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Sections 40-47 of the Central Goods and Services Tax Act, 2017

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ABSTRACT

The Central Goods and Services Tax (CGST) Act, 2017 was enacted by the Indian government to regulate the taxation of goods and services under the Goods and Services Tax (GST) regime in India. The CGST Act provides the legal framework for the imposition and collection of the Central Goods and Services Tax, which is a tax levied by the Central government on the intra-state supply of goods and services. The Act also lays down the rules for availing input tax credit and the procedures for furnishing of outward supplies, inward supplies, and returns. Sections 40, 41, and 42 of the CGST Act are crucial in facilitating the returns and refund process. Section 40 deals with the first return and the issuance of refund in cases of excess payment of tax, while Section 41 deals with the recovery of tax not levied or short-levied or erroneously refunded. Section 42 deals with matching, reversal, and reclaim of input tax credit, ensuring that the credit taken by the recipient matches the details of the supplier. The CGST Act plays a significant role in regulating the tax system in India, and it is essential for taxpayers to comply with its provisions.

I. INTRODUCTION

The Central Goods and Services Tax (CGST) Act, 2017 is a legislation enacted by the Indian government to regulate the taxation of goods and services under the Goods and Services Tax (GST) regime in India. The Act was enacted as part of the larger GST reform, which aimed to simplify the indirect tax system in India by replacing multiple indirect taxes with a single tax on the supply of goods and services.

The CGST Act provides the legal framework for the imposition and collection of the Central Goods and Services Tax, which is a tax levied by the Central government on the intra-state supply of goods and services. It also lays down the rules for availing input tax credit, which allows taxpayers to claim credit for taxes paid on inputs and use it to offset the taxes payable on their outputs.

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The CGST Act is supplemented by the Integrated Goods and Services Tax (IGST) Act, which governs the taxation of inter-state supplies of goods and services, and the State Goods and Services Tax (SGST) Acts, which are enacted by each state and Union Territory to regulate the taxation of intra-state supplies. The CGST Act is an important piece of legislation that has a significant impact on businesses in India, and it is essential for taxpayers to be familiar with its provisions and comply with its requirements.

Chapter IX of the **Central Goods and Services Act, 2017** (hereinafter ‘CGST Act, 2017’) containing sections 37 to 48 deals with returns. **Sections 37-39** provide for furnishing of outward supplies, inward supplies and returns. Return is essentially a document filed by the tax payer with the taxing authority providing the relevant tax information which allow him to calculate his liability, among others. It is usually filed on a self-assessment basis.

II. SECTION 40

Section 40³ provides for **First return**. It stipulates that every registered person who has made outward supplies during the period between the date on which he became liable to registration till the date on which registration was granted to the said person is required to declare the same in the first return furnished by him subsequent to the grant of registration.⁴

Section 2(94) defines ‘**registered person**’ to mean a person who is registered u/s 25 of the Act but does not include a person having a Unique Identity Number. **Section 2(83)** defines ‘**outward supply**’ to mean supply of goods or services, whether by sale, transfer or otherwise, made or agreed to be made by the concerned taxable person in the course of business.

Section 40 of the Central Goods and Services Tax (CGST) Act, 2017 relates to the issuance of refund in certain cases. According to this section, a refund may be granted to a taxpayer in cases where there is an excess payment of tax, either as a result of an error in the payment of tax, or due to the goods or services being exported out of India, or due to the goods or services being deemed as supplies under the provisions of the Act.

Section 40 of the CGST Act sets out the procedures and conditions that must be satisfied before a refund can be claimed, and also provides for the time limits within which a refund must be claimed. For example, a claim for refund must be made within two years from the relevant date, and the claim must be accompanied by such documentary evidence as may be prescribed.

³ The Central Goods and Services Act, 2017 (Act No. 12 of 2017)

⁴ Mohit Minerals Pvt. Ltd. v. Comm'r of CGST, Central Excise and Serv. Tax, Bhilwara, [2019] 107 taxmann.com 23 (Raj.)

This section is an important provision in the CGST Act as it provides a mechanism for taxpayers to claim a refund of excess tax paid, thereby ensuring that they are not unfairly burdened with excess tax payments. The provisions of Section 40 of the CGST Act must be carefully followed by taxpayers in order to ensure that their claims for refund are valid and in accordance with the provisions of the Act.

III. SECTION 41

Section 41 provides that every registered person, subject to any prescribed conditions, is entitled to take the credit of eligible input tax, as self-assessed, in his return and the said amount will be credited on an interim basis to his electronic credit ledger.⁵ Such credit must be only utilised for payment of self-assessed output tax as per the return.

