



Critical Issues in GST Assessment

The background features a grayscale image of a tax form on the left, with various fields and checkboxes visible. Two pencils are positioned horizontally in the upper center, and a pen is on the right side. A large, semi-transparent brown rectangle is overlaid in the center, containing the title text.

STATUTORY FRAMEWORK

S.No	Sections	Rules	Category
1.	S. 59 to S.66	R.99 to R.102	Assessment & Audits
2.	S. 67 to S. 72	R.132	Search & Summons
3.	S. 73 to S. 84	R.142	SCN, Order & recovery provisions
4.	S. 95 to S. 106	R.103 to R.105	Advance Rulings
5.	S. 107 to S. 121	R.106 to R.114	Appeals
6.	S. 122 to S. 138		Penalty & offences

Legal Provisions

1. Section 59- Self Assessment

2. Section 60- Provisional Assessment [For rate of tax]

3. Section 61- Scrutiny of returns- Form ASMT-10

4. Section 62- Non Filer Assessment- Form GSTR 3A [Deemed withdrawal if return filed within 60 days from notice]

Various Options of Assessment

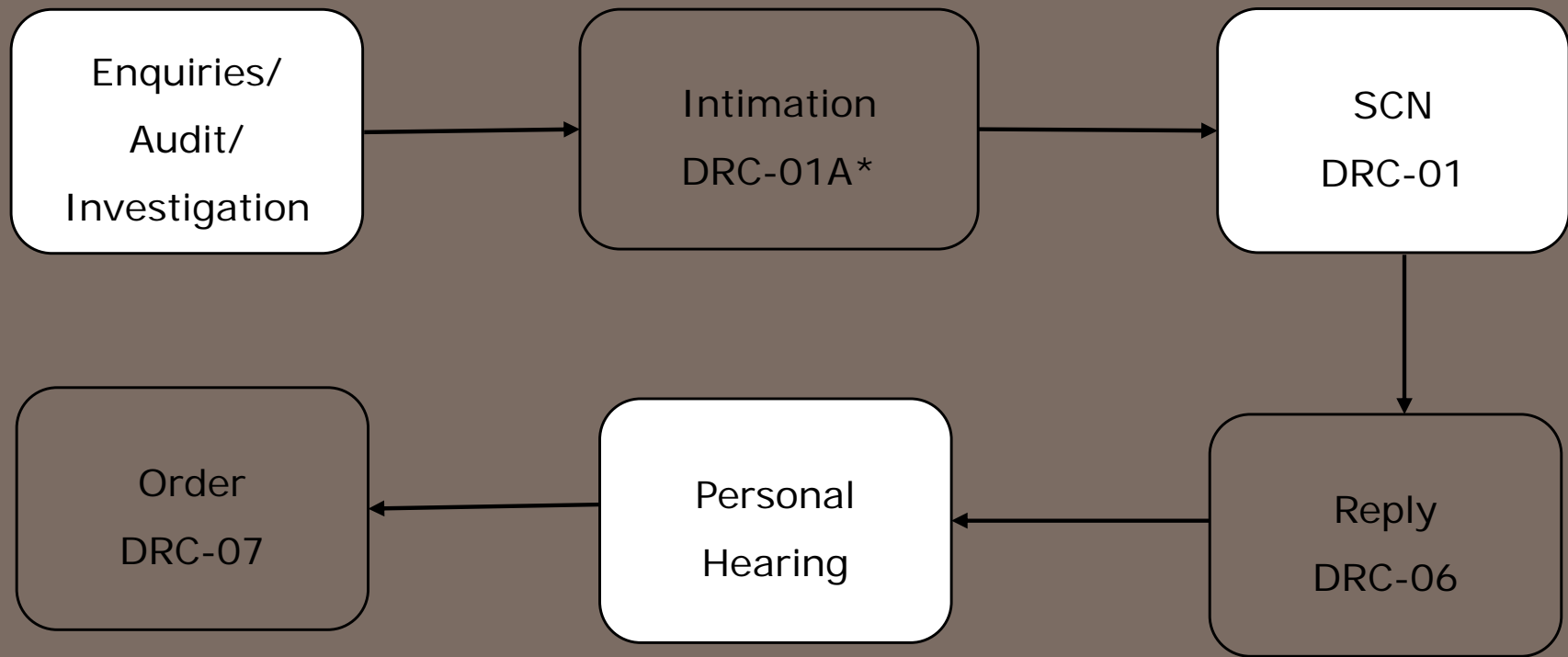
5. Section 63- URD Assessment [5 years from Annual Return]

6. Section 64- Summary Assessment [Evidence of tax evasion & to protect revenue]

7. Section 65- Audit in Form ADT-01

8. Section 66- Special Audit [Dept may direct audit by CA or Cost Accountant]

Various Options of Assessment



** Optional wef 15/10/2020*

Proceedings u/s. 73/ 74

- Tax not paid
- Tax short paid
- Erroneous refund
- Wrong availment or wrong utilization of ITC

on account of :

- Fraud or
- Willful misstatement or
- Suppression of fact to evade tax or

Pre requisites for imposing S. 74

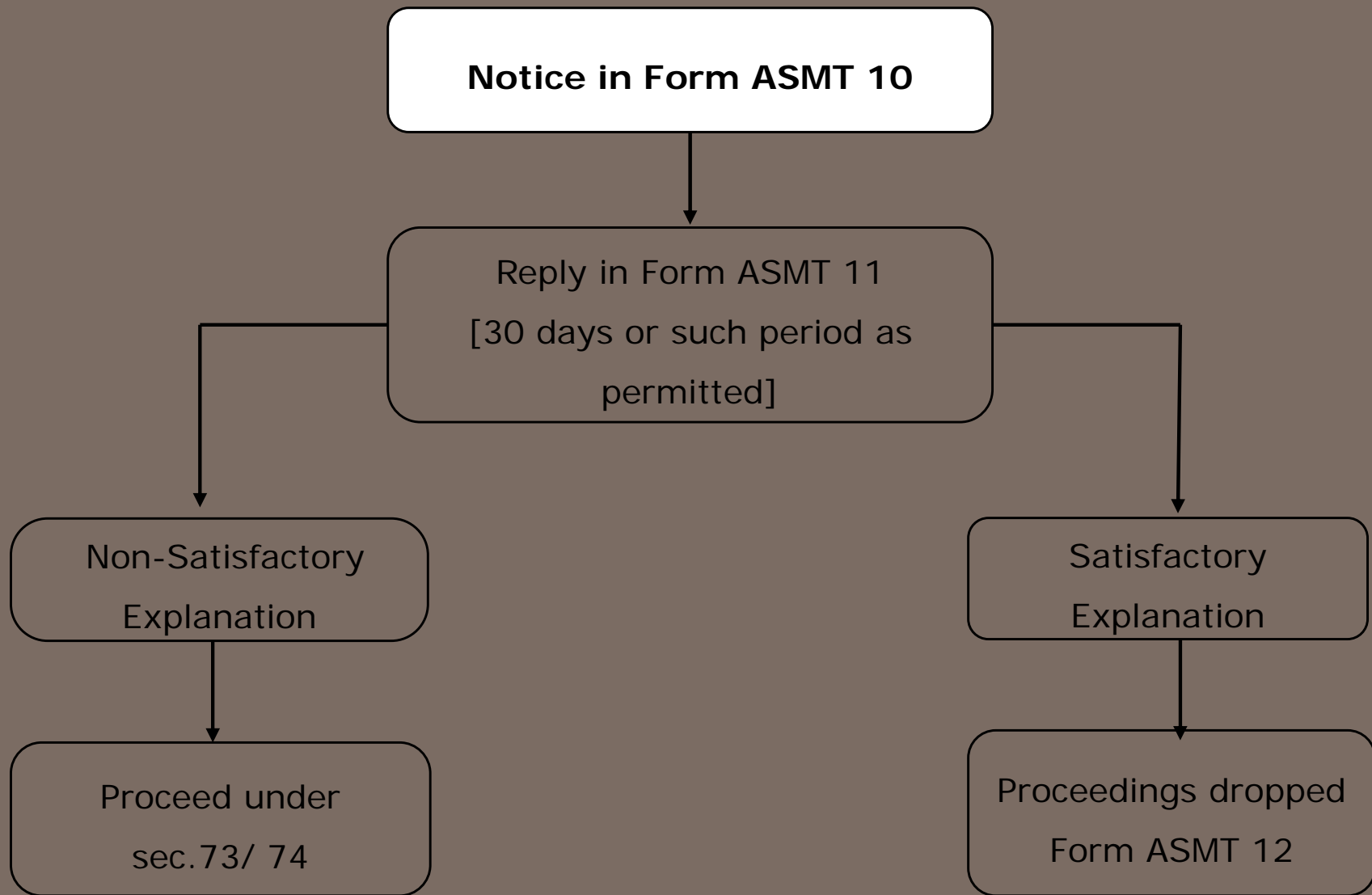
Financial Year	S. 73 (Non-Fraud)		S. 74 (Fraud)	
	DRC-01 (SCN)	DRC-07 (Final Order)	DRC-01 (SCN)	DRC-07 (Final Order)
2020-21	Time Barred	Time Barred	31/08/2026	28/02/2027
2021-22	Time Barred	Time Barred	30/06/2027	31/12/2027
2022-23	30/09/2026	31/12/2026	30/06/2028	31/12/2028
2023-24	30/09/2027	31/12/2027	30/06/2029	31/12/2029
2024-25 & going forward (S 74A)	SCN within 42 months from annual return due date i.e. 30/06/29; Order within 12 months from date of SCN .			

