

## GOODS AND SERVICE TAX

[CA (Ms.) ARTI SHAH

### 1. INTRODUCTION:

Goods and Services Tax (GST) has been implemented from 1<sup>st</sup> July 2017. With its implementation the landscape has changed significantly. In every sense this has been a monumental reform. 17 taxes and 13 cesses became one tax and tens of Returns have instantly become four. The dream of One Nation One Tax was realized. During the last two years a number of Notifications and Circulars were issued and the GST Council has also come out with radical changes. Below are some of the important provisions of GST Law along with changes made in the Goods and Services Tax as well as certain clarifications given by the Central Government which can be considered as important.

### 2. ORDER OF ITC UTILIZATION:

As per Section 49(5) of CGST Act 2017, the amount of input tax credit available in the electronic credit ledger of the registered person on account of different taxes viz: Integrated tax, Central Tax, State Tax and Union Territory Tax are to be utilized in following order:

- **Integrated tax:** To be utilized towards payment of Integrated tax and balance towards the payment of Central tax and the State tax, or Union Territory tax;
- **Central tax:** To be utilized towards payment of Central tax and balance towards integrated tax;
- **State tax / Union Territory tax:** To be utilized towards payment of State tax / Union Territory tax, and balance towards integrated tax. However the input tax credit on account of State tax / Union Territory tax can be utilised towards payment of Integrated tax only where the balance of the input tax credit on account of Central tax is not available for payment of Integrated tax
- the Central tax cannot be utilised towards payment of State tax or Union Territory tax; and
- the State tax or Union Territory tax cannot be utilised towards payment of central tax.

As per above mentioned provision the tax payer can choose any tax head first where ITC is available for utilization. However once a particular tax head is chosen (let us say IGST), then the utilization shall be as per the given order.

Now, new Sections 49A and 49B are inserted vide CGST (Amendment) Act, 2018 notified w.e.f. 01.02.2019. Sec. 49A provides that the IGST ITC must be utilized first and only thereafter CGST/SGST ITC can be utilized. These provisions have been formulated to cure the issue of huge amount of IGST remaining unallocated to the State's pending their utilization.

If the said provisions are applied, the outcome will be as under:

Following is the case to understand the effect of this provision:

Tax Head	Tax Liability	ITC
IGST	200	1200
CGST	1500	1000
SGST	1500	1000

ITC lying in IGST head shall first be utilized for payment of IGST tax liability of Rs 200/-. Thereafter, the balance of ITC of Rs 1000/- shall first be utilized for paying CGST Liability. After that the CGST liability shall reduce to Rs 500/-. Thereafter the ITC under CGST head shall be utilized to adjust against CGST liability. Hence Rs 500/- shall be adjusted and Rs 500/- ITC shall remain in CGST head. The CGST ITC of Rs 500/- cannot be utilized to adjust against liability under SGST head and it shall be carried forwarded.

In case of SGST, the ITC under SGST head is Rs 1000/- whereas the liability is Rs 1500/-. Hence the adjustment of ITC of Rs 1000/- against liability of Rs 1500/- would end up with the cash payment of Rs 500/- in SGST head. Hence there is blockage of Rs 500/- in CGST head and at the same time there is cash payment of Rs 500/- in SGST head.

To resolve the above mentioned anomaly, the Government has further issued Notification No. 16/2019 – Central Tax dated 29.03.2019 and a new Rule viz. Rule 88A has been inserted. The said Rule provides as under:

“Input tax credit on account of integrated tax shall first be utilised towards payment of integrated tax, and the amount remaining, if any, may be utilised towards the payment of central tax and State tax or Union territory tax, as the case may be, **in any order**:

Provided that the input tax credit on account of Central tax, State tax or Union Territory tax shall be utilised towards payment of Integrated tax, Central tax, State tax or Union Territory tax, as the case may be, only after the input tax credit available on account of Integrated tax has first been utilised fully.

