

# **TRANSITIONAL PROVISIONS & TIME OF SUPPLY UNDER GST**

**Vasai Branch of WIRC**

**07<sup>th</sup> May 2017**

**Presented by  
CA Archit Agarwal**

## Section 139. Migration of existing taxpayers to GST

- 1) On and from the appointed day, every person registered under any of the existing laws and having a valid Permanent Account Number shall be issued a certificate of registration on provisional basis subject to such conditions and in such form and manner as may be prescribed, which unless replaced by a final certificate of registration under subsection (2), shall be liable to be cancelled if the conditions so prescribed are not complied with.
- 2) The final certificate of registration shall be granted in such form and manner and subject to such conditions as may be prescribed.
- 3) The certificate of registration issued to a person under subsection (1) shall be deemed to have not been issued if the said registration is cancelled in pursuance of an application filed by such person that he was not liable to registration under section 22 or section 24.



# Goods and Services Tax

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• Indicates Mandatory Fields

**i** Please enter Mobile Number and Email Address of Authorised Signatory. All future correspondences from the GST portal will be sent on this registered Mobile Number and Email Address only. Changes to this will be non-editable till **01/04/2017**

Email Address •

Mobile Number •

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### Security Questions (To enable you to retrieve your password in case you forget it)

• Indicates Mandatory Fields

1. What is the date of birth of Proprietor (in case of Proprietorship) / Year of commencement of Business (Others)? •

2. What is your mother's name (in case of Proprietorship) / mother's name of Primary Authorized Signatory? •

3. Name your main commodity / service •

4. Name of the first employee •

5. Personal Mobile Number of Proprietor / Authorized Signatory •

## *Points for discussion*

- a. Pending surrender applications must be disposed off before appointed day.*
- b. What if after 3 months of provisional registration, the same is cancelled. – impact on input tax and other provisions.*
- c. Separate “new” registration for ISD required. It will not be migrated.*
- d. Single registration for VAT, Excise, Service tax assesses.*
- e. Ensure correct and proper spelling in all the documents*

## *Points for discussion*

- f. As per section 22(2), every person who, on the day immediately preceding the appointed day, is registered or holds a license under an existing law, shall be liable to be registered under this Act with effect from the appointed day.*
- g. As per rule 1 of Registration Rules,  
A Special Economic Zone unit or Special Economic Zone developer shall make a separate application for registration as a business vertical distinct from its other units located outside the Special Economic Zone.*

## *Issues in Migration:*

- a. Separate provisional IDs for each state are being issued for assesseees having centralized registration in service tax currently. However, second proviso to rule 16(1)(b) of Registration rules reads as follows:  
“Provided further that a person having centralized registration under Chapter V of the Finance Act, 1994 shall be granted only one provisional registration in the State or Union territory in which he is registered under the existing law”*
- b. In case of E-signature, OTP is not received on mobile number registered with Aadhar.*
- c. At the time of taking VAT registration, a deposit of Rs. 25000/- is made. What will happen to such deposit on migration of registration under GST?*

## *Issues in Migration:*

- d. Persons taking fresh registration in month of Feb and March 2017 have not received provisional ID.*
- e. Companies having centralized registration have received provisional ID for some of the states. Whether they should take fresh registration? Will distribution of credit be allowed in such case?*
- f. In case of foreign director, there is no option to give address of outside India.*
- g. In case of partnership firm of companies, individual names can only be mentioned.*
- h. Option to select "Composition" not available in migration*
- i. Have enough assessee migrated in GST? Will date be further extended?*



## Enrolment schedule for your State

State	Start Date	End Date	% Enrolled
Puducherry	08-11-2016	30-04-2017	76.93%
Sikkim	08-11-2016	30-04-2017	57.59%
Maharashtra	14-11-2016	30-04-2017	87.94%
Goa	14-11-2016	30-04-2017	60.19%
Daman and Diu	14-11-2016	30-04-2017	67.92%
Dadra and Nagar Haveli	14-11-2016	30-04-2017	69.26%
Chhattisgarh	14-11-2016	30-04-2017	82.68%
Gujarat	15-11-2016	30-04-2017	86.24%
Odisha	30-11-2016	30-04-2017	49.53%
Jharkhand	30-11-2016	30-04-2017	59.52%

State	Start Date	End Date	% Enrolled
Bihar	30-11-2016	30-04-2017	59.98%
West Bengal	30-11-2016	30-04-2017	75.93%
Madhya Pradesh	30-11-2016	30-04-2017	81.03%
Assam	30-11-2016	30-04-2017	23.99%
Tripura	30-11-2016	30-04-2017	43.55%
Meghalaya	30-11-2016	30-04-2017	17.18%
Nagaland	30-11-2016	30-04-2017	53.46%
Arunachal Pradesh	30-11-2016	30-04-2017	25.24%
Mizoram	30-11-2016	30-04-2017	34.67%
Manipur	30-11-2016	30-04-2017	41.75%
Uttar Pradesh	16-12-2016	30-04-2017	69.17%
Jammu and Kashmir	16-12-2016	30-04-2017	0.97%
Delhi	16-12-2016	30-04-2017	64.37%
Chandigarh	16-12-2016	30-04-2017	80.38%
Haryana	16-12-2016	30-04-2017	67.57%

Punjab	16-12-2016	30-04-2017	73.67%
Uttarakhand	16-12-2016	30-04-2017	75.0%
Himachal Pradesh	16-12-2016	30-04-2017	48.01%
Rajasthan	16-12-2016	30-04-2017	73.31%
Kerala	01-01-2017	30-04-2017	69.23%
Tamil Nadu	04-01-2017	30-04-2017	88.02%
Karnataka	01-01-2017	30-04-2017	92.96%
Telangana	01-01-2017	30-04-2017	78.37%
Andhra Pradesh	01-01-2017	30-04-2017	86.77%
Enrolment of Taxpayers who are registered under Central Excise Act but not registered under State VAT	07-01-2017	30-04-2017	16.7%
Enrolment of Taxpayers who are registered under Service Tax Act but not registered under State VAT	25-01-2017	30-04-2017	33.17%
New registration under VAT/Service Tax/Central Excise after January 2016	01-02-2017	30-04-2017	Not Yet Started

