th>Order No.</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Order No. 7/2019 CT dated</td>
<td>Seeks to remove difficulties regarding filing of Annual returns by extending the due date for</td>
</tr>
</tbody>
</table>

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24.16 GOODS AND SERVICES TAX


Note: The above list is illustrative and not exhaustive.

Delegation of Powers

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

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

The following are noteworthy in this regard:

- The Government may make rules for all or any of the matters which by the Act are required to be, or may be, prescribed or in respect of which provisions are to be or may be made by rules.

- The rules may also be issued with retrospective effect but not from a date earlier than the date on which the provisions of the Act have come into force.

- The rules may provide for a penalty not exceeding ₹ 10,000/- for committing breach of any rule.

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

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

The Central Government and the Board have been vested with the similar powers of making rules and regulations respectively under sections 22 & 23 of the IGST Act also.
13. LAYING OF RULES, REGULATIONS AND NOTIFICATIONS [SECTION 166]

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

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

If both the Houses agree that

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

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

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

14. DELEGATION OF POWERS [SECTION 167]

Section 167 prescribes that the powers conferred on any authority/officer can also be exercised by another authority/officer, if the Commissioner so directs by way of notification, subject to such conditions as may be specified in the notification.
15. POWER TO ISSUE INSTRUCTIONS OR DIRECTIONS [SECTION 168]

Section 167 empowers the Board (CBEC) to issue orders, instructions or directions to the CGST officers for the purpose of uniformity in the implementation of the Act.

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

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

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

<table>
<thead>
<tr>
<th>Section</th>
<th>Particulars</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 2(91)</td>
<td>Meaning of ‘proper officer’</td>
</tr>
<tr>
<td>Section 5(3)</td>
<td>Delegation of powers by Commissioner</td>
</tr>
<tr>
<td>Section 25(9)(b)</td>
<td>Notification of person or class of persons for grant of Unique Identity Number</td>
</tr>
<tr>
<td>Section 35(3)</td>
<td>Notification of class of taxable persons required to maintain additional accounts or documents</td>
</tr>
<tr>
<td>Section 35(4)</td>
<td>Notification of class of taxable persons permitted to maintain accounts in a prescribed manner where the Commissioner considers that such persons are not in a position to keep and maintain accounts in accordance with the general provisions</td>
</tr>
<tr>
<td>Section 37(1)</td>
<td>Details of outward supplies (extension of time limit)</td>
</tr>
<tr>
<td>Section 38(2)</td>
<td>Details of inward supplies (extension of time limit)</td>
</tr>
<tr>
<td>Section 39(6)</td>
<td>Return (extension of time limit)</td>
</tr>
</tbody>
</table>
Section 66(5) | Determination of expenses of the examination and audit of records, including remuneration of the Chartered Accountant or Cost Accountant

Section 143(1) | Job-work procedure

Section 151(1) | Collection of statistics

Section 158(3)(l) | Exceptions to bar on disclosure of information by public servant

Section 167 | Delegation of powers

Omission, Repeal and Saving

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

Amendment of Act 32 of 1994 [Section 173]

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

Repeal and saving [Section 174]

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

- The Central Excise Act, 1944 laid (except in respect of goods included in Entry 84 of Union List – petroleum crude, high speed diesel, motor spirit, natural gas, aviation turbine fuel, tobacco and tobacco products)
- The Medicinal and Toilet Preparations (Excise Duties) Act, 1955
- The Additional Duties of Excise (Goods of Special Importance) Act, 1957
- The Additional Duties of Excise (Textiles and Textile Articles) Act, 1978
- The Central Excise Tariff Act, 1985
The repeal under section 174 or amendment under section 173 shall not:

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

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

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

- The provisions of section 6 of the General Clauses Act, 1897 with regard to the effect of repeal will apply for repeal provided under section 174.

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

17. COMMON PORTAL [SECTION 146]

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

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

CBEC has notified www.gst.gov.in as the GST common portal to carry out the above stated functions. However, the Common GST Electronic Portal for furnishing electronic way bill is www.ewaybillgst.gov.in.

18. SPECIAL PROCEDURE FOR CERTAIN PROCESSES [SECTION 148]

Section 148 is an enabling provision for prescribing special procedures for certain processes. The following are noteworthy in this regard:
Such procedures shall be prescribed by way of a notification issued by the Government, on recommendations of the GST Council.