**Section 74A inserted in Finance Act, 2024 w.e.f 1.11.2024*

Time Barring Deadlines




NOTICE IN FORM ASMT 10



Proceedings ASMT-10 notices

KEY ISSUES

- 1 GSTR 1 V/S 3B
- 2 GSTR 2A/2B V/S 3B
- 3 Excess in GSTR 2B vs 3B
- 4 E-WAY BILL



ISSUE 2: GSTR 2A/2B VS 3B

- 1. Comparison summary on GST portal**
- 2. Actual GSTR 2A- monthly**
- 3. Actual GSTR 2B- monthly**
- 4. Column 8A of GSTR -9 [GSTR 2A]- upto F.Y. 2022-23**
- 5. Column 8A of GSTR -9 [GSTR 2B]- upto F.Y. 2023-24**
- 6. Column 8A of GSTR -9 [GSTR 2B +/- Adjustments]- from F.Y. 2024-25**
- 7. IMS**

DIFFERENT TYPES OF 2A/2B AVAILABLE

- a) Possession of tax invoice
- b) Receipt of goods or services
- c) Tax charged in respect of supply actually paid to government
- d) Furnishing of returns

(aa)- details of invoice reflect in GSTR 2B (wef 01/01/2022)

S. 16(2) conditions

Rule 36(4):

- 09/10/2019 to 31/12/2019- 20% mismatch allowed
- 01/01/2020 to 31/12/2020- 10% mismatch allowed
- 01/01/2021 to 31/12/2021- 5% mismatch allowed
- 01/01/2022- No mismatch- 100% matching – GSTR 2B- S. 16(2)(aa)

F.Y. 2017-18 & F.Y. 2018-19: Circular No. 183/15/2022 dt 27/12/2022

F.Y. 2019-20 onwards: Circular No. 193/05/2023 dt. 17/07/2023

Rule 36(4)

S. 155- Burden of Proof

Where any person claims that he is eligible for input tax credit under this Act, the burden of proving such claim shall lie on such person.

Burden of Proof

Timing difference

P.Y. ITC

N.Y. ITC

ITC claim/
reverse/ reclaim

ITC Reversal

Reversed during
the year

Reversed
through DRC-03

180 days
reversal

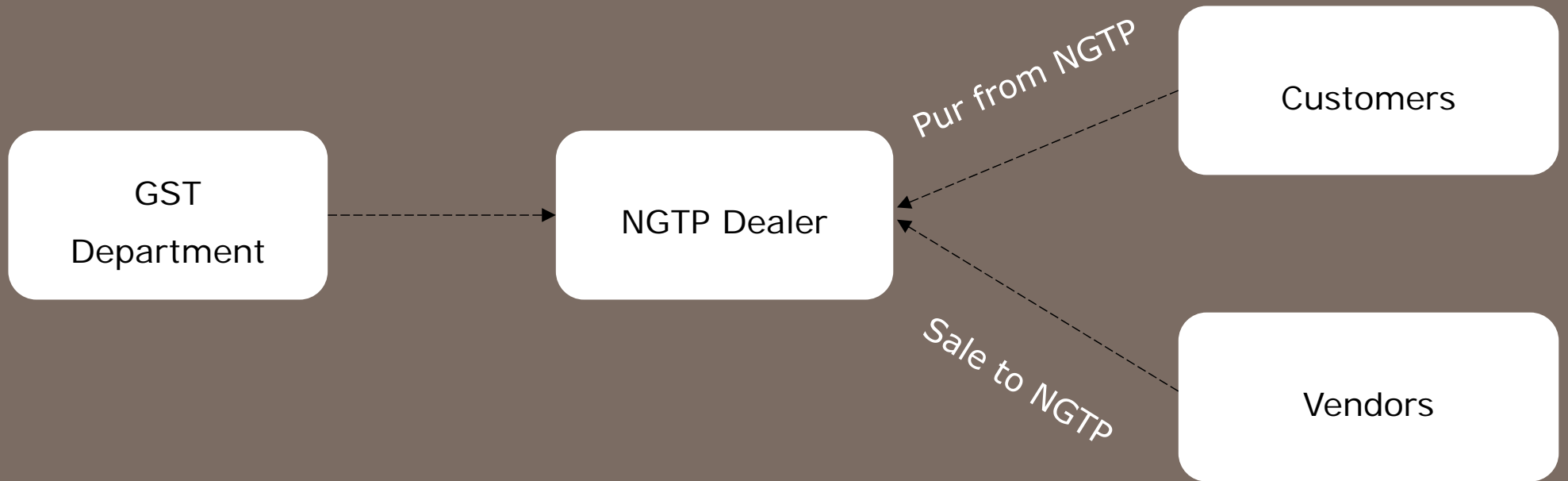
Not in GSTR 2B

B 2 C

Short Filer/ Non
Filer

NGTP

REASON FOR DIFFERENCE



NGTP Dealer- Overview

Sr. No.	GSTIN of Vendor as on date	Status during period of transaction
1.	Suspended	Suspended
2.	Suspended	Active
3.	Cancelled	Cancelled
4.	Cancelled	Active
5.	Blacklisted/ non existent but active	Active

Sr. No.	Category
1.	Verification of KYC of the vendor
2.	Placing of purchase order
3.	Obtaining tax invoice & delivery proof in the form of E-way bill
4.	Verification of GST registration status
5.	Verification of GST return filing status
6.	Deduction of TDS as per Income Tax Act, if applicable
7.	Making bank payment

SOP FOLLOWED BY ASSESSEE

In favor

GSTIN is active during transaction

Dispatch proof

Appearing in 2A/2B

GSTR-1 & GSTR 3B filed

Payment made through bank

Godown confirmation

Source of purchase

Subsequent sale details

Against

GSTIN not active

No dispatch proof

Specific statement of supplier

GSTR 3B not filed

IMPORTANT FACTS

Important judicial precedents:

- Gargo Traders v. Joint Commissioner (State Tax) [2023 (75) G.S.T.L. 3 (Cal.)]
- Himalaya Communicatoin Pvt Ltd vs UOI [(2025) 31 Centax 329 (H.P.)]
- LGW Industries vs UOI [(2023) 4 Centax 373 (Cal.)]
- Sanchita Kunud vs Asst Comm of State tax [2022 (63) G.S.T.L. 413 (Cal.)]
- Shiva Chemicals vs vs Asst Comm of State tax [(2024) 21 Centax 18 (Cal.)]

Summary of above decisions:

- ITC cannot be denied solely on the ground of retrospective cancellation of supplier
- Need to verify if purchases are supported by invoices, e-way bill and bank payment
- Initial burden on assessee to prove genuineness by way of documents

Important Judicial Precedents

No disallowance if no action on supplier:

- Ass Comm of State Tax vs Suncraft Energy Pvt. Ltd. [(2023) 13 Centax 189 (S.C.)]
- Diya Agencies vs State Tax officers (2023) 10 Centax 266 (Ker.)
- GMA Pinnacle Automotives Pvt Ltd vs. State Tax Officer [TS-167-HC(KER)-2024-GST]
- Wipro Ltd India vs. Asst Comm of Central Taxes and Ors. [TS-02-HC(KAR)-2023-GST]
- D Y Beathel Enterprises vs. State Tax Officer [TS(DB)-GST-HC(MAD)-2021-222]

Summary of above decisions:

- No disallowance merely on ground of non reflection in GSTR 2A
- No disallowance for bonafide mistakes which are technical in nature
- S. 16 conditions not struck down and not declared ultra vires
- Period covered prior to GSTR 2B amendment i.e. prior to 01/01/2022

Important Judicial Precedents



Maruti Enterprise vs Union of India
Writ Petition No. TS-312-HC(GUJ)-2026-GST

Dated: 01st May 2026

Facts of the Case:

- The petitioners (including maruti enterprise) challenged the constitutional validity of Section 16(2)(c) of the CGST Act, which provides that ITC can be availed only if the supplier has actually paid tax to the Government.
- The petitioners contended that they had fulfilled all prescribed conditions such as possession of valid tax invoices, receipt of goods/services, and reflection of the transactions in GSTR-2A/2B.
- However, ITC was denied solely due to the supplier's failure to deposit tax, an aspect beyond the control of the recipient.