## Documents to be uploaded while migration

Proof For	Documents to be uploaded	Max. File Size
<b>Constitution of Business</b>	Registration Certificate	1 MB
	Partnership Deed	1 MB
<b>Place of Business</b>	Bank Statement	500 KB
	Bye-laws of Society	1 MB
	Municipal Khata Copy	100 KB
	Consent Letter	100 KB
	Electricity Bill	100 KB
	Memorandum of Association and Articles of Association	1 MB
	Any other Certificate/document issued by Government	100 KB
	Any other Certificate or record issued by Govt department	100 KB
	Any other documents	1 MB
	Any supporting documents	1 MB
	Partnership Deed	1 MB
	First page of Pass Book	100 KB
	Registration Certificate	1 MB
	Rent/Lease Agreement	200 KB
	Tax Paid Receipt	100 KB

## Documents to be uploaded while migration

Proof For	Documents to be uploaded	Max. File Size
<b>Bank Details</b>	Bank Statement	500 KB
	First page of Pass Book	100 KB
<b>Photograph</b>	Proprietary Concern – Proprietor	100 KB
	Partnership Firm / LLP – Managing/ Authorized Partners	
	HUF – Karta	
	Company – Managing Director or the Authorised Person	
	Trust – Managing Trustee	
	Association of Person or Body of Individual –Members of Managing Committee	
	Local Body – CEO or his equivalent	
	Statutory Body – CEO or his equivalent	
	Others – Person in Charge	
<b>Appointment as Authorized Signatory</b>		100 KB
	Letter of Authorization	
	Copy of resolution passed by BoD/Managing Committee	100 KB

## *Issue:*

*A company has taken some premises on lease from a person who is also not the owner. For proof of 'place of business', rent agreement along with ownership proof is required. However, there is size restriction of 200KB.*

*As per VAT Trade Circular no. 7T of 2015 dt. 19.05.2015, upload following pages:*

- Name of the Lessor/owner and Lessee*
- Description of address of place of business*
- Validity period of the agreement*
- Signatures of lessor/owner and lessee*

## Transition of accumulated credit.

### 140(1). Amount of CENVAT credit carried forward in a return to be allowed as input tax credit.

- A registered taxable person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, the amount of CENVAT credit carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law in such manner as may be prescribed:

Provided that the registered person shall not be allowed to take credit in the following circumstances, namely:—

- I. where the said amount of credit is not admissible as input tax credit under this Act; or
- II. where he has not furnished all the returns required under the existing law for the period of six months immediately preceding the appointed date; or
- III. where the said amount of credit relates to goods manufactured and cleared under such exemption notifications as are notified by the Government

## CBEC FAQ Q. No. 8

**Question:** A registered person has excess ITC of Rs 10,000/- in his last VAT return for the period immediately preceding the appointed day. Under GST he opts for composition scheme. Can he carry forward the aforesaid excess ITC to GST?

**Answer:** The registered person will not be able to carry forward the excess ITC of VAT to GST if he opts for composition scheme – Section 140(1).





# CENTRAL BOARD OF EXCISE AND CUSTOMS

Ministry of Finance - Department of Revenue



## All registered Central Excise or Service Tax Assesses may please note:

Duty/Tax credits under existing laws cannot be carried forward in GST unless you enrol in GST Portal ([www.gst.gov.in](http://www.gst.gov.in))

To help you enrol, Provisional ID & Password is made available in ACES Portal. Please enrol in GST Portal IMMEDIATELY to avoid any duty/tax credit loss!

In case you are still to enrol, you are required to first enrol on the GST portal before the return can be filed. Your enrolment in time would allow an easy transition to GST for your business entity.

In case you have enrolled on the GST portal, please provide your user name (as registered on the portal [www.gst.gov.in](http://www.gst.gov.in)) in the box below and proceed to file your tax return.

In case you don't want to migrate to GST, please confirm so by clicking "Not migrating to GST" and continue to file return. Your provisional ID and password would be cancelled and this may deny your credit migration to the GST regime.



Enter your GST Username



Not Migrating to GST



Submit

ACES Application Processing Time : < 1 Second

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## Issues:

- a. How to identify credit in closing balance? For example, any catering service credit is not allowed under GST, but earlier it was disallowed if used for personal consumption.
- b. Will credit of capital Goods for composite dealer also lapse? – Presently it does not lapse under rule 11 of Cenvat Credit Rules 2004
- c. Is transfer of education cess, SHE cess allowed?
- d. Cenvat Credit reversed under protest earlier, claimed now.
- e. Credit not taken or reversed erroneously.
- f. Reverse charge payments made on 6<sup>th</sup> July 2017 for liability as on 30<sup>th</sup> June 2017.
- g. Proportionate rule 6(3) reversal of Apr-June 2017. How to take that credit?
- h. Credit c/f by outsourced mfg. unit allowed?



## 140(2). Unavailed cenvat credit on **capital goods**, not carried forward in a return, to be allowed in certain situation

A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, credit of the unavailed CENVAT credit in respect of capital goods, not carried forward in a return, furnished under the existing law by him, for the period ending with the day immediately preceding the appointed day in such manner as may be prescribed:

Provided that the registered person shall not be allowed to take credit unless the said **credit was admissible as Cenvat credit under the earlier law and is also admissible as input tax credit under this Act.**

Explanation - For the purposes of this sub-section, the expression “unavailed Cenvat credit” means the amount that remains after subtracting the amount of cenvat credit already availed in respect of capital goods by the taxable person under the earlier law from the aggregate amount of cenvat credit to which the said person was entitled in respect of the said capital goods under the existing law;

## Points for discussion:

- a. Meaning of unavailed credit - No restriction as to the amount of credit – if no credit availed in first year, then you can carry forward full credit in GST.
- b. Current (Amended) Rule 6 (4) allows you to take credit if the capital goods are used for dutiable goods any time within the 2 years – what if a person who was manufacturing exempted goods receives a machinery in January 2017 and which is used exclusively for the manufacture of exempted goods till June 2017.

Q. 3 CBEC FAQ - VAT Credit was not available on items 'X' & 'Y' as capital goods in the earlier law. Since they are covered in GST, can the register taxable person claim it now?

Ans. He shall be entitled to credit only when ITC on such goods were admissible under the earlier law and is also admissible in GST. Since on the two item credit was not available under the earlier law, the said person cannot claim it in GST.