The conditions and safeguards and the classes of registered persons to whom such procedures will be applicable shall be stated in the notification itself.

The special procedures may be prescribed with regard to the following matters:
- Registration
- Filing of returns
- Payment of tax
- Administration

Some notifications issued by the Government under this section are:

<table>
<thead>
<tr>
<th>Notification No.</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Notification No. 57/2017 CT dated 15.11.2017</td>
<td>Seeks to prescribe quarterly furnishing of return in Form GSTR-1 for taxpayers having aggregate turnover of upto ₹ 1.5 crores</td>
</tr>
<tr>
<td>Notification No. 66/2017 CT dated 15.11.2017</td>
<td>Seeks to exempt all taxpayers from payment of tax on advances received in case of supply of goods</td>
</tr>
<tr>
<td>Notification No. 04/2018 CT dated 25.01.2018</td>
<td>Seeks to provide special procedure with respect to payment of tax by registered person supplying service by way of construction against transfer of development rights and vice versa.</td>
</tr>
</tbody>
</table>

Note: The above list is illustrative and not exhaustive.

19. GOODS AND SERVICES TAX COMPLIANCE RATING [SECTION 149]

As per section 149, every registered person shall be assigned a compliance rating based on the record of compliance in respect of specified parameters. Such ratings shall not be permanent and will be revised from time to time. The ratings shall be intimated to the taxable person and will also be placed in the public domain.
A prospective client will be able to see the compliance ratings of suppliers and take a decision as to whether to deal with a particular supplier or not. This will create healthy competition amongst taxable persons.

**20. POWER TO TAKE SAMPLES [SECTION 154]**

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

**21. BURDEN OF PROOF [SECTION 155]**

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

Thus, this provision empowers the officer to presume that a person is not eligible for input tax credit and it shall be the onus of the such person to rebut the Department’s contention.

**22. PERSONS DEEMED TO BE PUBLIC SERVANTS [SECTION 156]**

Section 156 deems all persons discharging functions under the Act as public servants within the meaning of section 21 of the Indian Penal Code. This implies that all officers shall be governed by the provisions of Indian Penal Code, wherever so applicable.

**23. PROTECTION OF ACTION TAKEN UNDER THIS ACT [SECTION 157]**

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

- President of the Appellate Tribunal
- State President of the Appellate Tribunal
- Members of the Appellate Tribunal
- Officers or other employees of the Appellate Tribunal
24.24 GOODS AND SERVICES TAX

- Any other person authorised by the Appellate Tribunal
- Any officer appointed or authorised under the Act

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

24. BAR ON JURISDICTION OF CIVIL COURTS [SECTION 162]

Taxes are a civil liability. The basic rule is that every dispute which is civil in nature can be tried by the Civil Court. However, since tax laws generally provide a specific machinery for appeals in terms of Tribunals, the jurisdiction of civil courts is barred in tax laws.

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

25. LEVY OF FEE [SECTION 163]

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

26. SERVICE OF NOTICE IN CERTAIN CIRCUMSTANCES [SECTION 169]

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

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

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

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

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

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

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

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

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

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

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

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

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

**27. ANTI-PROFITEERING MEASURE [SECTION 171]**

The burden of indirect taxation ultimately falls on the consumers. It is expected that the GST regime will result in an increased flow of input tax credit. In such a scenario, the concern that benefit of such increased input tax credit may not be passed on by certain entities to the consumers is not unreasonable.
Section 171 makes it mandatory that any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed to the recipient by way of commensurate reduction in prices.

**National Anti-profiteering Authority**

**Constitution**

National Anti-profiteering Authority is therefore being constituted by the Central Government to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods and/or services supplied by him.

Chapter XV: Anti-profiteering of CGST Rules, 2017 prescribe the provisions relating to constitution of such authority, duties of the authority, orders of the authority etc. The same are discussed hereunder.

The National Anti-Profiteering Authority shall be a 5-member committee consisting of a Chairman who holds/has held a post equivalent in rank to a Secretary to the Government of India; & 4 Technical Members who are/have been Commissioners of State tax/central tax for at least 1 year or have held an equivalent post under earlier laws.

The Authority shall cease to exist after the expiry of 2 years from the date on which the Chairman enters upon his office unless the GST Council recommends otherwise.