- They argued that this provision is arbitrary and violative of Articles 14, 19(1)(g), 265, and 300A of the Constitution, leads to double taxation, imposes an impossible condition on the recipient, and provides no mechanism to verify whether the supplier has actually paid the tax.

High Court Observations:

- The Gujarat High Court upheld the constitutional validity of Section 16(2)(c) and held that ITC is not a vested right but a statutory concession subject to strict conditions.
- The Court observed that the condition requiring actual payment of tax by the supplier is intrinsic to the GST framework, which is designed as a self-policing system linked to actual tax flow.



- Allowing ITC without such payment would disrupt the destination-based taxation mechanism and adversely affect inter-state revenue settlement.
- It further noted that recipient is entitled to re-avail ITC once the supplier pays the tax in terms of Section 41 and Rule 37A, thereby making the denial temporary and not permanent.
- The Court refused to read down the provision for bona fide purchasers, holding that hardship or practical difficulty cannot be a ground to invalidate a fiscal statute.
- It also distinguished earlier decisions of the Delhi High Court and Tripura High Court on the basis that the GST regime is materially different from the earlier VAT framework.

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ISSUE 4: Excess in GSTR 2B

Circular No 170/22 dt.06/07/2022

Details	Integrated Tax	Central Tax	State/UT Tax	Cess
1	2	3	4	5
(A) ITC Available (whether in full or part)				
(1) Import of goods				
(2) Import of services				
(3) Inward supplies liable to reverse charge (other than 1 & 2 above)				
(4) Inward supplies from ISD				
(5) All other ITC	ITC as per 2B			
(B) ITC Reversed				
(1) As per rules 42 & 43 of CGST Rules	Permanent Reversal- R. 42/43/17(5)			
(2) Others	Temporary Reversal- 180 days/ invoice not received			
(C) Net ITC Available (A) – (B)				
(D) Ineligible ITC				
(1) As per section 17(5)	180 days + Late invoice			
(2) Others	16(4) late filing + Place of supply mismatch			

Updated GSTR 3B -July 2022

1. Start with GSTR 2B and compulsorily avail ITC as per GSTR-2B

2. Reverse ITC under “permanent reversal” pertaining to:
 - Rule 42 & Rule 43
 - Section 17(5)

3. Reverse ITC under “temporary reversal” pertaining to
 - Invoice appearing in GSTR 2B but not received by purchase team
 - Non-payment to vendors within 180 days.

4. Re-claim ITC reversed under “temporary reversal” as and when same is eligible:
 - Invoice received late by purchase team,
 - Delay in payment to vendors beyond 180 days

New Scheme of return filing

1. Books of accounts and GSTR 3B does not match
2. Invoices accepted and reversed no separate list in books of account.
Need to keep manual back up
3. Communication with purchase department with respect to accepted and reversed invoices
4. Reversal column does not have transaction wise break up
5. Wrong entry

Challenges

1.

Disallowance of ITC does not arise since conditions of S. 16 and R. 36 are not violated anywhere

2.

Penalty for incorrect filing of return of 10% of tax evaded- No tax is evaded

3.

Misc penalty- Rs. 25,000/-. Can be contested

4.

Taking wrong ITC appearing in GSTR-2B may lead to violation of S. 16- conditions for availing of ITC

Circular not mandatory



ISSUE 5: E-WAY BILLS

Mis-match between Sales as per GST returns & sales as per E-way Bill

Sr.No.	Category	GST returns	E-way bill
1.	Service Transaction	YES	NO
2.	Sale transaction below E-way bill Limit	YES	NO
3.	E way bill on Inward goods such as purchase returns	NO	YES
4.	Goods sent for Job Work	NO	YES
5.	Credit Note and subsequent sales	YES	NO
7.	E way bill generated by buyer	YES	NO
8.	Hand delivery	YES	NO
9.	Warranty	NO	YES

REASON FOR MIS-MATCH

E-WAYBILL ENTRY FORM

[●] indicates mandatory fields for E-Way Bill and [●] indicates mandatory fields for GSTR-1]

Transaction Details

Supply Type ●	<input type="radio"/> Outward <input checked="" type="radio"/> Inward	Sub Type ● ●	<input checked="" type="radio"/> Supply <input type="radio"/> Import <input type="radio"/> SKD/CKD/Lots <input type="radio"/> Job work Returns <input type="radio"/> Sales Return <input type="radio"/> Exhibition or Fairs <input type="radio"/> For Own Use <input type="radio"/> Others		
Document Type ●	Tax Invoice ●	Document No ● ●	Document Date ● 22/04/2026 ●	Transaction Type ●	Regular ●

Bill From

Name	<input type="text" value="Name"/> ●
GSTIN ●	<input type="text"/> ●
State ●	<input type="text" value="-State-"/> ●

Dispatch From

Address	<input type="text"/>	<input type="text"/>
Place	<input type="text"/>	
Pincode ●	<input type="text"/> ●	<input type="text" value="-State-"/> ●

Bill To

Ship To

EWB For Inward goods

Transaction Details

Supply Type Outward Inward Sub Type Supply Export Job Work SKD/CKD/Lots Recipient Not Known For Own Use Exhibition or Fairs Line Sales Others

Document Type Document No. Document Date Transaction Type

Bill From

Name	<input type="text" value="Name"/>
GSTIN	<input type="text"/>
State	<input type="text" value="MAHARASHTRA"/>

Dispatch From

Address	<input type="text"/>
Place	<input type="text" value="Mumbai Suburban"/>
Pincode	<input type="text" value="400086"/> <input type="text" value="MAHARASHTRA"/>

Bill To

Ship To

EWB For Job Work

E-WAYBILL ENTRY FORM

[● indicates mandatory fields for E-Way Bill and ● indicates mandatory fields for GSTR-1]

Transaction Details

Supply Type ●	<input checked="" type="radio"/> Outward <input type="radio"/> Inward	Sub Type ● ?	<input type="radio"/> Supply <input type="radio"/> Export <input type="radio"/> Job Work <input type="radio"/> SKD/CKD/Lots <input type="radio"/> Recipient Not Known <input type="radio"/> For Own Use <input type="radio"/> Exhibition or Fairs <input type="radio"/> Line Sales <input checked="" type="radio"/> Others
		<input type="text" value="Warranty"/>	

Document Type ●	Delivery Challan ?	Document No ● ?	Document Date ●	22/04/2026 ?	Transaction Type ●	Regular ?
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Bill From

Name	<input type="text" value="Name"/> ?
GSTIN ●	<input type="text"/> ?
State ●	MAHARASHTRA ?

Dispatch From

Address	<input type="text"/>
Place	Mumbai Suburban
Pincode ●	400086 ? MAHARASHTRA ?

EWB For Warranty

Transaction Details

Supply Type Outward Inward Sub Type Supply Import SKD/CKD/Lots Job work Returns Sales Return Exhibition or Fairs For Own Use Others

Document Type Document No. Document Date Transaction Type

Bill From

Name	<input type="text" value="Name"/>
GSTIN	<input type="text" value="URP"/>
State	<input type="text" value="OTHER COUNTRIES"/>

Dispatch From

Address	<input type="text"/>	<input type="text"/>
Place	<input type="text"/>	
Pincode	<input type="text"/>	<input type="text" value="-State-"/>

Bill To

Ship To

EWB For Import

Important judicial precedents:

- Vishnu Singh vs State of UP [(2025) 28 Centax 384 (All.)]
- Additional Commissioner vs Zhuzoor Infratech Pvt Ltd [(2025) 34 Centax 228 (S.C.)]
- Chennai Metals vs. Assistant Commissioner (ST) (2024) 15 Centax 429 (Mad.)
- Ganesh Engineering vs. Assistant Commissioner (ST), Chennai (2024) 17 Centax 415 (Mad.)