### 140(3). Credit of eligible duties and taxes in respect of inputs held in stock to be allowed in certain situations:

- A registered person, who was not liable to be registered under the existing law, or who was engaged in the manufacture of exempted goods or provision of exempted services, or who was providing works contract service and was availing of the benefit of notification No. 26/2012—Service Tax, dated the 20th June, 2012 or a first stage dealer or a second stage dealer or a registered importer or a depot of a manufacturer, shall be entitled to take, in his electronic credit ledger, credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day subject to the following conditions, namely:—
  - i. such inputs or goods are used or intended to be used for making taxable supplies under this Act;
  - ii. the said registered person is eligible for input tax credit on such inputs under this Act;
  - iii. the said registered person is in possession of invoice or other prescribed documents evidencing payment of duty under the existing law in respect of such inputs

- iv. such invoices and /or other prescribed documents were issued **not earlier than twelve months** immediately preceding the appointed day; and
- v. the supplier of services is **not eligible for any abatement** under this Act:

Provided that where a registered person, **other than a manufacturer or a supplier of services**, is not in possession of an invoice or any other documents evidencing payment of duty in respect of inputs, then, such registered person shall, subject to such conditions, limitations and safeguards as may be prescribed, **including that the said taxable person shall pass on the benefit of such credit by way of reduced prices to the recipient**, be allowed to take credit at such rate and in such manner as may be prescribed.

### Example – Trader of goods

Discussion point:- **Anti-profiteering clause not applicable if copy of invoice is available. However, in case of deemed credit, there is loss as credit benefit is to be passed on.**

## Issues:

- a. Impact for service providers who were availing abatement which contained restriction for non-availment of cenvat credit on inputs like accommodation service provider.
- b. A service provider was providing exempted services (bridge construction for general public use) but was registered for reverse charge (like GTA) – can he take the credit of inputs stock as on appointed date?



## Transitional Rules – Rule 3

3. (a) (i) A registered person, who was not registered under the existing law, availing credit in accordance with the proviso to sub-section (3) of section 140 shall be allowed to avail input tax credit on goods held in stock on the appointed day in respect of which he is not in possession of any document evidencing payment of central excise duty.

(ii) Such credit shall be allowed at the rate of [forty per cent.] of the central tax applicable on supply of such goods after the appointed date and shall be credited after the central tax payable on such supply has been paid.

(iii) The scheme shall be available for six tax periods from the appointed date.

b) Such credit of central tax shall be availed subject to satisfying the following conditions, namely,-

(i) Such goods **were not wholly exempt** from duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985 or were not nil rated.

(ii) **Document for procurement of such goods** is available with the registered person.

(iii) Registered person availing this scheme and having furnished the details of stock held by him in accordance with the provisions of clause (b) of sub-rule (2) of rule 1, submits a **statement in FORM GST TRAN---** at the end of each of the **six tax periods** during which the scheme is in operation indicating therein the details of supplies of such goods effected during the tax period.

**Documents like VAT Invoice or Commercial Invoice will be accepted.**

**Whether time limit of 12m apply to deemed credit?**

(iv) The amount of credit allowed shall be credited to the electronic credit ledger of the applicant maintained in **FORM GST PMT-2** on the Common Portal.

(v) The **stock of goods** on which the credit is availed is so stored that it can be **easily identified** by the registered person.

(4) The amount of credit specified in the application in FORM GST TRAN-1 shall be credited to the electronic credit ledger of the applicant maintained in FORM GST PMT-2 on the Common Portal.

**(In CGST Rules)**

### Issues:

- 1) How to keep separate stock in a departmental or retail store?
- 2) How to charge different amount for old and new stock?

3) (a) (i) A registered person, holding stock of goods which have suffered tax at the first point of their sale in the State and the subsequent sales of which are not subject to tax in the State availing credit in accordance with the proviso to subsection (3) of section 140 shall be allowed to avail input tax credit on goods held in stock on the appointed day in respect of which he is not in possession of any document evidencing payment of value added tax.

(ii) Such credit shall be allowed at the rate of [forty per cent.] of the State tax applicable on supply of such goods after the appointed date and shall be credited after the State tax payable on such supply has been paid.

(iii) The scheme shall be available for six tax periods from the appointed date.

(b) Such credit of State tax shall be availed subject to satisfying the following conditions, namely,-

(i) Such goods were not wholly exempt from tax under the <Name of the State> Value Added Tax Act,.....

(ii) Document for procurement of such goods is available with the registered person.

(iii) Registered person availing this scheme and having furnished the details of stock held by him in accordance with the provisions of clause (b) of sub-rule (2) of rule 1, submits a statement in FORM GST TRAN--- at the end of each of the six tax periods during which the scheme is in operation indicating therein the details of supplies of such goods effected during the tax period.

(iv) The amount of credit allowed shall be credited to the electronic credit ledger of the applicant maintained in FORM GST PMT-2 on the Common Portal. 3

(v) The stock of goods on which the credit is availed is so stored that it can be easily identified by the registered person.

(4) The amount of credit specified in the application in FORM GST TRAN-1 shall be credited to the electronic credit ledger of the applicant maintained in FORM GST PMT-2 on the Common Portal.

**(In SGST Rules of States offering tax on MRP scheme)**

## 140(4). Credit of eligible duties and taxes in respect of inputs held in stock to be allowed in certain situations:

A registered person, who was engaged in the manufacture of **taxable as well as exempted goods** under the Central Excise Act, 1944 or provision of **taxable as well as exempted services** under Chapter V of the Finance Act, 1994, but which are liable to tax under this Act, shall be entitled to take, in his electronic credit ledger, —

- a) the amount of **CENVAT credit carried forward in a return** furnished under the existing law by him accordance with the provisions of sub-section (1); and
- b) the amount of CENVAT credit of eligible duties in respect of **inputs held in stock and inputs contained in semi-finished or finished goods held in stock** on the appointed day, relating to such exempted goods or services, in accordance with the provisions of sub-section (3).