Rule 88A (1) allows the utilization of the balance IGST ITC against CGST and SGST “in any order” hence the registered tax payer can do partial utilization of the IGST ITC against CGST and SGST head.

The ITC utilization in above mentioned example shall be as under:

Tax Head	Liability	ITC	IGST ITC Adjustment	CGST ITC Adjustment	SGST ITC Adjustment	Closing Balance of ITC	Net Tax Payable in Cash
IGST	200	1200	(200)	-	-	-	-
CGST	1500	1000	(500)	(1000)	-	-	-
SGST	1500	1000	(500)	-	(1000)	-	-

Hence, following the above rule, in above mentioned example, the registered tax payer would utilize INR 200 of IGST ITC against and IGST liability, Rs 500/- IGST ITC against CGST and the balance Rs 500 against SGST. Thereafter he would utilize respective CGST & SGST ITC. By utilising ITC as per this rule there would no blockage of cash.

### 3. TREATMENT OF SALES PROMOTION SCHEME UNDER GST:

Various types of sales promotion schemes offered by taxable persons to increase sales volume and to attract new customers for their products are being implemented by assesses. The Central Government has given clarification on various issues/doubts raised with respect to the tax treatment of sales promotion schemes under GST.

#### (i) Free Samples and Gifts:

Free samples and gifts given to non related persons without charging any consideration shall not be treated as 'supply' under GST. Hence GST shall not be applicable on such transactions. However, ITC shall not be available to the supplier for the inputs, input services and capital goods used in relation to supply of goods or services or both.

#### (ii) Buy one get one offer:

There are transactions wherein two or more individual supplies are supplied at a single price. It is supplying two goods for the price of one. The taxability of such supplies will be dependent upon as to whether the supply is a composite supply or a mixed supply. In case of composite supply the principal supply's rate shall be applicable on total supply and in case of mix supply the highest rate of GST applicable to any individual supply is applicable to total supply. ITC shall be available to the supplier for the inputs, input services and capital goods used in relation to supply of goods or services or both as part of such offers.

(iii) **Discounts including 'Buy more, save more' offers:**

Sometimes, the supplier offers staggered discount to his customers (increase in discount rate with increase in purchase volume). For example- Get 10 % discount for purchases above Rs. 5000/-, 20% discount for purchases above Rs. 10,000/- and 30% discount for purchases above Rs. 20,000/-. Such discounts are shown on the invoice itself. Also at times periodic / year end discount is given i.e. get additional discount of 1% if you purchase 10,000 pieces in a year, get additional discount of 2% if you purchase 15,000 pieces in a year. Such discounts are established in terms of an agreement entered into on or before the time of supply, though not shown on the invoice as the actual quantum of such discounts gets determined after the supply has been effected and generally, at the year end such discounts are passed on by the supplier through credit notes. Such discounts offered by the suppliers to customers shall be excluded to determine the value of supply, provided they satisfy the parameters laid down in sub-section (3) of section 15 of the CGST Act 2017.

The parameters are:

- Such discount is established in terms of an agreement entered into on or before the time of such supply and specifically linked to relevant invoices; and
- Input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.
- Supplier shall be entitled to avail of the ITC for such inputs, input services and capital goods used in relation to the supply of goods or services or both on such discounts.

(iv) **Secondary Discounts:**

Certain discounts which are not known at the time of supply or are offered after the supply is already over. Such secondary discounts are not be excluded while determining the value of supply since the discounts are not known at the time of supply and therefore the conditions laid down in clause (b) of sub- section (3) of section 15 of the CGST Act are not satisfied. However, the supplier can issue Financial / commercial credit note even if the said conditions are not satisfied.

For example, M/s A supplies 10000 packets of biscuits to M/s B at Rs. 10/- per packet. Afterwards M/s A re-values it at Rs. 9/- per packet. Subsequently, M/s A issues credit note to M/s B for Rs. 1/- per packet. Such Credit Note shall not have GST applicability.