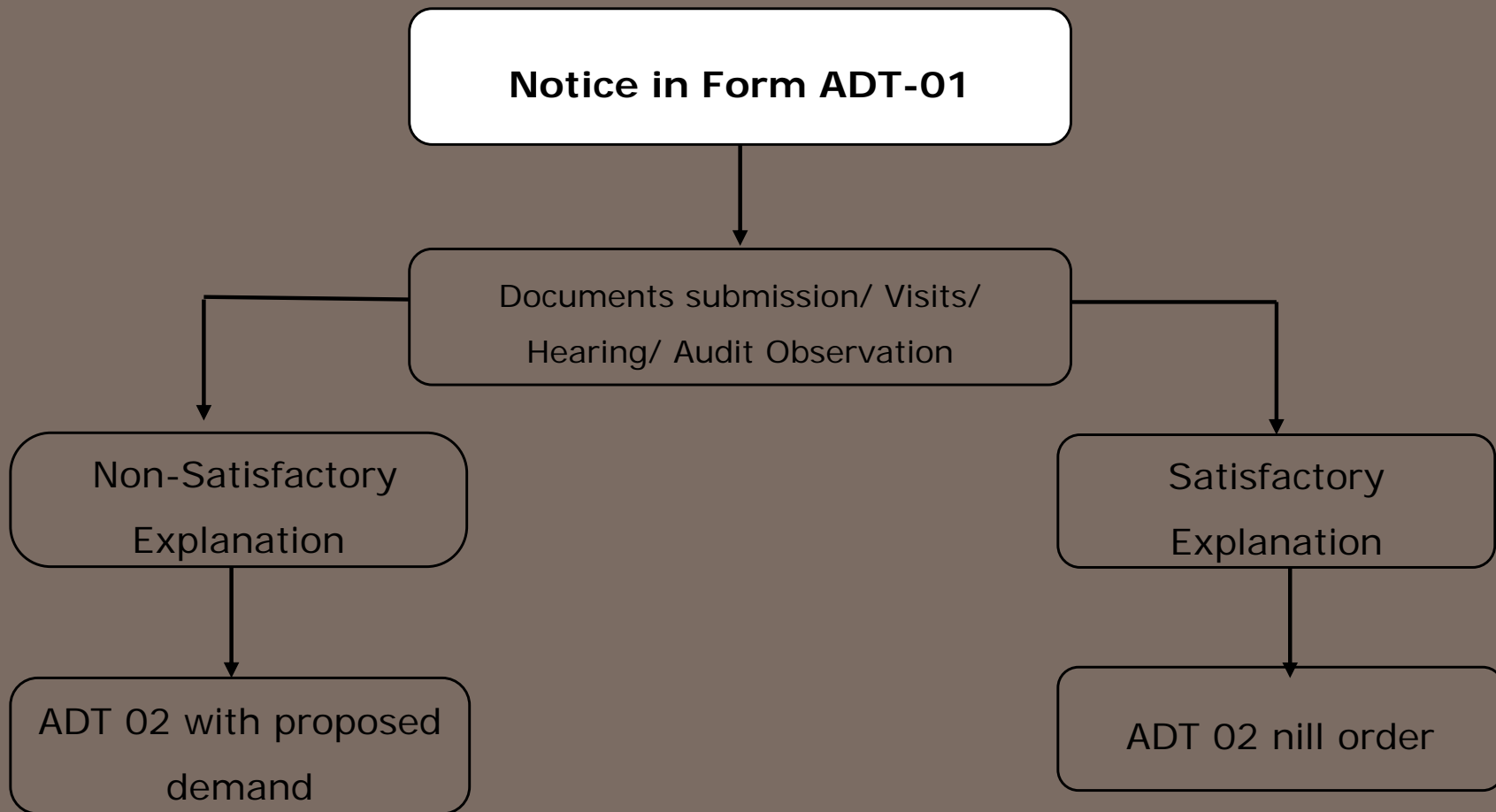
Summary of above decisions:

- E-way bill provisions are facilitative in nature and not punitive
- Minor or technical defects in E-Way Bills (such as clerical errors, expiry during transit, or mismatch of details) should not lead to automatic detention or penalty.
- Courts have emphasized that substantive compliance prevails over procedural lapses, and penal provisions cannot be invoked in a mechanical manner.

Important Judicial Precedents

A grayscale photograph of a desk with tax forms, pencils, and a pen. The forms are partially visible on the left side, showing fields for social security numbers, marital status, and tax-related questions. Two pencils are positioned vertically in the upper right, and a pen is in the lower right. A large, semi-transparent brown rectangle is overlaid in the center, containing the text 'GST AUDITS' in white, bold, sans-serif font.

GST AUDITS



Time Limits: 3 months from 'commencement of audit' (further 6 months with approval)
Commencement of audit Submission of all documents or actual visit whichever is later

GST AUDIT PROCEEDINGS



OUTWARD LIABILITY

OUTWARD LIABILITY

Sr. No.	Category
1.	Reconciliations- GSTR 1 vs GSTR 3B vs Books
2.	Other Income / Non operating revenue
3.	Credit Notes
4.	Exemptions & Non GST Supply
5.	Exports
6.	Merchant sales at 0.1%

KEY AREAS OF AUDIT

EXAMPLES

Sr. No.	Description	GST
1.	Interest	Exempt
2.	Dividend	N.A.
3.	Profit on sale of asset	Taxable
4.	Profit on sale of investments	N.A.
5.	Residential rent	Exempt
6.	Commercial rent	Taxable
7.	Commission/ Brokerage	Taxable
8.	Interest on late payment	Taxable
9.	Liquidated damages/ compensation	Case to case basis

Other Income / Non operating revenue

EXAMPLES

Sr. No.	Description	Notification	GST
1.	Exempt supply of goods or services	As per exemption notification	Rule 42 reversal
2.	Sale from bonded warehouse	Schedule III [E. 8a)]	Rule 42 reversal (wef Oct 2023)
3.	High Seas Sale	Schedule III [E. 8(b)]	No ITC reversal
4.	Out & Out Sales	Schedule III [E. 7]	No ITC reversal
5.	Sale of land	Schedule III [E.5]	No ITC reversal
6.	Sale of post OC flats	Schedule III [E.5]	Rule 42 reversal

EXEMPT INCOME/ NON GST SUPPLY



Credit Notes

Different types of Credit Notes

1. Change in price
2. Goods return
3. Short quantity
4. Quantity discount
5. Cash discount/ early payment discount
6. Payment not received

S. 34 conditions

1. Taxable value or tax charged on invoice is found to be exceed supply value
2. Goods or service are deficient
3. Time limit- 30th November from end of financial year or annual return whichever is earlier
4. ITC has been reversed by recipient (w.e.f 01/10/2025)
5. Circular No. 212/6/2024 dt 26//06/2024- confirmation from recipient- withdrawn
6. IMS Action- optional



IMS- Option to Declare ITC to be Reduced

- A new feature allows the recipient taxpayer to declare the exact amount of Input Tax Credit (ITC) that needs to be reduced at the time of accepting Credit Notes or related amendments.
- This is particularly useful where ITC was not availed or partially reversed earlier.
- Recipients can now specify:
 - “No”, if ITC was never availed – no reversal will occur.
 - “Yes”, if reversal (full or partial) is required – the recipient can declare the precise amount to be reversed.
- Based on the declaration, the ITC adjustments will automatically reflect in GSTR-2B and subsequently in GSTR-3B.

SALE @

0.1%

1. Supply of same goods for further exports
2. Valid tax invoice and Purchase Order with 0.1% GST rate
3. Export within 90 days from date of invoice
4. Indication of GSTIN & tax invoice details of supplier on Shipping Bill
5. Movement of goods directly to port or registered warehouse
6. If recipient intends to aggregate supplies, all such goods to directly move to registered warehouse from respective suppliers.
7. Acknowledgement from warehouse operator
8. All above documents to be submitted with jurisdictional GST officer of supplier

The background features a grayscale image of a tax form on the left, two pencils in the upper center, and a pen on the right. A large, semi-transparent brown rectangle is overlaid in the center, containing the word 'Exports' in white. A white horizontal line is positioned below the text.