**This is similar to section 140(3)**

## 140(5). Credit of eligible duties and taxes in respect of inputs or input services during transit

A registered person shall be entitled to take, in his electronic credit ledger, credit of eligible duties and taxes in respect of **inputs or input services received on or after the appointed day but the duty or tax in respect of which has been paid by the supplier under the existing law**, subject to the condition that the invoice or any other duty or tax paying document of the same was **recorded in the books of accounts of such person within a period of thirty days** from the appointed day:

Provided that the period of **thirty days may, on sufficient cause being shown, be extended** by the Commissioner for a further period not exceeding thirty days:

Provided further that said registered person shall furnish a statement, in such manner as may be prescribed, in respect of credit that has been taken under this sub-section.

**Discussion Point: Capital goods in transit is not covered.**

**Suppose after taking credit as inputs, subsequently the auditor insists that the goods are to be capitalized.**



*Explanation 2* to sec. 140(10)—For the purposes of sub-section (5), the expression “eligible duties and taxes” means—

- I. the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957;
- II. the additional duty leviable under sub-section (1) of section 3 of the Customs Tariff Act, 1975;
- III. the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, 1975;
- IV. the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978;
- V. the duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985;
- VI. the duty of excise specified in the Second Schedule to the Central Excise Tariff Act, 1985;
- VII. the National Calamity Contingent Duty leviable under section 136 of the Finance Act, 2001; and
- VIII. the service tax leviable under section 66B of the Finance Act, 1994, in respect of inputs and input services received on or after the appointed day.

in respect of inputs or input services received on or after the appointed day.

**Discussion Point:** Credit of Additional duty u/s 3(5) of Customs Act is not available to service provider. However, for in-transit goods it will be allowed. But if goods are received prior to appointed day, then such credit will not be allowed.

## 140(6). CREDIT OF ELIGIBLE DUTIES AND TAXES ON INPUTS HELD IN STOCK TO BE ALLOWED TO A TAXABLE PERSON SWITCHING OVER FROM COMPOSITION SCHEME

A registered person, **who was either paying tax at a fixed rate or paying a fixed amount** in lieu of the tax payable under the existing law shall be entitled to take, in his electronic credit ledger, credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day subject to the following conditions, namely :—

- I. such inputs or goods are used **or intended to be used for making taxable supplies** under this Act;
- II. the said registered person is **not paying tax under section 10**;
- III. the said registered person is **eligible for input tax credit** on such inputs under this Act;

- IV. the said registered person is in **possession of invoice** or other prescribed documents evidencing payment of duty under the existing law in respect of inputs; and
- V. such invoices or other prescribed documents were issued not earlier than **twelve months** immediately preceding the appointed day.

**Provisions similar to section 140(3)**



## Section 140(10) Eligible Duties

The amount of credit under sub-sections (3), (4) and (6) shall be calculated in such manner as may be prescribed.

*Explanation 1.*—For the purposes of sub-sections (3), (4) and (6), the expression “eligible duties” means—

- I. the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957;
- II. the additional duty leviable under sub-section (1) of section 3 of the Customs Tariff Act, 1975;
- III. the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, 1975;
- IV. the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978;
- V. the duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985;

- VI. the duty of excise specified in the Second Schedule to the Central Excise Tariff Act, 1985; and
- VII. the National Calamity Contingent Duty leviable under section 136 of the Finance Act, 2001;  
in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day

Points for discussion:

1) Service tax credit (like GTA Services) not specified

## 140(7). CREDIT DISTRIBUTION OF SERVICE TAX BY ISD

Notwithstanding anything to the contrary contained in this Act, the input tax credit on account of any **services received prior** to the appointed day by an Input Service Distributor shall be eligible for distribution as credit under this Act even if the **invoices relating to such services are received on or after the appointed day.**

**Issue:**

**Closing credit balance available under ISD – Allowed to be distributed subsequently?**

## 140(8) Transfer of credit by a person having Centralized Registration

Where a registered person having **centralised registration** under the existing law has obtained a registration under this Act, such person shall be allowed to take, in his electronic credit ledger, credit of the amount of **CENVAT credit carried forward in a return**, furnished under the existing law by him, in respect of the period ending with the day immediately preceding the appointed day in such manner as may be prescribed:

Provided that if the registered person furnishes his return for the period ending with the day immediately preceding the appointed day **within three months of the appointed day**, such credit shall be allowed subject to the condition that the said return is either an **original return or a revised return where the credit has been reduced from that claimed earlier**:

Provided further that the registered person shall not be allowed to take credit unless the said amount is admissible as input tax credit under this Act:

Provided also that such **credit may be transferred to any of the registered persons having the same Permanent Account Number** for which **the** centralised registration was obtained under the existing law.

## Points for Discussion:

- 1) Company must identify the prospective liability and accordingly transfer the credit to avoid cash payment in future.
- 2) If migration of registration is not done for any state, will transfer of credit not be allowed on taking new registration?



## 140(9) Transitional provisions for availing Cenvat credit in certain cases

Where any CENVAT credit availed for the input services provided under the existing law has been **reversed due to non-payment of the consideration within a period of three months**, such credit can be reclaimed subject to the condition that the registered person has made the payment of the consideration for that supply of services **within a period of three months from the appointed day.**

**All such payment must be done before 30<sup>th</sup> Sept in order to avail the credit**

## Transitional Rules

**Rule 1 . Application in respect of tax or duty credit carried forward under any existing law or on goods held in stock on the appointed day**

1. Every registered person entitled to take credit of input tax under section 140 shall, **within sixty days** of the appointed day, **submit an application electronically** in **FORM GST TRAN-1**, duly signed, on the Common Portal specifying therein, separately, the amount of tax or duty to the credit of which the said person is entitled under the provisions of the said section:

Provided that where the inputs have been received from an Export Oriented Unit or a unit located in Electronic Hardware Technology Park, the **credit shall be allowed to the extent as provided in sub-rule (7) of rule 3 of the CENVAT Credit Rules, 2004:**

**(this proviso only in CGST rules)**

Provided that in the case of a claim under sub-section (1) of section 140, the application shall specify separately —

(i) the value of claims under section 3, sub-section (3) of section 5, sections 6 and 6A and sub-section (8) of section 8 of the Central Sales Tax Act, 1956 made by the applicant during the financial year relating to the relevant return, and

(ii) the serial number and value of declarations in Forms C and/or F and Certificates in Forms E and/or H or Form I specified in rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957 submitted by the applicant in support of the claims referred to in sub-clause (i) above;