#### 4. PROVISIONS OF TDS UNDER GST:

Section 51 of CGST Act, 2017 provides for Tax Deduction at Source (TDS) by the specified category of persons ( 'the Deductor') from the payment made or credited to the supplier of taxable goods or services or both ( 'the Deductee') at a prescribed rate on the value indicated on the invoices (excluding the Central tax, State tax, Union Territory tax, Integrated tax and Cess).

Accordingly, Deductor means :

- (a) a department or establishment of the Central Government or State Government; or
- (b) local authority; or
- (c) Governmental agencies; or
- (d) such persons or category of persons as may be notified by the Government on the recommendations of the Council,

The Deductor has to deduct CGST and SGST at the rate of two per cent from the payment made or credited to the supplier ( "the deductee") of taxable goods or services or both, where the total value of such supply, under a contract, exceeds two lakh and fifty thousand rupees:

Provided that no deduction shall be made if the location of the supplier and the place of supply is in a State or Union territory is different from the State or Union territory of the registration of the recipient.

Notification no 50/2018 has further notified the following class of persons under clause (d) of Section 51(1) as Deductors:-

- (a) An authority or a board or any other body,-
  - Set up by an Act of Parliament or a State Legislature; or
  - Established by any Government,

With 51% or more participation by way of equity or control, to carry out any function;

- (b) Society established by the Central/ State Government or a Local Authority under the Societies Registration Act,1860;
- (c) Public sector undertaking.

- The rate of TDS in case of Intra-State transaction is 1% CGST & 1% SGST and in case of Inter-State transaction 2% IGST.
- A deductor of GST will be required to get itself registered and obtain a GSTIN (GST Identification Number) as a TDS deductor even if he is separately registered as a supplier by filing application Form in GST REG 07.

- For purpose of calculating TDS, the value of supply is to be taken as the amount excluding the Tax indicated on the face of invoice. It means TDS shall not be deducted on the CGST, SGST or IGST component of invoice.
- Every Registered TDS deductor shall File a Return in FORM GSTR-7 within 10 days from the end of month and deposit TDS with Government.
- The deductor is required to issue TDS certificate within 5 days from the date of furnishing return in form GSTR – 7.

Following are the penalties / late fees in case of non-compliance of the TDS provisions:

Sr No	Non-compliance	Penalty/late fee
1	TDS not deducted or TDS deducted but not paid to the Government or paid later than 10th of the succeeding month	Interest @ 18% to be paid along with amount of TDS
2	Delay in issuing TDS certificate beyond a period of 5 days from the date of filing TDS return	Rs. 100/- per day under CGST and SGST each head from the expiry of period subject to maximum of Rs. 5,000/- under CGST and SGST each head
3	Late filing of TDS returns	Rs. 100/- per day under CGST and SGST each head from the expiry of period subject to maximum of Rs. 5,000/- under CGST and SGST each head

#### 5. GOODS & SERVICES UNDER RCM:

GST Reverse Charge means the liability to pay tax is on the recipient of supply of goods or services instead of the supplier of such goods or services in respect of notified categories of supply

##### (i) Summary of Goods under RCM as on 31/08/2019:

Relevant Notifications:- Notification No.4/2017-Central Tax (Rate) Dated 28.06.2017 as amended by Notification No.36 /2017-Central Tax (Rate) Dated 13.10.2017 and Notification No.43/2017-Central Tax (Rate) Dated 14.11.2017

S. No.	Description of supply of goods	Supplier of goods	Recipient of goods who is liable to pay GST under RCM
1.	Cashew nuts, not shelled or peeled	Agriculturist	Any registered person
2.	Bidi wrapper leaves (tendu)	Agriculturist	Any registered person
3.	Tobacco leaves	Agriculturist	Any registered person
4.	Silk yarn	Any person who manufactures silk yarn from raw silk or silk worm cocoons for supply of silk yarn	Any registered person
5.	Raw cotton	Agriculturist	Any registered person
6.	Supply of lottery	State Government, Union Territory or any local authority	Lottery distributor or selling agent
7.	Used vehicles, seized and confiscated goods, old and used goods, waste and scrap	Central Government, State Government, Union Territory or a local authority	Any registered person