**Duties of the Authority**

It shall be the duty of the authority-

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

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

(iii) to order

(a) reduction in prices

(b) return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest @ 18% from the date of collection of the higher amount till the date of the return of such amount or recovery of the amount not returned, as the case may
be, in case the eligible person does not claim return of the amount or is not identifiable, and depositing the same in the Consumer Welfare Fund;

(c) imposition of penalty

(d) cancellation of registration

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

Process followed by the Authority

Application to the Authority: All applications from interested parties on issues of local nature shall first be examined by the State Level Screening Committee. On being satisfied that the supplier has not passed on the benefit, the Screening Committee will forward the application with its recommendations to the Standing Committee on Anti-profiteering.

If the Standing Committee is satisfied that there is a prima facie evidence to show that the supplier has not passed on the benefit, it shall refer the matter to the Director General of Anti-Profiteering (DFAP) for a detailed investigation.

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

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

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

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

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

(a) reduction in prices;

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

(c) the deposit of an amount equivalent to 50% of the amount determined under the above clause in the Consumer Welfare Fund of Centre and the remaining 50% of the amount in the Consumer Welfare Fund of the [Concerned State]*, where the eligible person does not claim return of the amount or is not identifiable

*State in respect of which the authority passes an order

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

(e) cancellation of registration under the Act.

If the report of the DFAP recommends that there is contravention or even non-contravention of the provisions of section 171 or these rules, but the Authority is of the opinion that further investigation or inquiry is called for in the matter, it may, for reasons to be recorded in writing, refer the matter to the DFAP to cause further investigation or inquiry in accordance with the provisions of the Act and these rules.

The following are noteworthy in this regard:

- Any order passed by the Authority shall be immediately complied with by the registered person failing which action shall be initiated to recover the amount.

- The Authority will pass order within 3 months from the date of the receipt of the report from the DFAP.

- An opportunity of being heard will be given, if the interested parties request for it in writing.

- Period of interest will be calculated from the date of collection of higher amount till the date of return of such amount.
If the eligible person (i.e., the buyer) does not claim the return or the person is unidentifiable then the amount must be deposited to the Consumer Welfare Fund along with applicable interest.

**Application by the Consumer**

- **State Screening Committee**
  Confirm prima facie evidence of profiteering

- **Standing Committee**
  Confirm prima facie evidence of profiteering

- **Director General of Anti-Profiteering**
  For investigating profiteering

- **National Anti-Profiteering Authority**
  For determining profiteering and passing appropriate order to ensure consumers benefit from the reduced prices.

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

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

(i) scope of supply;

(ii) composite supply and mixed supply;

(iii) time and value of supply;

(iv) input tax credit;

(v) registration;

(vi) tax invoice, credit and debit notes;

(vii) accounts and records;

(viii) returns, other than late fee;
(ix) payment of tax;
(x) tax deduction at source [TDS rate under IGST – 2%];
(xi) collection of tax at source [TCS rate under IGST – not exceeding 2%];
(xii) assessment;
(xiii) refunds;
(xiv) audit;
(xv) inspection, search, seizure and arrest;
(xvi) demands and recovery;
(xvii) liability to pay in certain cases;
(xviii) advance ruling;
(xix) appeals and revision;
(xx) presumption as to documents;
(xxi) offences and penalties;
(xxii) job work;
(xxiii) electronic commerce;
(xxiv) transitional provisions; and
(xxv) miscellaneous provisions including the provisions relating to the imposition of interest and penalty

When the tax involved is IGST, the rate of TDS shall be 2% and the rate of TCS shall not exceed 2%. Presently, the notified rate for TCS in case of IGST is 1%.

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

The words and expressions used and not defined in the IGST Act but defined in the CGST Act shall have the same meaning as assigned to them in the said Act. Similarly, the words and expressions used and not defined in the CGST Act but defined in the IGST Act shall have the same meaning as assigned to them in the said Act.
29. APPORTIONMENT OF TAX AND SETTLEMENT OF FUNDS [CHAPTER VIII OF THE IGST ACT]

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

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

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

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

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

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

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

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

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

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

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

Methodology of apportionment [Section 17(2)]

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

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

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

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

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

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

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

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

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

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

Amount of IGST in respect of B2B supplies wherein ITC is taken by the recipients [i.e., IGST not apportioned above] may, for the time being, on the recommendations of the GST Council, be apportioned at the rate of
MISCELLANEOUS PROVISIONS

50% to the Central Government and 50% to the State Governments/Union territories on ad hoc basis. Such amount shall be adjusted against the amount apportioned under sub-sections (2) and (3).