**(this proviso only in SGST rules)**

2. Every application under sub-rule (1) shall:-

(a) in the case of a claim under **sub-section (2) of section 140**, specify separately the following particulars in respect of every item of **capital goods** as on the appointed day-

(i) the **amount of tax or duty availed or utilized** by way of input tax credit under each of the existing laws till the appointed day, and

(ii) the **amount of duty or tax yet to be availed or utilized** by way of input tax credit under each of the existing laws till the appointed day;

(b) in the case of a claim under sub-section (3), or the proviso thereto, or clause (b) of sub-section (4), sub-section (6), sub-section (8), sub-section (9) of Section 140 shall specify separately details of stock held on the appointed day;

(c) in the case of a **claim under sub-section (5)**, shall furnish the following details—

(i) the name of the **supplier, serial number and date of issue of the invoice** by the supplier or any document on the basis of which credit of input tax was admissible under the existing law,

(ii) the **description, quantity and value** of the goods or services

(iii) the **amount of eligible taxes and duties** or, as the case may be, the value added tax [or entry tax] charged by the supplier in respect of the goods or services,

(iv) the date on which the receipt of goods or services is **entered in the books** of account of the recipient.

**Discussion point: It is advisable to file the declaration at earliest.**

## 141 (1). INPUTS REMOVED FOR JOB WORK AND RETURNED ON OR AFTER THE APPOINTED DAY

- 1) Where any inputs received at a place of business had been removed as such or removed after being partially processed to a job worker for further processing, testing, repair, reconditioning or any other purpose in accordance with the provisions of existing law prior to the appointed day and such inputs **are returned to the said place on or after the appointed day, no tax shall be payable if such inputs, after completion of the job work or otherwise, are returned to the said place within six months from the appointed day:**

Provided that the period of six months may, on sufficient cause being shown, be extended by the Commissioner for a further **period not exceeding two months:**

**Provided further that if such inputs are not returned within the period specified in this sub-section, the input tax credit shall be liable to be recovered in accordance with the provisions of clause (a) of sub-section (8) of section 142.**

## Issues:

- a. What will happen if inputs are directly sold/ dispatched from the premises of job worker without bringing it back at the premises from where removed?
- b. If the inputs are returned after 6 months, whether it will be treated as a supply by job worker?

## 141 (2). SEMI-FINISHED GOODS REMOVED FOR JOB WORK AND RETURNED ON OR AFTER THE APPOINTED DAY

Where any **semi-finished goods** had been removed from the place of business to any other premises for carrying out certain manufacturing processes in accordance with the provisions of existing law prior to the appointed day and such goods (here after in this section referred to as “the said goods”) are returned to the said place on or after the appointed day, no tax shall be payable, if the said goods, **after undergoing manufacturing processes or otherwise, are returned to the said place within six months from the appointed day:**

Provided that the period of six months may, on sufficient cause being shown, be **extended** by the commissioner for a further period not exceeding **two months**



Provided further that if the said goods are not returned within the specified in this sub-section, the input tax credit shall be liable to be recovered in accordance with the provisions of clause (a) of sub-section (8) of section 142:

Provided also that the manufacturer may, in accordance with the provisions of the existing law, transfer the said goods to the premises of any registered person for the purpose of supplying therefrom on payment of tax in India or without payment of tax for exports within the period specified in this sub-section.

This third proviso is not available in section 141(1)

## 141 (3) - FINISHED GOODS REMOVED FOR CARRYING OUT CERTAIN PROCESSES AND RETURNED ON OR AFTER THE APPOINTED DAY

Where any excisable goods manufactured at a place of business had been removed without payment of duty for carrying out tests or any other process not amounting to manufacture, to any other premises, whether registered or not, in accordance with the provisions of existing law prior to the appointed day and such goods, are returned to the said place on or after the appointed day, no tax shall be payable if the said goods after undergoing tests or any other process (herein after referred to as the “said goods”) are returned to the said factory on or after the appointed day, are **returned to the said factory within six months from the appointed day:**

Provided that the period of six months may, on sufficient cause being shown, be extended by the commissioner for a further **period not exceeding two months: :**

Provided further that if the said goods are not returned within the period specified in this sub-section, the input tax credit shall be liable to be recovered in accordance with the provisions of clause (a) of sub-section (8) of section 142:

Provided also that the manufacturer may, in accordance with the provisions of the existing law, transfer the said goods from the said other premises on payment of tax in India or without payment of tax for exports within the period specified in this sub-section.

## SECTION 141(4) DECLARATION OF STOCK

The tax under sub-sections (1), (2) and (3) shall not be payable, only if the **manufacturer and the job-worker declare** the details of the inputs or goods held in stock by the job-worker on behalf of the manufacturer on the appointed day in such form and manner and within such time as may be prescribed.

## Transitional Rules

### Rule 2 . Declaration of stock held by a principal

Every person to whom the provisions of section 141 apply shall, within sixty days of the appointed day, submit an application electronically in **FORM GST TRAN-1**, specifying therein, the stock or, as the case may be, capital goods held by him on the appointed day details of stock or, as the case may be, capital goods held by him as a principal at the place/places of business of his agents/branch, separately agent-wise/branch-wise.

## 142 (1). DUTY PAID GOODS RETURNED TO THE PLACE OF BUSINESS ON OR AFTER THE APPOINTED (SALES RETURN)

- 1) Where any goods on which duty, if any, had been paid under the earlier law at the time of removal thereof not being earlier than six months prior to the appointed day, are returned to any place of business on or after the appointed day, the registered person shall be eligible for refund of the duty paid under the existing law where such goods are returned by a person, other than a registered person, to the said place of business within a period of six months from the appointed day and such goods are identifiable to the satisfaction of the proper officer :

Provided that if the said goods are returned by a registered person, the return of such goods shall be deemed to be a supply.

## 142(2). ISSUE OF SUPPLEMENTARY INVOICES, DEBIT OR CREDIT NOTES WHERE PRICE IS REVISED IN PURSUANCE OF A CONT

- a) Where, in pursuance of a contract entered into prior to the appointed day, the price of any goods or services or both is revised upwards on or after the appointed day, the registered person who had removed or provided such goods or services or both shall issue to the recipient a supplementary invoice or debit note, containing such particulars as may be prescribed, within thirty days of such price revision and for the purposes of this Act such supplementary invoice or debit note shall be deemed to have been issued in respect of an outward supply made under this Act.