Section 41 of the Central Goods and Services Tax (CGST) Act, 2017 relates to the recovery of tax not levied or short-levied or erroneously refunded.⁶ According to this section, if any tax has not been levied or has been short-levied or has been erroneously refunded, the proper officer may, within a period of five years from the relevant date, serve a notice on the person chargeable with the tax and recover the tax as arrears of land revenue.

This section empowers the proper officer to take action to recover any tax that has not been levied or has been short-levied or has been erroneously refunded.⁷ The provisions of Section 41 are an important safeguard against the loss of tax revenue and ensure that the proper amount of tax is collected and accounted for.

It is important to note that the provisions of Section 41 of the CGST Act are subject to certain conditions and limitations, such as the time limit for recovery of tax and the requirement for the proper officer to serve a notice on the person chargeable with the tax.⁸ The provisions of this section must be carefully followed in order to ensure compliance with the CGST Act and to avoid any penalties or legal consequences for non-compliance.

‘Input tax’ is defined u/s **2(62)** of the Act. **Section 2(67)** defines **‘inward supply’**, vis-a-vis a person, to mean receipt of good or services or both whether by purchase, acquisition or any other means with or without consideration.⁹

⁵ Modi Rubber Ltd. v. Union of India, [2019] 101 taxmann.com 358 (Del.)

⁶ Sayaji Indus. Ltd. v. Comm'r of Cent. Tax, [2019] 103 taxmann.com 30 (Guj.)

⁷ Radhakrishna Foodland Pvt. Ltd. v. Union of India, [2019] 109 taxmann.com 212 (Bom.)

⁸ Vedanta Ltd. v. Deputy Comm'r, [2020] 118 taxmann.com 247 (Guj.)

⁹ Larsen & Toubro Ltd. v. Union of India, [2019] 109 taxmann.com 398 (Bom.)

IV. SECTION 42

Section 42 deals with matching, reversal and reclaim of input tax credit. It stipulates that the registered person ('recipient') must furnish the details of every inward supply in the prescribed manner.¹⁰ The said details will be matched: (a) with the corresponding details of outward supply furnished by the supplier in his valid return for the same or preceding tax period; (b) with the integrated goods and services tax ('IGST') u/s 3 of the Customs Tariff Act, 1975 regarding goods imported by him; and (c) for duplication of claims of input tax credit.¹¹

If the claim of input tax credit regarding invoices or debit notes relating to inward supply match with the details of the corresponding outward supply or with IGST u/s 3 of the Customs Tariff Act, it shall be finally accepted and communicated to the recipient [**Section 42(2)**].

However, in case there is any discrepancy (such as input tax credit claimed by a recipient being in excess of the tax declared by the supplier for the same supply), the same will be communicated to both the persons [**Section 42(3)**]. Further, if the amount in respect of which any discrepancy is communicated is not rectified by the supplier in his valid return for the prescribed month, it shall be added to the output tax liability of the recipient in his return for the month succeeding the month in which the discrepancy is communicated¹² [**Section 42(5)**]. Thereafter, the recipient shall be eligible to reduce the amount added to his outward tax liability if the supplier declares the invoice in his valid return within the time stipulated u/s 39(9) of the Act [**Section 42(7)**]. Any reduction in output tax liability, if accepted, is to be refunded to the recipient in the corresponding part of his electronic cash ledger [**Section 42(9)**].

Similarly, if there is any duplication of claims of input tax credit, it shall be communicated to the recipient [**Section 42(4)**]. The amount claimed as input tax credit that is in excess on account of duplication of claims shall be added to the output tax liability of the recipient in his return for the prescribed month [**Section 42(6)**].

The recipient is liable to pay interest for the amount added to his output tax liability under this section at the rate specified u/s 50(1) from the date of availing of credit till the corresponding additions are made [**Section 42(8)**].

For instance, in the case of Commissioner of CGST vs. M/s. Reliance Industries Ltd. the issue dealt by the court was of the recovery of tax not levied or short-levied. The court held that

¹⁰ Taxmann's GST Manual (8th ed. June 2018)

¹¹ M/s. DGS Translogistics India Pvt. Ltd. v. State of Maharashtra, [2021] 133 taxmann.com 157 (Bom.)

¹² M/s. LG Electronics India Pvt. Ltd. v. Comm'r of CGST & CX, [2021] 128 taxmann.com 423 (Mad.)

the proper officer was entitled to recover the tax as arrears of land revenue under Section 41 of the CGST Act, subject to the limitations and conditions specified in the Act.

If the amount is reduced from output tax liability in contravention of this section, it shall be added to the output tax liability of the recipient in his return for the prescribed month [**Section 42(10)**].

V. SECTION 43

Section 43 deals with **matching, reversal and reclaim of output tax liability**.¹³ It stipulates that the registered person ('supplier') must furnish the details of every credit note relating to outward supply in the prescribed manner. The said details will be matched: (a) with the corresponding reduction in the claim for input tax credit furnished by the recipient in his valid return for the same or subsequent tax period; and (b) for duplication of claims of output tax liability [**Section 43(1)**].