(ii) **Summary of Services under RCM as on 31/08/2019:**

Relevant Notifications:

- Under CGST Act, 2017 :- Notification No.13/2017- Central Tax (Rate) Dated 28.06.2017 as amended by Notification No.22/2017- Central Tax (Rate) dated 22.08.2017, Notification No. 33/2017- Central Tax (Rate) Dated 13.10.2017 and Notification No. 03/2018 Dated 25th Jan

2018 – Central Tax (Rate), Notification No 15/2018-Central Tax (Rate) ,dt. 26-07-2018, Notification No. 29/2018- Central Tax (Rate).

- Under IGST Act, 2017 :-Notification No.10/2017-Integrated Tax(Rate) Dated 28-06-2017 as amended by Notification No. 22/2017 – Integrated Tax (Rate) Dated 22.08.2017 and Notification No. 34/2017- Integrated Tax (Rate) Dated 13.10.2017, 16/2018-Integrated Tax (Rate) ,dt. 26-07-2018, 30/2018-Integrated Tax (Rate) ,dt. 31-12-2018).

S. No.	Description of supply of service	Supplier of service	Recipient of Services who is liable to pay GST under RCM
1.	GTA Services	Goods Transport Agency (GTA)	Any factory, society, co-operative society, registered person, body corporate, partnership firm, casual taxable person; located in the taxable territory
2.	Legal Services by advocate	An individual advocate, including a senior advocate or a firm of advocates	Any business entity located in the taxable territory
3.	Services supplied by an arbitral tribunal to a business entity	An arbitral tribunal	Any business entity located in the taxable territory
4.	Services provided by way of sponsorship to anybody corporate or partnership firm	Any person	Anybody corporate or partnership firm located in the taxable territory
5.	Services supplied by the Central Government, State Government, Union territory or local authority to a business entity excluding: -(1) renting of immovable property, and	Central Government, State Government, Union territory or local authority	Any business entity located in the taxable territory



	<p>(2) services specified below: -</p> <table border="1"> <tr> <td>(i)</td> <td>services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Central Government, State Government or Union territory or local authority;</td> </tr> <tr> <td>(ii)</td> <td>services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;</td> </tr> <tr> <td>(iii)</td> <td>transport of goods or passengers.</td> </tr> </table>	(i)	services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Central Government, State Government or Union territory or local authority;	(ii)	services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;	(iii)	transport of goods or passengers.		
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(ii)	services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;								
(iii)	transport of goods or passengers.								
6.	Services by way of renting of immovable property	Central Government, State Government, Union territory or local authority	Any person registered under the GST Act.						
7.	Services supplied by a director of a company or a body corporate to the said company or the body corporate	A director of a company or a body corporate	The company or a body corporate located in the taxable territory						
8.	Services supplied by an insurance agent to any person carrying on insurance business	An insurance agent	Any person carrying on insurance business, located in the taxable territory						

9.	Services supplied by a recovery agent to a banking company or a financial institution or a non-banking financial company	A recovery agent	A banking company or a financial institution or a non-banking financial company, located in the taxable territory
10.	Supply of services by an author, music composer, photographer, artist or the like by way of transfer or permitting the use or enjoyment of a copyright covered under section 13(1)(a) of the Copyright Act, 1957 relating to original literary, dramatic, musical or artistic works to a publisher, music company, producer or the like	Author or music composer, photographer, artist, or the like	Publisher, music company, producer or the like, located in the taxable territory
11.	Supply of services by the members of Overseeing Committee to Reserve Bank of India	Members of Overseeing Committee constituted by the Reserve Bank of India	Reserve Bank of India
12.	Any service supplied by any person who is located in a non-taxable territory to any person other than non-taxable online recipient.	Any person located in a non-taxable territory	Any person located in the taxable territory other than nontaxable online recipient.
13.	Services supplied by a person located in non- taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India	A person located in non-taxable territory	Importer, as defined in clause (26) of section 2 of the Customs Act, 1962(52 of 1962), located in the taxable territory