Whether interest will be payable on supplementary invoices.?

b) Where, in pursuance of a contract entered into prior to the appointed day, the price of any goods or services or both is **revised downwards** on or after the appointed day, the registered person who had removed or provided such goods or services or both may issue to the recipient a credit note, containing such particulars as may be prescribed, within thirty days of such price revision and for the purposes of this Act such credit note shall be deemed to have been issued in respect of an outward supply made under this Act:

Provided that the registered person shall be allowed to reduce his tax liability on account of issue of the credit note only if the recipient of the credit note has **reduced his input tax credit corresponding to such reduction of tax liability.**

**Issue: How to determine whether recipient has reduced the credit? What if no credit was taken by the recipient at all? Whether GSTR 2 has such provisions?**



## 142(3). PENDING REFUND CLAIMS TO BE DISPOSED OF UNDER EARLIER LAW

- Every claim for refund filed by any person before, on or after the appointed day, for refund of any amount of CENVAT credit, duty, tax, interest or any other amount paid under the existing law, shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 :

Provided that where any claim for refund of CENVAT credit is fully or partially rejected, the amount so rejected shall lapse.

Provided further that no refund shall be allowed of any amount of CENVAT credit where the balance of the said amount as on the appointed day has been carried forward under this Act.

**Issue:**

- a. Refund of excess amount reversed through cenvat credit will be available in cash ?
- b. Refund of pre-deposit made through cenvat credit will be in cash? If yes, pending demands must be paid through cenvat.

## 142(4). REFUND CLAIMS FILED AFTER THE APPOINTED DAY FOR GOODS OR SERVICES EXPORTED BEFORE OR AFTER THE APPOINTED DAY – EXPORT REFUND

Every claim for refund filed after the appointed day for refund of any duty or tax paid under existing law in respect of the goods or services exported before or after the appointed day, shall be disposed of in accordance with the provisions of the existing law:

Provided that where any claim for refund of CENVAT credit is fully or partially rejected, the amount so rejected shall lapse:

Provided further that no refund shall be allowed of any amount of CENVAT credit where the balance of the said amount as on the appointed day has been carried forward under this Act.

## SECTION 142(5) PENDING REFUND CLAIMS TO BE DISPOSED OF UNDER EXISTING LAW – OTHER REFUNDS

Every claim filed by a person after the appointed day for refund of tax paid under the existing law in respect of services not provided shall be **disposed of in accordance with the provisions of existing law** and any amount eventually accruing to him **shall be paid in cash**, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944.

## 142(6). CLAIM OF CENVAT CREDIT TO BE DISPOSED OF UNDER THE EARLIER LAW – APPEAL FOR CENVAT CREDIT

- a) Every proceeding of appeal, review or reference relating to a claim for CENVAT credit initiated whether before, on or after the appointed day under the existing law shall be disposed of in accordance with the provisions of existing law, and any amount of credit found to be admissible to the claimant shall be refunded to him in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 and the amount rejected, if any, shall not be admissible as input tax credit under this Act:

Provided that no refund shall be allowed of any amount of CENVAT credit where the balance of the said amount as on the appointed day has been carried

## 142(6). CLAIM OF CENVAT CREDIT TO BE DISPOSED OF UNDER THE EARLIER LAW – APPEAL FOR CENVAT CREDIT

- b) every proceeding of appeal, review or reference relating to recovery of CENVAT credit initiated whether before, on or after the appointed day under the existing law shall be disposed of in accordance with the provisions of existing law and if any amount of credit becomes recoverable as a result of such appeal, review or reference, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act.

## 142(7) FINALIZATION OF PROCEEDINGS RELATING TO OUTPUT DUTY LIABILITY - APPEAL

- a) Every proceeding of appeal, review or reference relating to any output duty liability initiated whether before, on or after the appointed day under the existing law, shall be disposed of in accordance with the provisions of the existing law, and if any amount becomes recoverable as a result of such appeal, review or reference, the same shall, unless recovered under the existing law, be recovered as an arrear of duty or tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act.

Issue:

Credit of service tax paid upon finalisation of the dispute in respect of reverse charge will not be available?

## 142(7). FINALIZATION OF PROCEEDINGS RELATING TO OUTPUT DUTY LIABILITY - **APPEAL**

- b) Every proceeding of appeal, review or reference relating to any output duty or tax liability initiated whether before, on or after the appointed day under the existing law, and **any amount found to be admissible to the claimant shall be refunded to him in cash**, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 and the amount rejected, if any, shall not be admissible as input tax credit under this Act.



## 142(8). TREATMENT OF THE AMOUNT RECOVERED OR REFUNDED IN PURSUANCE OF ASSESSMENT OR ADJUDICATION PROCEEDINGS

- a) Where in pursuance of an assessment or adjudication proceedings instituted, whether before, on or after the appointed day, under the existing law, any amount of tax, interest, fine or penalty becomes recoverable from the person, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act;

This will cover proceedings of pending SCN/new SCN.



b) Where in pursuance of an assessment or adjudication proceedings instituted, whether before, on or after the appointed day, under the existing law, any amount of tax, interest, fine or penalty becomes refundable to the taxable person, the same shall be refunded to him in cash under the said law, notwithstanding anything to the contrary contained in the said law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 and the amount rejected, if any, shall not be admissible as input tax credit

## 142(9). TREATMENT OF THE AMOUNT RECOVERED OR REFUNDED PURSUANT TO REVISION OF RETURNS

- a) Where any return, furnished under the existing law, is revised after the appointed day and if, pursuant to such revision, any amount is found to be recoverable or any amount of CENVAT credit is found to be inadmissible, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act.

b) Where any return, furnished under the existing law, is revised after the appointed day but within the time limit specified for such revision under the existing law and if, pursuant to such revision, any amount is found to be refundable or CENVAT credit is found to be admissible to any taxable person, the same **shall be refunded to him in cash under the existing law**, notwithstanding anything to the contrary contained in the said law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 and the amount rejected, if any, shall not be admissible as input tax credit under this Act.