If the claim of reduction in output tax liability matches with the details of the corresponding reduction in the claim for input tax credit, it shall be finally accepted and communicated to the supplier [**Section 43(2)**].

However, in case of any discrepancy (such as reduction in output tax liability claimed by a supplier being in excess of the corresponding reduction in input tax credit declared by the recipient for the same supply), the same will be communicated to both the persons [**Section 43(3)**]. Further, if the amount in respect of which any discrepancy is communicated is not rectified by the recipient in his valid return for the prescribed month, it shall be added to the output tax liability of the supplier in his return for the month succeeding the month in which the discrepancy is communicated [**Section 43(5)**].¹⁴ Thereafter, the supplier shall be eligible to reduce the amount added to his outward tax liability if the supplier declares the invoice in his valid return within the time stipulated u/s 39(9) of the Act [**Section 43(7)**]. Any reduction in output tax liability, if accepted, is to be refunded to the recipient in the corresponding part of his electronic cash ledger [**Section 43(9)**].

Similarly, if there is any duplication of claims of output tax liability, it shall be communicated to the supplier [**Section 43(4)**]. The amount claimed as reduction in output tax liability that is in excess on account of duplication of claims shall be added to the output tax liability of the supplier in his return for the prescribed month [**Section 43(6)**].

¹³ Kolkata North (GST A.A.R.) v. Rupa & Co., [2019] 108 taxmann.com 404 (Cal.)

¹⁴ AAP & Co. v. State of Gujarat, [2020] 118 taxmann.com 75 (Guj.)

The supplier is liable to pay interest for the amount added to his output tax liability under this section at the rate specified u/s 50(1) from the date of availing of credit till the corresponding additions are made [**Section 43(8)**].

If the amount is reduced from output tax liability in contravention of this section, it shall be added to the output tax liability of the supplier in his return for the prescribed month [**Section 43(10)**].

VI. SECTION 44

Section 44 provides for **Annual Return**. **Section 44(1)** provides that every registered person shall be required to file annual return for every year before 31st December following end of such financial year.¹⁵ However, certain persons are excluded such as Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person.¹⁶

Section 44(2) provides that persons required to be audited u/s 35(5) (whose turnover is above 2 crore rupees) shall furnish Annual Return under sub-section (1) along with a copy of the audited annual accounts and a reconciliation statement and such other particulars as may be prescribed.¹⁷

VII. SECTION 45

Section 45 is a provision that mandates the filing of a late return.¹⁸ The provision states that every registered person who is required to furnish a return under the provisions of section 39(1) and whose registration has been cancelled, must furnish a final return within 3 months of the cancellation of the registration. Registered persons include every person, except for input service distributors, non-resident taxable persons, or persons paying tax under the provisions of section 10, section 51 and section 52.¹⁹

VIII. SECTION 46

Section 46 stipulates the procedure through which a registered person who does not furnish a final return under section 39, section 44 or section 45 must be dealt with. It states that a notice must be issued requiring the individual to furnish the return within a period of 15 days, in a

¹⁵ Comm'r of Central Tax, Delhi v. M/s Intercontinental Consultants & Technocrats Pvt. Ltd., [2020] 115 taxmann.com 63 (Del.)

¹⁶ Maharashtra AAR, M/s Southern Structural Pvt. Ltd., [2020] 118 taxmann.com 384 (AAR - Maharashtra)

¹⁷ Indus Towers Ltd. v. State of Chhattisgarh, [2019] 103 taxmann.com 71 (Chhattis.)

¹⁸ Maharashtra AAR, Ultratech Cement Ltd., [2021] 122 taxmann.com 496 (AAR - Maharashtra)

¹⁹ Comm'r of CGST, Central Excise & Serv. Tax, Vapi v. Rishabh Plast Indus., [2021] 129 taxmann.com 170 (Guj.)

manner that is prescribed by the act.²⁰

IX. SECTION 47

Section 47 provides that if a person does not furnish the details required under section 37 and 38, or the returns required under section 44 or 45, the individual is to pay a late fee of one hundred rupees a day, subject to a maximum amount of Rs. 5,000.²¹ The second clause states that individuals who don't file returns under section 44 in specific by the due date will be penalised a hundred rupees every day, up to a maximum quarter percent of the individuals turn over.²²

²⁰ United News of India v. Union of India, [2020] 116 taxmann.com 419 (Allahabad)

²¹ ICSI Tax Laws and Practice (2017)

²² Commercial Steel Engineering Corporation v. Union of India, [2019] 104 taxmann.com 108 (Calcutta)