14	Services supplied by individual Direct Selling Agents (DSAs) other than a body corporate, partnership or limited liability partnership firm to bank or non-banking financial company (NBFCs).	Individual Direct Selling Agents (DSAs) other than a body corporate, partnership or limited liability partnership firm.	A banking company or a non-banking financial company, located in the taxable territory.”;
15	Services provided by business facilitator (BF) to a banking company	Business facilitator (BF)	A banking company, located in the taxable territory
16	Services provided by an agent of business correspondent (BC) to business correspondent (BC).	An agent of business correspondent (BC)	A business correspondent, located in the taxable territory.
17	Security services (services provided by way of supply of security personnel) provided to a registered person:  Provided that nothing contained in this entry shall apply to, - (i)(a) a Department or Establishment of the Central Government or State Government or Union territory; or (b) local authority; or (c) Governmental agencies; which has taken registration under the Central Goods and Services Tax Act, 2017 (12 of 2017) only for the purpose of deducting tax under section 51 of the said Act and not for making a taxable supply of goods or services; or (ii) a registered person paying tax under section 10 of the said Act.	Any person other than a body corporate	A registered person, located in the taxable territory.”;

## 6. **REFUND FOR PENULTIMATE SALE:**

Penultimate Sale means a case wherein an exporter purchases any goods from a registered supplier with the intention of exporting the same. This concept has been continuing from the old indirect tax regime and there has been slight change in the provisions. As per the old tax regime, the last sale or purchase of any goods preceding the sale or purchase occasioning the export of those goods out of the territory of India shall also be deemed to be in the course of such export, if such last sale or purchase took place after, and was for the purpose of complying with, the agreement or order for or in relation to such export. So, earlier the penultimate sales were considered as exports and were exempted. But under GST regime by Notification 40/2017 (Central Tax Rate) dated 24/10/2017 a 0.05% of the CGST and 0.05% of the SGST is being charged on these kind of transactions. This shall resolve the problem of Exporters regarding the blockage of working capital.

### (i) **For claiming such benefit, the exporter and the registered supplier have to fulfill certain conditions:**

- the registered supplier shall supply the goods to the registered recipient on a tax invoice.
- the registered recipient shall export the said goods within a period of ninety days from the date of issue of a tax invoice by the registered supplier.
- the registered recipient shall indicate the Goods and Services Tax Identification Number of the registered supplier and the tax invoice number issued by the registered supplier in respect of the said goods in the shipping bill or bill of export, as the case may be.
- the registered recipient should be registered with an Export Promotion Council or a Commodity Board recognised by the Department of Commerce.
- the registered recipient shall place an order on registered supplier for procuring goods at concessional rate and a copy of the same shall also be provided to the jurisdictional tax officer of the registered supplier;
- the registered recipient shall move the said goods from place of registered supplier –
  - I. directly to the Port, Inland Container Depot, Airport or Land Customs Station from where the said goods are to be exported; or
  - II. directly to a registered warehouse from where the said goods shall be moved to the Port, Inland Container Depot, Airport or Land Customs Station from where the said goods are to be exported
- If the registered recipient intends to aggregate supplies from multiple registered suppliers and then export, the goods from each registered supplier shall move to a registered warehouse and after aggregation, the registered recipient shall move goods to the Port, Inland Container Depot, Airport or Land Customs Station from where they shall be exported

- In case of situation referred to in **condition (vii)**, the registered recipient shall endorse receipt of goods on the tax invoice and also obtain acknowledgement of receipt of goods in the registered warehouse from the warehouse operator and the endorsed tax invoice and the acknowledgment of the warehouse operator shall be provided to the registered supplier as well as to the jurisdictional tax officer of such supplier; and
- when goods have been exported, the registered recipient shall provide copy of shipping bill or bill of export containing details of Goods and Services Tax Identification Number (GSTIN) and tax invoice of the registered supplier along with proof of export general manifest or export report having been filed to the registered supplier as well as jurisdictional tax officer of such supplier.