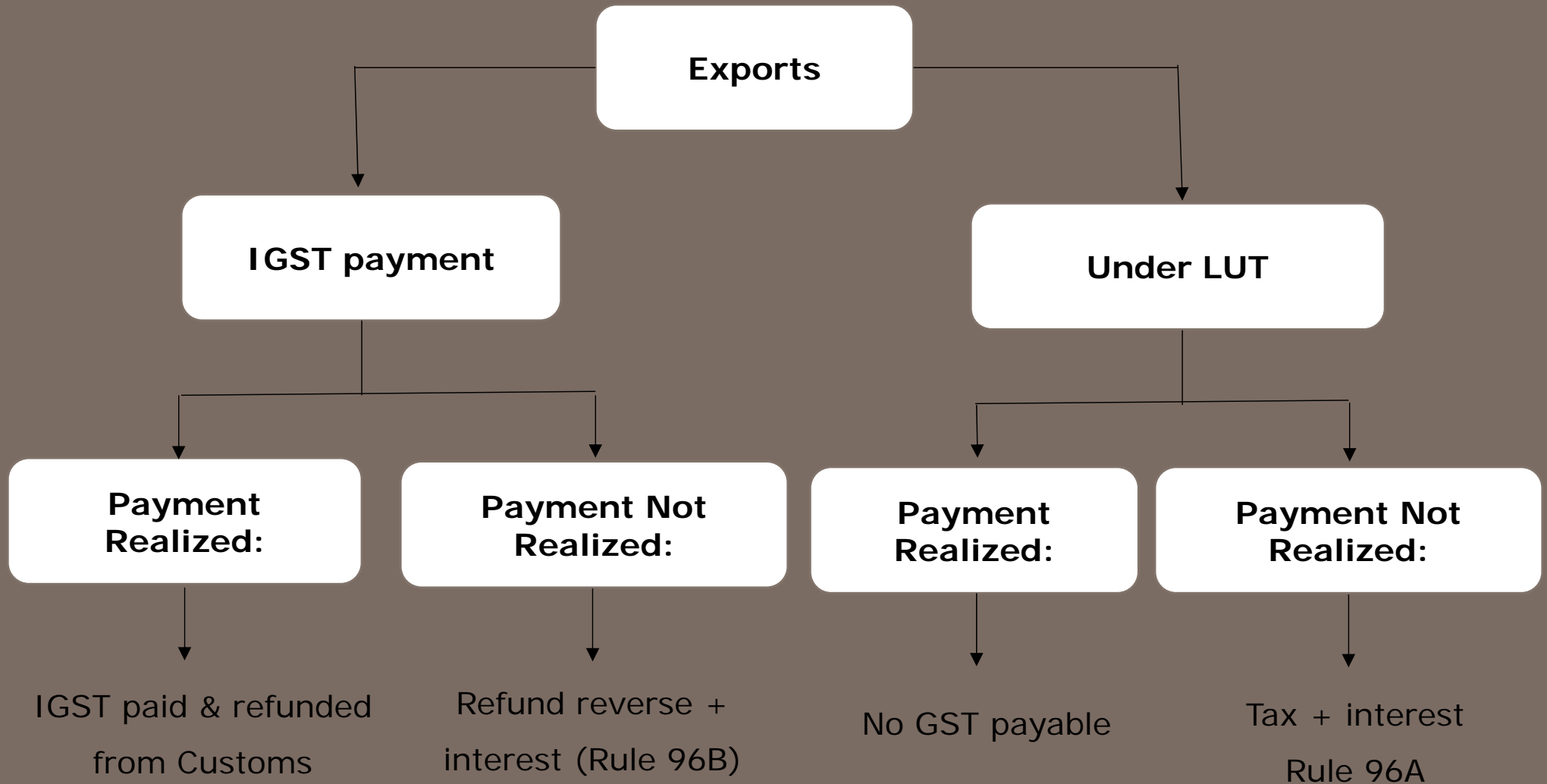
Exports

S. 2(5) of IGST Act- Export of goods

means taking goods out of India to a place outside India;

S. 2(6) of IGST Act- Export of Services

S.No	Conditions	Remarks
1.	Supplier of service is located in India	Normally satisfied
2.	Recipient of service is located outside India	Normally satisfied
3.	Place of supply of service is outside India	S. 13 of IGST Act
4.	Payment for has been received in convertible foreign exchange <i>or INR where permitted by RBI</i>	FIRC/ BRC
5.	Supplier and recipient are not merely establishments of a distinct person	Circular 161/17/2021 dt 20/09/21



Export realization Rule 96

R. 96(10) Exporter claiming IGST refund should not have availed benefit of below NN

Sr. No.	Description	Notification
1.	48/2017-Central Tax dated 18.10.2017	Deemed export (Advance authorization, EPCG, EOU,)
3.	41/2017-Integrated Tax (Rate) dated 23.10.2017	Supply of goods at concessional IGST rate for exports at IGST 0.1%
4.	78/2017-Customs dated 13.10.2017	IGST exemption on imports under Advance Authorization & EPCG schemes
5.	79/2017-Customs dated 13.10.2017	IGST exemption on imports by EOU/STP/EHTP units.

* Omitted wef 08/10/2024

Important judicial precedents:

- Hikal Ltd vs Union of India [(2025) 34 Centax 249 (Bom.)]
- Addwrap Packaging Pvt Ltd Vs Union of India [(2025) 31 274 (Guj.)]
- Shiva Pharmachem Ltd Vs Union of India [(2025) 32 198 (Guj.)]
- Sance Laboratories Private Limited Vs Union of India [(2024) 23 435 (Ker.)]

Summary of above decisions:

- Rule 96(10) ibid was to be declared ultra vires Section 16 of IGST Act and unenforceable
- Orders and proceedings invoking rule 96(10) would not survive
- Recommendations of GST Council to omit Rule 96(10) prospectively would apply to all pending proceedings and cases
- Where Rule 89(4B) and Rule 96(10) of CGST Rules were omitted on 8-10 2024 without any saving clauses or application of section 6 of General Clauses Act, all pending proceedings and unfinalized orders will stand lapsed

Important Judicial Precedents

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REVERSE CHARGE

REVERSE CHARGE LIABILITY

Sr. No.	Category	Imp Remarks
1.	Legal Fees	Sr No 45 of NN 12/2017- No RCM if t/o upto Rs. 20 Lakhs
2.	GTA	FCM cases- Declaration in Form V
3.	Sponsorship	By any person other than body corporate
4.	Rent a cab	By any person other than body corporate
5.	Directors fees	Other than employment
6.	FSI/ TDR/ Long term lease	
7.	Residential Rent paid to URD	
8.	Commercial rent paid to URD	
9	Import of services	

MAIN EXAMPLES OF RCM

Sr. No.	Category	Place of Supply	Section
1.	Consultancy/ Professional fees	India	Default Rule- S. 13(2)
2.	Overseas Commission Payments	India (wef 30/03/26)	Default Rule- S. 13(2)
3.	Royalty payments	India	Default Rule- S. 13(2)
4.	Purchase of Software	India	OIDAR- S. 13(12)
5.	Membership & Subscriptions	India	Default Rule- S. 13(2)
6.	Foreign exhibition payments	Outside India	Event based- S. 13(5)
7.	Foreign stay/ accommodation	Outside India	Imm property- S. 13(4)
8.	Foreign Bank Charges	N.A.	N.A.

- Reconcile with Form 15CA/ CB
- Reconcile with foreign expenditure as per ITR

Import of services



INPUT TAX CREDIT

INPUT TAX CREDIT

Sr. No.	Category
1.	S. 16(2) conditions- Receipt of goods & services
2.	S. 16(2) GSTR 2A- Non Filer/ Late Filer/ RC Cancelled
3.	Payment within 180 days
4.	Blocked Credits u/s 17(5)
5.	ITC reversal- important points
6.	Rule 86B

Sr. No.	Category	Remarks
1.	Motor vehicles upto 13 seater	Repairs/ Insurance/ renting/ hiring
2.	Food, beverages	Except when part of outward supply
3.	Life insurance & health insurance	Keyman insurance, goods insurance, marine insurance
4.	Immovable property	
5.	CSR	Wef 01/10/2023
6.	Personal consumption	Mobile phone/ staff welfare/ uniforms/ helmets/ safety gears
7.	Gift/ Free samples/ goods destroyed	
8.	Tax paid in terms of S. 74	

Blocked Credits u/s 17(5)



ITC reversal --- Imp Points

S. 17(1)

- Business and non business use. *E.g. mobile phones / laptops*

S. 17(2)

- Taxable and exempt supplies

S. 17(3)

Value of exempt supplies

- *NIL rated supplies*
- *Non GST items such as liquor/ petrol/ etc*
- *Supplies on which RCM is applicable*
- *Transaction in securities*
- *Sale of land*
- *Sale of post OC flats*
- *Schedule III supplies not included [except sale from bonded warehouse]- wef 01/10/23*

S. 17- ITC reversal

Transaction in securities

Expln to R. 45- 1% of Sale value to be treated as exempt supplies

Sale of post OC Flats

Amended R. 42- Reversal based on area of the project

Sale of F.A.

Higher of the two:
GST on sale value or
ITC reversal as per R. 43
(Useful life of 5 years – Actual no of year used)

Important scenarios



Rule 86B

Applicability	Not applicable if
1. Use of Elec Credit Ledger- 99%	1. Proprietor/ any 2 partners / karta/ managing director/ etc have paid Income Tax > Rs. 1 Lakh
2. Turnover exceeds Rs. 50 Lakhs per month	2. Taxpayer has received refund > Rs. 1 Lakhs in preceding F.Y.
3. Turnover Includes- Taxable Supplies	3. Government / PSU / local authority/ statutory body
4. Turnover Excludes- Exports/ Exempted supply/ Non GST supply	4. Monthly Turnover below Rs. 50 Lakhs
	5. Cash payment of 1 % of total output liability (other than RCM)

RULE 86B



General Penalty

S. 125- Rs. 25,000/-

Sr. No.	Category
1.	Non display of GSTIN
2.	Non addition of additional place of business (e.g.- site address/ godown)
3.	Non Filing of Form ITC-04
4.	Incorrect Filing of GSTR-1 (Documents issued)
5.	Incorrect Filing of GSTR 3B
6.	Non maintenance of stock records