C. Refund of IGST apportioned to a State/Central Government on account of a Union territory [Section 17(5)]

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

Transfer of input tax credit [Section 18 of the IGST Act & Section 53 of the CGST Act]

Section 18 of the IGST Act provides as under:

- When IGST credit is utilised for payment of CGST, the amount collected as IGST shall stand reduced by the amount equal to such credit. The Central Government shall transfer an amount equal to the amount so reduced from the IGST account to the CGST account.

- When IGST credit is utilised for payment of UTGST, the amount collected as IGST shall stand reduced by the amount equal to such credit. The Central Government shall transfer an amount equal to the amount so reduced from the IGST account to the UTGST account.

- When IGST credit is utilised for payment of SGST, the amount collected as IGST shall stand reduced by the amount equal to such credit and shall be apportioned to the appropriate State Government. The Central Government shall transfer the amount so apportioned to the account of the appropriate State Government.

  Appropriate State means the State or Union territory where a taxable person is registered or is liable to be registered under the CGST Act.

- Section 53 of the CGST Act provides that when CGST credit is utilised for payment of IGST, the amount collected as CGST shall stand reduced by an amount equal to such credit so utilised. The Central Government shall transfer an amount equal to the amount so reduced from the CGST account to the IGST account.

Tax wrongfully collected and paid to Central Government or State Government [Section 19 of the IGST Act]

Section 19 provides that a registered person who has paid IGST on a supply
considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall be granted refund of the amount of IGST so paid.

A registered person who has paid CGST and SGST/UTGST on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall not be required to pay any interest on the amount of IGST payable.

30. ADMINISTRATION UNDER GST

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

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

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

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

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

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

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

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

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

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

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

(i) Commissioner of Central Tax (Audit)

(j) Commissioner of Central Tax (Appeals)

(k) Additional Commissioner of Central Tax (Appeals)

(l) Joint Commissioner of Central Tax (Appeals)
Further, the officers appointed under the Central Excise Act, 1944 shall be deemed to be the officers appointed under the provisions of CGST Act.

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

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

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

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

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

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

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

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

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

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

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

(a) where any proper officer issues an order under CGST Act, he shall also issue an order under the SGST Act or the UTGST Act, as authorised by the SGST Act or the UTGST Act, as the case may be, under intimation to the jurisdictional officer of SGST or UTGST;
(b) where a proper officer under the SGST Act or the UTGST Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under CGST Act on the same subject matter [Section 6(2)].

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

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

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

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

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

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

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

In simple words, while computing time, the rule is to exclude the first day and to include the last day. Courts have held that the word “from” is akin to “after” and that the word “from” if used for the purpose of and in reference to the computation of time, as for example, from a stated date, that stated date is prima facie excluded from computation. Although on some occasions, Courts have a taken a view that
the question as to whether the stated date should or should not be so excluded, should be decided according to the context in which the word “from” occurs.

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

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

TEST YOUR KNOWLEDGE

1. How shall the GST compliance rating score be determined?
2. When shall the power to collect statistics be exercised under GST laws?
3. When shall the particulars relating to any proceedings or prosecution be published under GST laws?
4. Explain the provisions relating to rectification of errors apparent on the face of record under section 161 of the CGST Act, 2017?
5. What is Anti-profiteering measure?

ANSWERS/HINTS

1. As per section 149(2), the GST compliance rating score shall be determined on a scale of ten on the basis of prescribed parameters.
2. As per section 151, if the Commissioner considers that collection of statistics is necessary for the purpose of better administration of the Act, he may direct that statistics be collected.
3. When the Commissioner/authorised officer is of opinion that it is necessary or expedient in the public interest to publish the name of any person and any other particulars relating to any proceedings or prosecution under the CGST Act in respect of such person, it may cause to be published such name and particulars [Section 159(1)]
No publication under this section shall be made in relation to any penalty imposed under the CGST Act until the time for presenting an appeal to the Appellate Authority under section 107 has expired without an appeal having been presented or the appeal, if presented, has been disposed of [Section 159(2)].