(ii) **Prerequisites for considering a transaction as Penultimate Sale :**

- **Export Order**: The recipient of the goods (exporter) should possess an export order before such penultimate sale and he should be registered under Export Promotion Council.
- **Export within 90 days**: The recipient should export the said goods within a period of 90 days from the date of invoice issued by supplier of goods.
- GSTIN of supplier and the tax invoice number issued by supplier should be mentioned on shipping bill.
- The exporter should export the said goods only under LUT or bond and cannot export on payment of IGST (Circular 37/2018 – Central Tax, read with Notification 03/2018 – Central Tax)
- The said benefit is optional. So, even if you want to go for normal provisions, you can.

(iii) If the exporter doesn't export the said goods within 90 days, he may seek extension of period from jurisdictional officer under which the exporter is registered and if the officer gets satisfied with whatever reasons you have provided, he may grant extension for a period which he deems fit. However, if the exporter doesn't export goods within said period, he is liable to pay the differential tax amount along with the interest.

(iv) The registered supplier is selling goods to the exporter at a concessional rate of 0.1%. But the supplier is purchasing inputs for those goods at normal rates only. This would fall under the case of inverted duty structure as the tax rate on inputs is higher than the tax rate on outputs. So, the registered supplier can go for refund of his unutilized ITC.

(v) The government has also provided that the exporter can claim refund of the concessional tax (0.1%) paid by him while purchasing the inputs. There is no restriction on this.

(vi) Registered supplier can go for refund of unutilized ITC on the basis of inverted duty structure. While claiming the refund, the following points should be kept in mind:

- Make sure that the registered supplier has not claimed credit on input services as we are going for refund under inverted duty structure.
- Verify the shipping bills of the exporter and make sure that the shipping bill contains GSTIN of supplier and invoice number mentioned on invoice issued by the registered supplier.
- Check whether the exporter has made any export on payment of IGST as this scheme is not applicable when exports were made on payment of IGST.
- Ensure that the purchase order from exporter has been attached along with sales invoice.
- Ask for Registration-cum-Membership Certificate (RCMC) of the exporter. As this benefit is available only when the exporter is registered under Export Promotion Council, registered supplier should obtain such membership certificate from the exporter.
- Check the validity period of such membership certificate

**7. INTEREST FOR LATE PAYMENT OF TAX ONLY ON NET AMOUNT AND NOT GROSS AMOUNT:**

Interest is chargeable u/s. 50 of the Central Goods and Services Tax Act, 2017 if there is delay in payment of tax. The GST Council, in its 31st meeting held on 22.12.2018, has decided that interest should be charged only on net tax liability of the taxpayer, after taking into account the admissible input tax credit. The Act is amended accordingly through Finance Act 2019. The Union Budget 2019 has inserted a Proviso to remove the doubt over the interest for late payment of GST. The new Proviso clarifies that the interest would be levied on the part of tax which has been paid by debiting the electronic cash ledger and not on the amount pertaining to the input tax credit.

- (i) Further, a proviso has been added on 5<sup>th</sup> July, 2019 in section 50 of the Central Goods and Services Tax Act, in sub-section (1):— “Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger.”

- (ii) There is one exception to this rule wherein interest shall be levied on gross tax liability. The new Proviso is applicable only where the taxpayer files his return and pays his tax on his own but in case returns are filed subsequent to initiation of any proceedings under GST Act, the interest shall be levied on the Gross tax liability.
- (iii) It is not clear whether the applicability of the said Proviso shall be effective from 1<sup>st</sup> August 2019 i.e prospective or from 1<sup>st</sup> July 2017 i.e retrospectively . It is suggested that the Government comes with clarification that the law has changed retrospectively with effect from 01.07.2017. Unless it is done the matter will be subjudice.