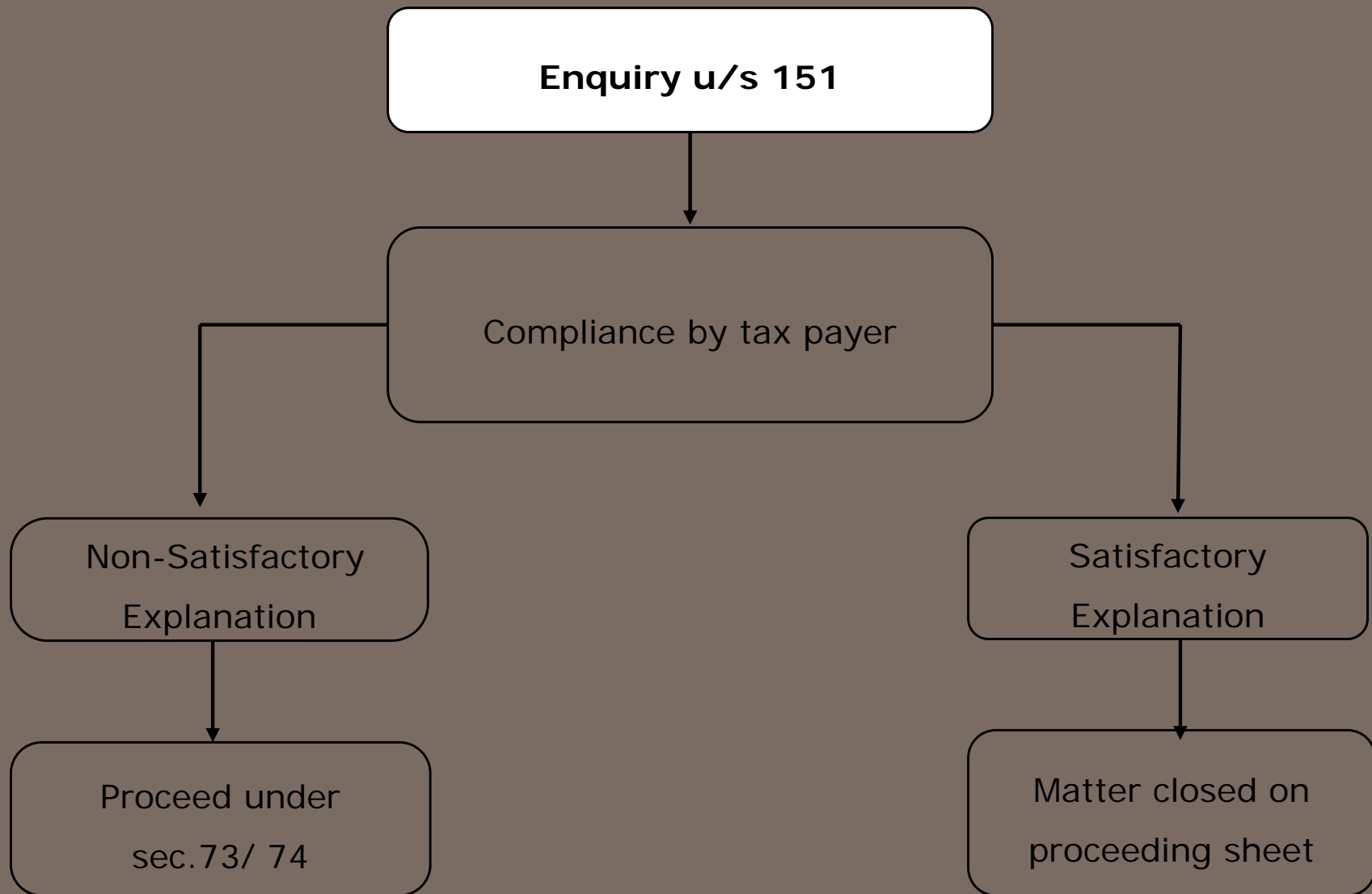


ORDER TO CALL INFORMATION

S. 151- Power to call information

The Commissioner or an officer authorised by him may, by an order, direct any person to furnish information relating to any matter dealt with in connection with this Act, within such time, in such form, and in such manner, as may be specified therein.

S. 151



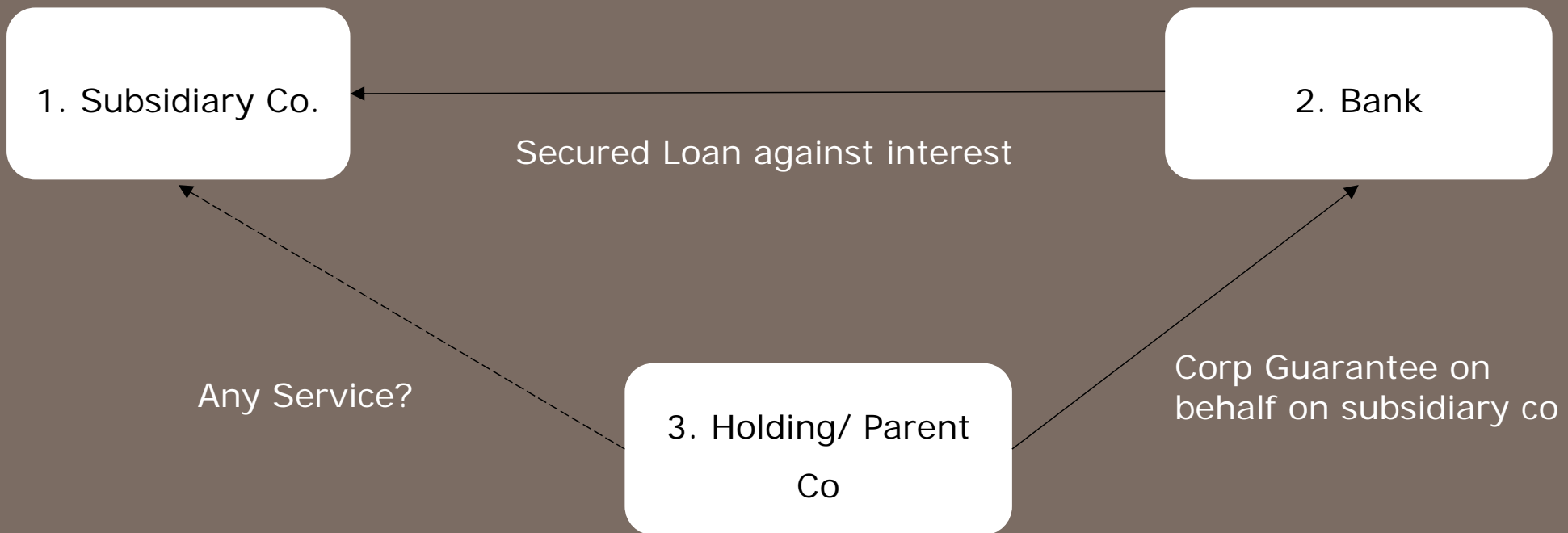
Procedure

KEY ISSUES

- 1 CORPORATE GUARANTEE
- 2 FSI/ TDR PAYMENTS TO GOVERNMENT
- 3 ASSIGNMENT OF LEASE RIGHTS
- 4 GST TDS MISMATCH



Corporate Guarantee



Corporate Guarantee- Synopsis

1. Cover its own exposure against default by subsidiary company

2. Safeguard financial health of the group

3. As a parent company, it is very much own function of holding company

4. Whether any service provided by Holding company to subsidiary company?

What is corporate guarantee?

Bank Guarantee

- Mandated under banking laws in the course of its business.
- Failure will lead to deficiency in services

Corporate Guarantee

- Issued for business needs, not based on banking laws.
- Issued without any underlying assets or securities.
- Facility provided to subsidiary.
- Out of service definition

Bank Guarantee vs Corporate Guarantee

1. Videocon Industries Ltd. v. Addl. CIT [2015] 55 taxmann.com 263 (Mumbai – Trib)

2. Bharti Airtel Ltd [2014] 63 SOT 113/43 taxmann.com 150

3. Manugraph India Ltd. [2016] 69 taxmann.com 400 (Mumbai – Trib.)

1. Does not involve cost or does not have any bearing on profits.

2. The issuance of corporate guarantee by assessee on behalf of its subsidiary company is in nature of quasi capital or shareholder activity and not in nature of 'provision for services'

3. Therefore outside purview of international taxation u/s 92B

Judgements under Income Tax

- Schloss HMA Pvt Ltd [(2025) 26 Centax 382 (Bom.)]
- Vedanta Ltd [(2025) 26 Centax 244 (Bom.)]
- Sterlite Power Transmission Limited- 2024 (84) G.S.T.L. 42 (Del.) [28-02-2024]
- Acme Cleantech Solutions Pvt Ltd - 2024 (86) G.S.T.L. 257 (P&H.) [03-05-2024]

Stay by Hon'ble High Court

Sr. No	Notification	Date	Narration
1.	Schedule I		Activities treated as supply, including transactions between related persons in the course of business (even without consideration)
2.	Nn 52/2023	26/10/2023	Insertion of Rule 28(2)
3.	Circular No. 204/16/2023	27/10/2023	Clarification on issues pertaining to taxability of personal guarantee and corporate guarantee
4.	NN 12/2024	10/07/2024	Amendment in Rule 28(2) and proviso to 28(2)
5.	Circular No. 225/19/2024	11/07/2024	Clarification on various issues pertaining to taxability and valuation of supply of services of providing corporate guarantee between related persons

- **S. 25(4) - Distinct Persons**

A person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as distinct persons for the purposes of this Act.