### **Issue for discussion**

Suppose a service provider having huge cenvat balance does not show any availment of credit in ST-3 for the period April to June 2017. Can he subsequently revise the return for availing the credit and claim cash refund?

## 142(10). TREATMENT OF LONG TERM CONSTRUCTION / WORKS CONTRACTS

Save as otherwise provided in this Chapter, the goods or services or both supplied on or after the appointed day in pursuance of a contract entered into prior to the appointed day shall be liable to tax under the provisions of this Act.

Example – sale of residential flat

Discussion point:

Suppose a trader receives advance for any supplies to be made in future. He does not pay vat on such advances. Subsequently the supply is made on 30<sup>th</sup> Aug 2017. What will be the point of taxation in such case – 1<sup>st</sup> July 2017 or 30<sup>th</sup> Aug 2017?

Suppose, a service provider has turnover of less than 50L and is paying tax on receipt basis. He has raised the invoice earlier with service tax, but received payment on 5<sup>th</sup> July. What will be applicable?

## SECTION 142 (11) : PROGRESSIVE OR PERIODIC SUPPLY OF GOODS OR SERVICES

- a) notwithstanding anything contained in section 12, no tax shall be payable on goods under this Act to the extent the tax was leviable on the said goods under the Value Added Tax Act of the State;
- b) notwithstanding anything contained in section 13, no tax shall be payable on services under this Act to the extent the tax was leviable on the said services under Chapter V of the Finance Act, 1994;
- c) where tax was paid on any supply both under the Value Added Tax Act and under Chapter V of the Finance Act, 1994, tax shall be leviable under this Act and the taxable person shall be entitled to take credit of value added tax or service tax paid under the existing law to the extent of supplies made after the appointed day and such credit shall be calculated in such manner as may be prescribed.

Example - advance received prior to 30<sup>th</sup> June 2017 – invoice issued after 1<sup>st</sup> July 2017.

Example – 5% retention money in construction industry

**Issue:**

**Whether 1% VAT paid for sale of residential/commercial unit is covered?**

## 142 (12) . GOODS SENT ON APPROVAL BASIS RETURNED ON OR AFTER THE APPOINTED DAY

Where any goods sent on approval basis, **not earlier than six months before the appointed day**, are rejected or not approved by the buyer and returned to the seller on or after the appointed day, no tax shall be payable thereon **if such goods are returned within six months from the appointed day**:

Provided that the said period of six months may, on sufficient cause being shown, be extended by the Commissioner for a **further period not exceeding two months**:

Provided further that the tax shall be payable by the person returning the goods if such goods are liable to tax under this Act, and are returned after a period specified in this subsection:

Provided also that tax shall be payable by the person who has sent the goods on approval basis if such goods are liable to tax under this Act, and are not returned within a period specified in this subsection.



## Transitional Rules

### Rule 3. Details of goods sent on approval basis

Every person having sent goods on approval under the earlier law and to whom sub-section (12) of section 142 applies shall, **within sixty days** of the appointed day, **submit details of such goods sent on approval** in **FORM GST TRAN-1**.

## CBEC FAQ Q. No. 26

**Question:** Goods were sent on approval not earlier than six months before the appointed day but are returned to the seller after 6 months from the appointed day, will tax be payable under GST?

**Answer:** Yes, if such goods are liable to tax under GST and the person who has rejected or has not approved the goods, returns it after 6 months (or within the extended period of maximum two months) from the appointed day. In that case tax shall also be payable by the person who has sent the goods on approval basis- section 142(12).

## 142(13) . DEDUCTION OF TAX SOURCE

Where a supplier has made any sale of goods in respect of which tax was required to be deducted at source under any law of a State or Union territory relating to Value Added Tax and has also issued an invoice for the same before the appointed day, **no deduction of tax at source under section 51 shall be made by the deductor under the said section where payment to the said supplier is made on or after the appointed day.**

**Example – TDS on Works Contract**

# TIME OF SUPPLY OF GOODS

Section 12 of CGST Act determines time of supply as –

(2) The time of supply of goods shall be the **earlier** of the following dates, namely:—

- a) the **date of issue of invoice by the supplier or the last date on which he is required**, under sub-section (1) of section 31, to issue the invoice with respect to the supply; or
- b) the date **on which the supplier receives the payment** with respect to the supply:

Provided that where the supplier of taxable goods **receives an amount upto one thousand rupees in excess of the amount indicated in the tax invoice**, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the **date of issue of invoice in respect of such excess amount**

## Points for discussion:

- 1) Advances are not subject to tax under VAT/ Central Excise.
- 2) HO receiving advance for material to be supplied by factory. If there is no communication between factory and HO about advance received.
- 3) Mr. A supplies 4 different products (having different rates) to Mr. B regularly. He receives adhoc advance payment of Rs. 5 lakhs.

*Explanation 1.*—For the purposes of clauses (a) and (b), “supply” shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment.

### Part payment or part invoicing for any supply

*Explanation 2.*—For the purposes of clause (b), “the date on which the supplier receives the payment” shall be the date on which the payment is entered in his books of account or the date on which the payment is credited to his bank account, whichever is earlier.

### Point for discussion –

- 1) Cheque received and recorded in books, but cleared in bank after 10 days.
- 2) Amount received in bank through RTGS but recorded in books subsequently. On last day of every month, reco will have to be done to ensure that all advances are duly identified.

## Reverse charge

(3) In case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the **earliest of the following dates**, namely:—

- a) the date of the **receipt of goods**; or
- b) the **date of payment as entered in the books of account** of the recipient or the date on which the **payment is debited in his bank account**, whichever is earlier; or
- c) the date immediately following **thirty days from the date of issue of invoice** or any other document, by whatever name called, in lieu thereof by the supplier

Provided that **where it is not possible to determine the time of supply under clause (a) or clause (b) or clause (c), the time of supply shall be the date of entry in the books of account of the recipient of supply.**

## Examples/Issues for discussion:

- 1) Pen drive purchased by employee in a particular month for which voucher is prepared and claimed in next month.
- 2) Bill received from the supplier after 30 days from the date of its issue.
- 3) Cheque issued to the vendor on 30<sup>th</sup> May but he presented to the bank for payment on 25<sup>th</sup> July.