**8. SABKA VISHWAS (LEGACY DISPUTE RESOLUTION) SCHEME,2019:**

(1) Legacy Dispute Resolution Scheme for resolution and settlement of legacy cases of the Central Excise and Service Tax & quick closure of those litigations.The proposed Scheme covers past disputes of taxes which have been subsumed under GST, i.e., Central Excise, Service Tax and Cess and other acts as well such as the Rubber Act, 1947, the Textiles Committee Act, 1963, etc. The relief under the scheme varies from 40% to 70% of the Tax Dues, depending on the amount of tax dues involved. The scheme also provides relief from payment of interest and penalty.

(2) **Meaning of Tax Dues:**

Sr. No.	Scenarios	Meaning
1.	If a single appeal arising out of order is pending as on 30.06.2019	Total amount of duty which is disputed
2.	If more than one appeal arising out of an order, one by the declarant and other being a departmental appeal which is pending as on 30.06.2019	Sum total of amount disputed by both declarant & Department.
3.	Where SCN has received under any Indirect Tax Act on or before 30.06.2019	Amount of duty payable as per SCN
4.	Where enquiry or Investigation or audit is pending	Amount of duty payable quantified on or before 30.06.2019
5.	Amount voluntarily disclosed by declarant	Amount of disclosed duty
6.	Where an amount in arrears relating to the declarant is due	Amount in arrears.

(3) **Relief available under the scheme:**

Sr. No.	Scenarios	Amount Involved	Relief Rs.
		Rs.	
1	Tax dues relatable to SCN or appeal arising out of such	<= 50 lakhs	70% of tax dues
		> 50 lakhs	50% of tax dues
2	Tax dues relatable to SCN for late fee or penalty only and the amount of duty has been paid or is NIL		Entire amount of late fees or
3	Tax Dues are relatable to amount in	<= 50 lakhs	60% of tax dues
		> 50 lakhs	40% of tax dues
4	Tax dues are relatable to amount in arrears and the	<= 50 lakhs	60% of tax dues
		> 50 lakhs	40% of tax dues
5	Tax dues are linked to an enquiry, investigation or audit	<= 50 lakhs	70% of tax dues
		> 50 lakhs	50% of tax dues
6	Where the tax dues are payable based on the return being filed after 30.06.2019 on account of a voluntary disclosure by the declarant	-	No relief

### 3.1 Other Reliefs:

- A. Relief from payment of interest and penalty
- B. Any amount paid as pre-deposit at any stage of appellate proceedings or as deposit during enquiry, investigation or audit will be deducted in computing the amount payable.
- C. No refund if pre-deposit/deposit exceeds amount payable

#### (4) Eligible persons under the Scheme:

All persons shall be eligible to make a declaration under this scheme EXCEPT:

- (a) Where appeal filed before the appellate forum and final hearing has taken place on or before 30.06.2019.
- (b) Who have been convicted for any offence punishable under any provision of the IDT enactment for the matter for which he intends to file a declaration.
- (c) Where SCN has been issued under IDT enactment and final hearing has taken place on or before 30.06.2019.
- (d) Who have been subjected to any enquiry or investigation or audit and amount of



duty involved has not been quantified on or before 30.06.2019.

- (e) A person making a voluntary disclosure, —
  - (i) after being subjected to any enquiry or investigation or audit; or
  - (ii) having filed a return after 30.06.2019 and before the closure of the scheme under the indirect tax enactment, wherein he has indicated an amount of duty as payable, but has not paid it;
- (f) Persons seeking to make declarations with respect to excisable goods set forth in the Fourth Schedule to the Central Excise Act, 1944;
- (g) Who have filed an application in the Settlement Commission for settlement of a case.