- **S. 25(5) – Establishment of Distinct Persons**

Where a person who has obtained or is required to obtain registration in a State or Union territory in respect of an establishment, has an establishment in another State or Union territory, then such establishments shall be treated as establishments of distinct persons for the purposes of this Act.

- **Schedule I- Activities treated as supply, including transactions between related persons in the course of business (even without consideration)**

Supply of goods or services or both between 'related persons' or between 'distinct persons' as specified in section 25, will qualify as supply even if made without consideration provided the same is made in the course or furtherance of business.

Relevant Provisions...

Rule 28 - Value of supply of goods or services or both between distinct or related persons, other than through an agent. -

(1) The value of the supply of goods or services or both between distinct persons as specified in sub section (4) and (5) of section 25 or where the supplier and recipient are related, other than where the supply is made through an agent, shall-

(a) be the open market value of such supply;

(b) if the open market value is not available, be the value of supply of goods or services of like kind and quality;

(c) if the value is not determinable under clause (a) or (b), be the value as determined by the application of rule 30 or rule 31, in that order:

Provided that where the goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to ninety percent of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person:

Provided further that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services.

Rule 28(1)

(2) Notwithstanding anything contained in sub-rule (1), the value of supply of services by a supplier to a recipient who is a related person located in India, by way of providing corporate guarantee to any banking company or financial institution on behalf of the said recipient, shall be deemed to be one per cent of the amount of such guarantee offered per annum, or the actual consideration, whichever is higher.

Provided that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the value of said supply of services.

Rule 28(2)- wef 26/10/2023



Important clarifications

Before 26/10/2023

- No specific valuation
- Value charged on invoice deemed to be accepted, if recipient eligible for full ITC

After 26/10/2023

- 1% of corp. guarantee amount per year
- Value charged on invoice deemed to be accepted, if recipient eligible for full ITC

Before & After amendment

**1. Guarantee provided for
6 months**

1% of GA x 6/12

**3. Guarantee renewed
every year**

1% of GA every year

**2. Guarantee provided for
5 years**

1% of GA x 5

**4. No tenure
specified**

???

**Point 6 of Circular 225/19/24 dt/ 11/07/24*

Guarantee spreading across financial years

Exports

- CG provided by Indian Co. to overseas Co.
- R. 28(2) not applicable
- R. 28(1) valuation
- Export of service subject to conditions

Imports

- CG provided by foreign co. to Indian Co.
- Import of service
- RCM

Exports & Import

- **Partial or no loan disbursement**

Valuation linked to guarantee amount & not actual loan utilized

- **Change of lender / Loan Takeover**

No impact under GST

- **Co-Guarantors:**

If share of co-guarantor fixed- 1 % GST liability to be divided as per respective share

If share of co- guarantor not fixed- 1% GST liability to be divided equally

- **Personal guarantee by directors**

No GST

- **Recipient eligible for full ITC**

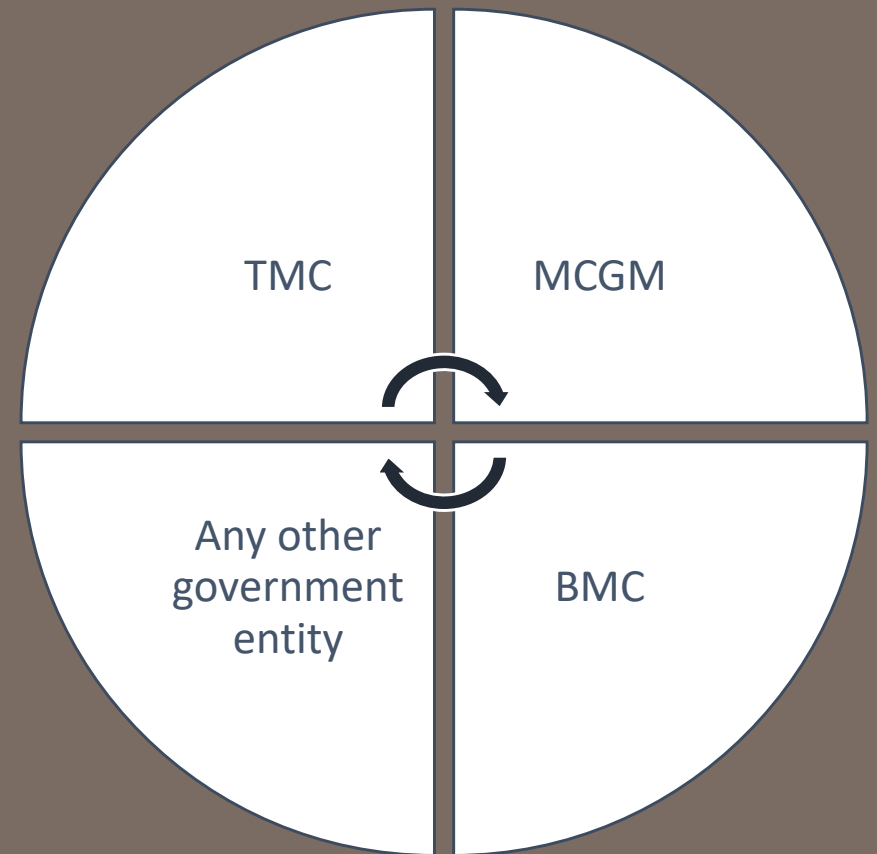
Any valuation deemed to be accepted

Other Important clarification



GOVERNMENT PAYMENTS

- ❖ Basic FSI
- ❖ Additional FSI
- ❖ Staircase & Lift Premium
- ❖ Pest Control
- ❖ Scrutiny Fees
- ❖ Water Deposit
- ❖ Labour Cess Tax
- ❖ Property Tax
- ❖ Security Deposit



Payments To Government

RCM Notification

SI No.	Category of Supply of Services	Supplier of Service	Recipient of service
5A	Services supplied by the Central Government, State Government, Union territory or local authority to a business entity excluding....	Central Government, State Government, Union territory or local authority	Any business entity located in the taxable territory
5B	Services supplied by any person by way of transfer of development rights or Floor Space Index (FSI) (including additional FSI) for construction of a project by a promoter.	Any person	Promoter

Exemption Notification

NN 14/2017 dt. 28.06.17, r.w. NN 16/2018- Central tax (Rate) dt. 26.07.2018

"Services by way of any activity in relation to a function entrusted to a Panchayat under article 243G of the Constitution or to a Municipality under article 243W of the Constitution."

S. 2(69)- Local Authority

- a) *a "Panchayat" as defined in clause (d) of article 243 of the Constitution;*
- b) *a "Municipality" as defined in clause (e) of article 243P of the Constitution;***
- c) *a Municipal Committee, a Zilla Parishad, a District Board, and any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund;*
- d) *a Cantonment Board as defined in section 3 of the Cantonments Act, 2006;*
- e) *a Regional Council or a District Council constituted under the Sixth Schedule to the Constitution;*
- f) *a Development Board constituted under article 371 and article 371J of the Constitution; or*
- g) *a Regional Council constituted under article 371A of the Constitution*