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

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

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

5. As per section 171 of the CGST Act, any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices. National Anti-profiteering Authority may examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.
AMENDMENTS MADE VIDE THE FINANCE (NO. 2) ACT, 2019

The Finance (No. 2) Act, 2019 has become effective from 01.08.2019. However, the amendments made in the CGST Act and the IGST Act vide the Finance (No. 2) Act, 2019 would become effective only from a date to be notified by the Central Government in the Official Gazette. Such a notification has not been issued till the time this Study Material is being released for printing. Therefore, the applicability or otherwise of such amendments for May 2020 and/or November 2020 examinations shall be announced by the ICAI only after such notification is issued by the Central Government.

In the table given below, the existing provisions under Chapter XXI: Miscellaneous are compared with the provisions as amended by the Finance (No. 2) Act, 2019.

Once the announcement for applicability of such amendments for examination(s) is made by the ICAI, students should read the amended provisions given hereunder in place of the related provisions discussed in the Chapter.

<table>
<thead>
<tr>
<th>Existing provisions</th>
<th>Provisions as amended by the Finance (No. 2) Act, 2019</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Section 168(2)</strong></td>
<td>The Commissioner specified in clause (91) of section 2, sub-section (3) of section 5, clause (b) of sub-section (9) of section 25, sub-sections (3) and (4) of section 35, sub-section (1) of section 37, sub-section (2) of section 38, sub-section (6) of section 39, sub-section (5) of section 66, sub-</td>
<td>Amendments made in sections 44 and 52 seek to empower the Commissioner to extend the due date for furnishing annual return (GSTR-9/9A) and monthly statement by an ECO liable to collect tax at source (GSTR-8). Consequently, section 168 is being</td>
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</table>

*Provisions existing as on the date when the Study Material was released for printing*
section (1) of section 143, sub-section (1) of section 151, clause (l) of sub-section (3) of section 158 and section 167 shall mean a Commissioner or Joint Secretary posted in the Board and such Commissioner or Joint Secretary shall exercise the powers specified in the said sections with the approval of the Board.

New sub-section (3A) of section 171 of the CGST Act

**New sub-section (3A)**

Where the Authority referred to in sub-section (2), after holding examination as required under the said sub-section comes to the conclusion that any registered person has profiteered under sub-section (1), such person shall be liable to pay penalty equivalent to ten per cent. of the amount so profiteered:

Provided that no penalty shall be leviable if the profiteered amount is deposited within thirty days of the date of passing of the order by the Authority.

*Explanation.* - For the purposes of this section, the expression “profiteered” shall mean the amount determined on account of not passing the benefit of reduction in rate of tax on supply of goods or services or both or the benefit of input tax credit to the recipient by way of commensurate reduction in the price of the goods or services or both.

New section 17A of the IGST Act

**New section 17A of the IGST Act**

*Transfer of certain amounts:* Where any amount has been transferred from the electronic cash ledger under

amended so as to specify that in respect of sub-section (1) of section 44 and sub-sections (4) and (5) of section 52, Commissioner or Joint Secretary shall exercise the powers specified in the said sections with the approval of the Board.

Section 171 of the CGST Act is being amended so as to empower the National Antiprofiteering Authority (under sub-section (2) of section 171 of the Act) to impose penalty equivalent to 10% of the profiteered amount.

A new section 17A is being inserted in the IGST Act so as to
this Act to the electronic cash ledger under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, the Government shall transfer to the State tax account or the Union territory tax account, an amount equal to the amount transferred from the electronic cash ledger, in such manner and within such time, as may be prescribed.

bring into the Act, provisions for transfer of amount between Centre and States consequential to amendment in section 49 of the CGST Act allowing transfer of an amount from one head to another head in the electronic cash ledger of the registered person.
Note

The discussion on the GST law in Modules 1-3 of this Study Material incorporates the content and images made available by the CBEC on its website www.cbec.gov.in namely, FAQs on GST, e-fliers issued on various aspects of GST, sectoral FAQs as also the user manuals and FAQs available on the GST common portal www.gst.gov.in, to the extent relevant to such discussion.

Attention of the students is invited to the following correction in Modules 1 and 2 of this Study Material:

The footnote no. 1 at page no. (v) [Initial pages of Module 1] be read as under:

"Section 103 of the Finance (No. 2) Act, 2019 amending section 54 of the CGST Act, 2017 which prescribes the provisions relating to refund of tax, has come into force on 01.09.2019. The same has been incorporated in Chapter 15: Refunds."

Further, footnote no. 25 at page no. 3.65 [Module 1], footnote no. 14 at page no. 9.72 [Module 2] and footnote no. 6 at page no. 10.47 [Module 2] be ignored.