(5) **Procedure:**

1. Eligible person to file declaration in electronic form to be prescribed.
  2. Designated Committee to verify correctness of declaration.
  3. If amount by Committee = Amount by Declarant, then statement will be issued within 60 days.
  4. If amount by Committee > Amount by declarant, then statement will be issued within 30 days.
- (i) Declarant shall make payment within 30 days of issuance of statement
  - (ii) Any appeal or reference or reply to SCN filed before the appellate forum (other than SC/HC) shall be deemed to have been withdrawn.
  - (iii) In case the declarant has filed a writ petition or appeal or reference before SC/ HC, declarant shall file an application to SC/HC for withdrawal.
  - (iv) Designated Committee shall issue discharge certificate on payment of the amount and on proof of withdrawal of appeal, where applicable.
  - (v) Within 30 days of the date of issue of a statement indicating the amount payable by the declarant, the designated committee may modify its order only to correct an arithmetical error or clerical error, which is apparent on the face of record.

(6) **Issue of discharge certificate to be conclusive of matter and time period:**

1. The declarant shall not be liable to pay any further duty, interest or penalty with respect to the matter and time period covered in the declaration;
2. The declarant shall not be liable to be prosecuted under the IDT enactment with respect to the matter and time period covered in the declaration;

3. No matter and time period covered by such declaration shall be reopened in any other proceeding under the IDT enactment.

4. However, it shall not exclude issuance of SCN for the same matter for subsequent period, different matter for same period and in case of voluntary disclosure information furnished is found to be false.

5. The amount paid shall not be taken as ITC or shall not entitle any person to take ITC as recipient of goods or services.

(7) **Checklist for inclusions & exclusions under the scheme:**

Sr.No.	Inclusions	Exclusions
(1)	An appeal arising out of order is pending as on 30.06.2019	Order is not passed where hearing has been finally conducted before 30.06.2019
(2)	SCN has received under any Indirect Tax Laws on or before 30.06.2019	Cases involving erroneous refunds
(3)	Enquiry or investigation or audit is pending	An audit, enquiry or investigation has started but the amount of duty payable has not been quantified on or before 30.06.2019
(4)	Amount voluntarily disclosed by declarant	Adjudication order determining the duty/tax liability is passed and received prior to 30.06.2019, but the appeal is filed on or after 01.07.2019

(5)	Arrears due on account of— <ul style="list-style-type: none"> <li>• No appeal having been filed by the declarant against an order or an order in appeal before expiry of the period of time for filing appeal; or</li> <li>• An order in appeal is received &amp; filing of appeal is pending; or</li> <li>• The declarant having filed a return under IDT enactment on or before 30.06.2019, wherein he has admitted a tax liability but not paid it.</li> </ul>	Persons dealing with the goods mentioned in the Fourth Schedule to the Central Excise Act, 1944
(6)	A person has once been convicted for any offence punishable under any provision of the indirect tax enactment in respect of any matters.	A person has been convicted for any offence punishable under any provision of the indirect tax enactment in respect of the same matter for which he intends to file a declaration.

9. **CONCLUSION:**

In the initial phase GST witnessed certain teething problems. This was natural considering the scale of the reform. However, the GST Council, Centre and States and Union Territories proactively worked to resolve these issues. GST rate has also been reduced significantly and we should not lose sight of this fact while judging the performance of GST. The tax payer's interface with tax departments has been reduced. The border checks got eliminated. Goods have started moving freely across states, which is saving time and energy. Thus the dream of one nation, one tax, one market is realized. Moreover, the legacy dispute resolution scheme is also a welcome step, not only to reduce pending litigation but also to bring in a onetime additional revenue to the Government, with a complete waiver of interest, penalty and prosecution and part waiver of tax dues. This scheme has the potential to liquidate huge outstanding litigation and free the taxpayers from the burden of litigation and investigation under legacy taxes.