## Voucher

(4) In case of supply of vouchers by a supplier, the time of supply shall be—

- a) the date of issue of voucher, if the supply is identifiable at that point;  
or
- b) the date of redemption of voucher, in all other cases.

“voucher” means an instrument where there is an obligation to accept it as consideration or part consideration for a supply of goods or services or both and where the goods or services or both to be supplied or the identities of their potential suppliers are either indicated on the instrument itself or in related documentation, including the terms and conditions of use of such instrument

**Issue/ Example –**

- 1) Is AVA voucher given in flight covered?
- 2) Big Bazaar/ Amazon voucher of Rs. 1000 purchased.
- 3) Bata selling shoes and slippers having same rate of tax. Whether the voucher issued by Bata is identified?

## Residual Clause

(5) Where it is not possible to determine the time of supply under the provisions of sub-section (2) or sub-section (3) or sub-section (4), the time of supply shall—

- a) in a case where a periodical return has to be filed, be the date on which such return is to be filed; or
- b) in any other case, be the date on which the tax is paid.

## Interest/Late fee/ Penalty

(6) The time of supply to the extent it relates to an addition in the value of supply by way of **interest, late fee or penalty for delayed payment** of any consideration shall be the date on which the **supplier receives such addition in value**.

Section 15(2) – The value of supply shall include –

(d) interest or late fee or penalty for delayed payment of any consideration for any supply;

**Points for discussion –**

- 1) **Waiver of charges is common and hence TOS is date of receipt**

# TIME OF SUPPLY OF SERVICE

Section 13 (2) The time of supply of services shall be the earliest of the following dates, namely:—

- a) the date of **issue of invoice by the supplier**, if the invoice is issued within the period prescribed under sub-section (2) of section 31 or the date of receipt of payment, whichever is earlier; or
- b) the **date of provision of service**, if the invoice is not issued within the period prescribed under sub-section (2) of section 31 or the date of receipt of payment, whichever is earlier; or
- c) the **date on which the recipient shows the receipt of services in his books of account**, in a case where the provisions of clause (a) or clause (b) do not apply:

Provided that where the supplier of taxable service **receives an amount upto one thousand rupees in excess of the amount** indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice relating to such excess amount.

*Explanation.*—For the purposes of clauses (a) and (b)—

(i) the supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment;

(ii) “the date of receipt of payment” shall be the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier.

**Example – Telecom company receiving extra payment on bills.**

## Reverse Charge

(3) In case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earlier of the following dates, namely:—

- a) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or
- b) the date immediately following sixty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier:

Provided that where it is not possible to determine the time of supply under clause (a) or clause (b), the time of supply shall be the date of entry in the books of account of the recipient of supply:

Provided further that in case of supply by **associated enterprises**, where the supplier of service is located outside India, the time of supply shall be the date of entry in the books of account of the recipient of supply or the date of payment, whichever is earlier.

### Points for discussion-

- 1) Presently, reverse charge has 3 months time limit which is being reduced to 60 days
- 2) Repairs of AC/car/computer/printer etc. by an unregistered person involving supply of goods and service. Which section will apply?

# Vouchers

(4) In case of supply of vouchers by a supplier, the time of supply shall be—

- a) the date of issue of voucher, if the supply is identifiable at that point; or
- b) the date of redemption of voucher, in all other cases

## Issue/ Example –

1) L 'oreal salon voucher for hair spa, facial, bleaching.

Whether voucher is identified? Same HSN/SAC is criteria to determine?

2) Taj Hotel Voucher for 2 nights stay



## **Residual Clause**

(5) Where it is not possible to determine the time of supply under the provisions of sub-section (2) or sub-section (3) or sub-section (4), the time of supply shall—

- a) in a case where a periodical return has to be filed, be the date on which such return is to be filed; or
- b) in any other case, be the date on which the tax is paid.

## **Interest/Late fee/ Penalty**

(6) The time of supply to the extent it relates to an addition in the value of supply by way of interest, late fee or penalty for delayed payment of any consideration shall be the date on which the supplier receives such addition in value.

# TIME OF SUPPLY IN CASE OF CHANGE IN THE RATE OF TAX

Section 14 of CGST Act determines time of supply as –

Notwithstanding anything contained in section 12 or section 13, the time of supply, where there is a change in the rate of tax in respect of goods or services or both, shall be determined in the following manner, namely:—

- a) in case the goods or services or both have been supplied before the change in rate of tax,—
  - (i) where the invoice for the same has been issued and the payment is also received after the change in rate of tax, the time of supply shall be the date of receipt of payment or the date of issue of invoice, whichever is earlier; or
  - (ii) where the invoice has been issued prior to the change in rate of tax but payment is received after the change in rate of tax, the time of supply shall be the date of issue of invoice; or
  - (iii) where the payment has been received before the change in rate of tax, but the invoice for the same is issued after the change in rate of tax, the time of supply shall be the date of receipt of payment;

b) in case the goods or services or both have been supplied after the change in rate of tax,—

(i) where the payment is received after the change in rate of tax but the invoice has been issued prior to the change in rate of tax, the time of supply shall be the date of receipt of payment; or

(ii) where the invoice has been issued and payment is received before the change in rate of tax, the time of supply shall be the date of receipt of payment or date of issue of invoice, whichever is earlier; or

(iii) where the invoice has been issued after the change in rate of tax but the payment is received before the change in rate of tax, the time of supply shall be the date of issue of invoice:

Provided that the date of receipt of payment shall be the date of credit in the bank account if such credit in the bank account is after four working days from the date of change in the rate of tax.

*Explanation.*—For the purposes of this section, “the date of receipt of payment” shall be the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier.

## Issues for discussion:

- 1) Change in rate is not defined.
- 2) Cess introduced on any item is change in rate?
- 3) When a supply will be taxed for the first time – say for example Petroleum products.

# CONTINUOUS SUPPLY

## Section 31(5)

Subject to the provisions of clause (d) of sub-section (3), in case of continuous supply of services,—

(a) where the due date of payment is ascertainable from the contract, the **invoice shall be issued on or before the due date of payment;**

(b) where the due date of payment is not ascertainable from the contract, the invoice shall be issued before or at the time **when the supplier of service receives the payment;**

(c) where the payment is linked to the completion of an event, the invoice shall be issued on or before the **date of completion of that event.**

# THANK YOU

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