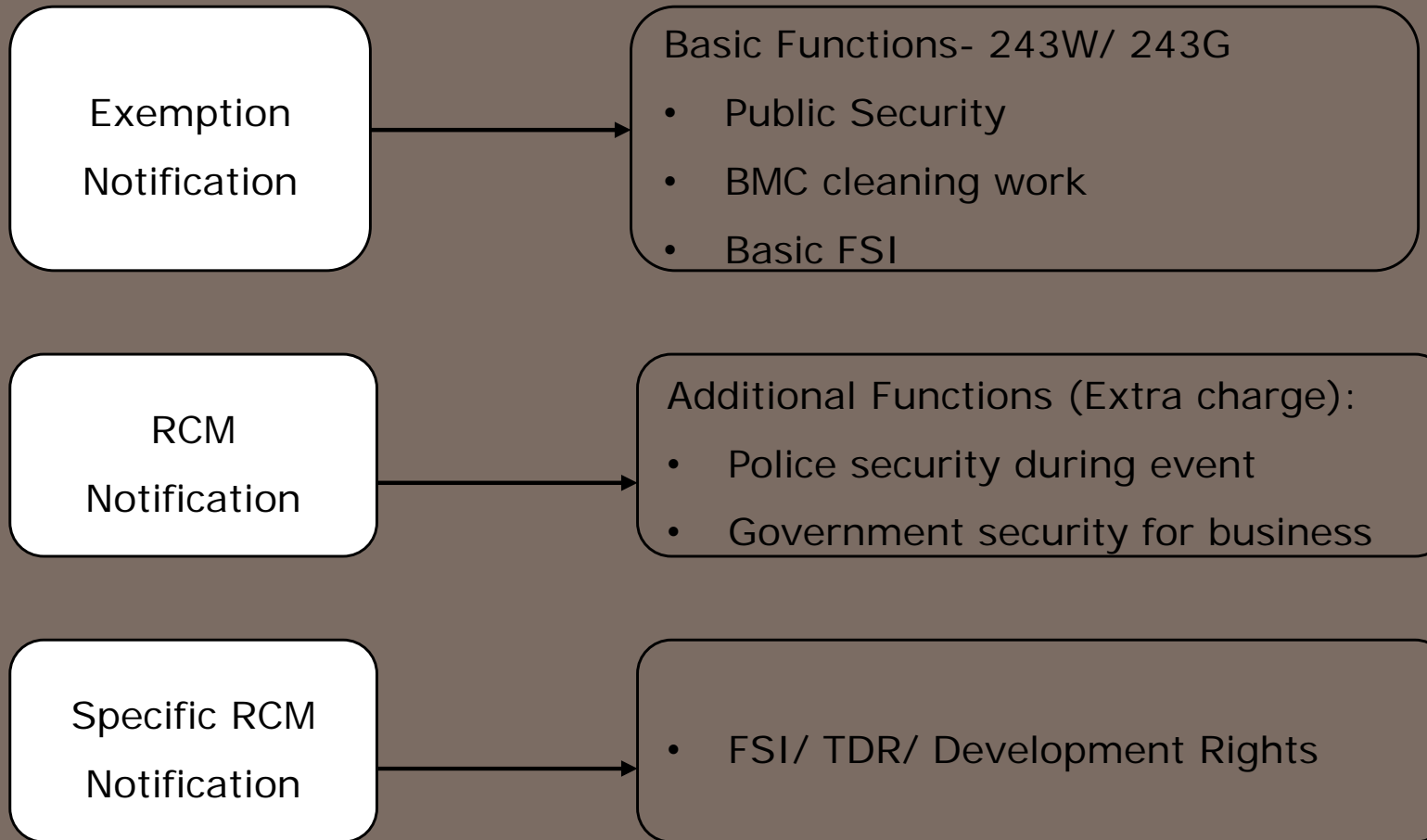
Article 243W

- a) **Urban planning including town planning**
- b) **Regulation of land-use and construction of buildings.**
- c) Planning for economic and social development
- d) Roads and bridges.
- e) Water supply for domestic, industrial and commercial purposes.
- f) Public health, sanitation conservancy and solid waste management.
- g) Fire services
- h) Urban forestry, protection of the environment and promotion of ecological aspects.
- i) Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.
- j) Slum improvement and upgradation.
- k) Urban poverty alleviation.
- l) Provision of urban amenities and facilities such as parks, gardens, playgrounds.
- m) Promotion of cultural, educational and aesthetic aspects.
- n) Burials and burial grounds; cremations, cremation grounds; and electric crematorium
- o) Cattle pounds; prevention of cruelty to animals.
- p) Vital statistics including registration of births and deaths.
- q) Public amenities including street lighting, parking lots, bus stops and public conveniences.
- r) Regulation of slaughter houses and tanneries.

Article 243G

- a) Agriculture, including agricultural extension.
- b) **Land improvement, implementation of land reforms, land consolidation and soil conservation.**
- c) Minor irrigation, water management and watershed development.
- d) Animal husbandry, dairying and poultry.
- e) Fisheries.
- f) Social forestry and farm forestry
- g) Minor forest produce.
- h) Small scale industries, including food processing industries.
- i) Khadi, village and cottage industries.
- j) Rural housing
- k) Drinking water
- l) Fuel and fodder.
- m) Roads, culverts, bridges, ferries, waterways and other means of communication.
- n) Rural electrification, including distribution of electricity.
- o) Non-conventional energy sources.
- p) Poverty alleviation programme.
- q) Education, including primary and secondary schools
- r) Technical training and vocational education.
- s) Adult and non-formal education.
- t) Libraries
- u) Cultural activities.
- v) Markets and fairs.
- w) Health and sanitation, including hospitals, primary health centres and dispensaries.
- x) Family welfare.
- y) Women and child development
- z) Social welfare, including welfare of the handicapped and mentally retarded.
- aa) Welfare of the weaker sections, and in particular, of the Scheduled Castes and the Scheduled Tribes
- bb) Public distribution system.
- cc) Maintenance of community assets.

Arguments by Department



RCM Notification vs Exemption Notification

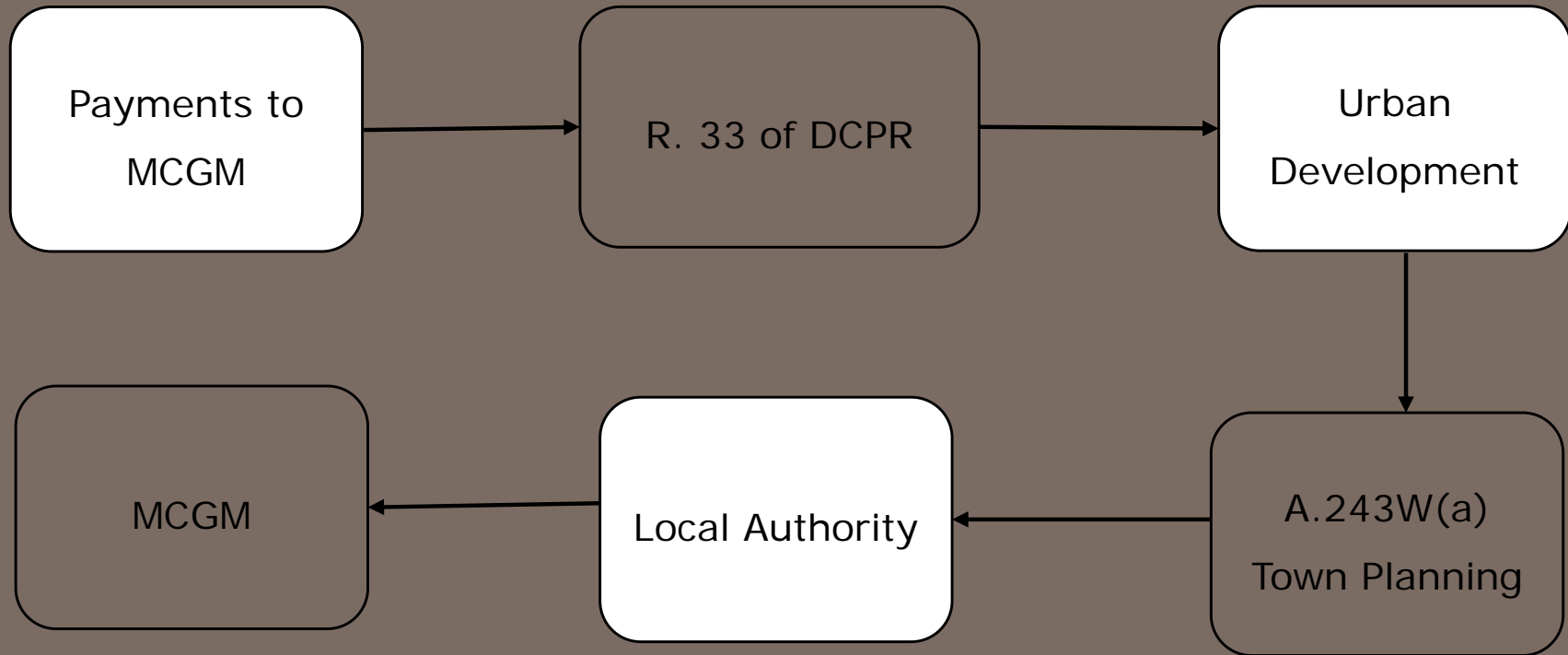
Arguments by Department

Sr. No	Other Charges	GST Rate	Reason
1.	Basic FSI	NIL	Basic Function
2.	Additional FSI	18%	Additional Function
3.	Staircase & Lift Premium	18%	Additional Function
4.	Pest Control	18%	Additional Function
5.	Scrutiny Fees	18%	Additional Function
6.	Water Deposit	NIL	No tax on Deposit
7.	Labour Cess Tax	NIL	No tax on tax
8.	Property Tax	NIL	No tax on tax
9	Security Deposit	NIL	No tax on Deposit

Development Control & Promotion Regulation for Greater Mumbai ('DCPR')

- Urban Development Department of Maharashtra vide Notification No TPB 4317/629/CR-118/2017/DP/UD-11 dated 08/05/2018 issued DCPR 2034
- Regulation 30- Floor Space Index (FSI)
- Regulation 32- Transfer of Development Rights (TDR)
- Regulation 33- Additional Floor Space Index (Additional FSI)

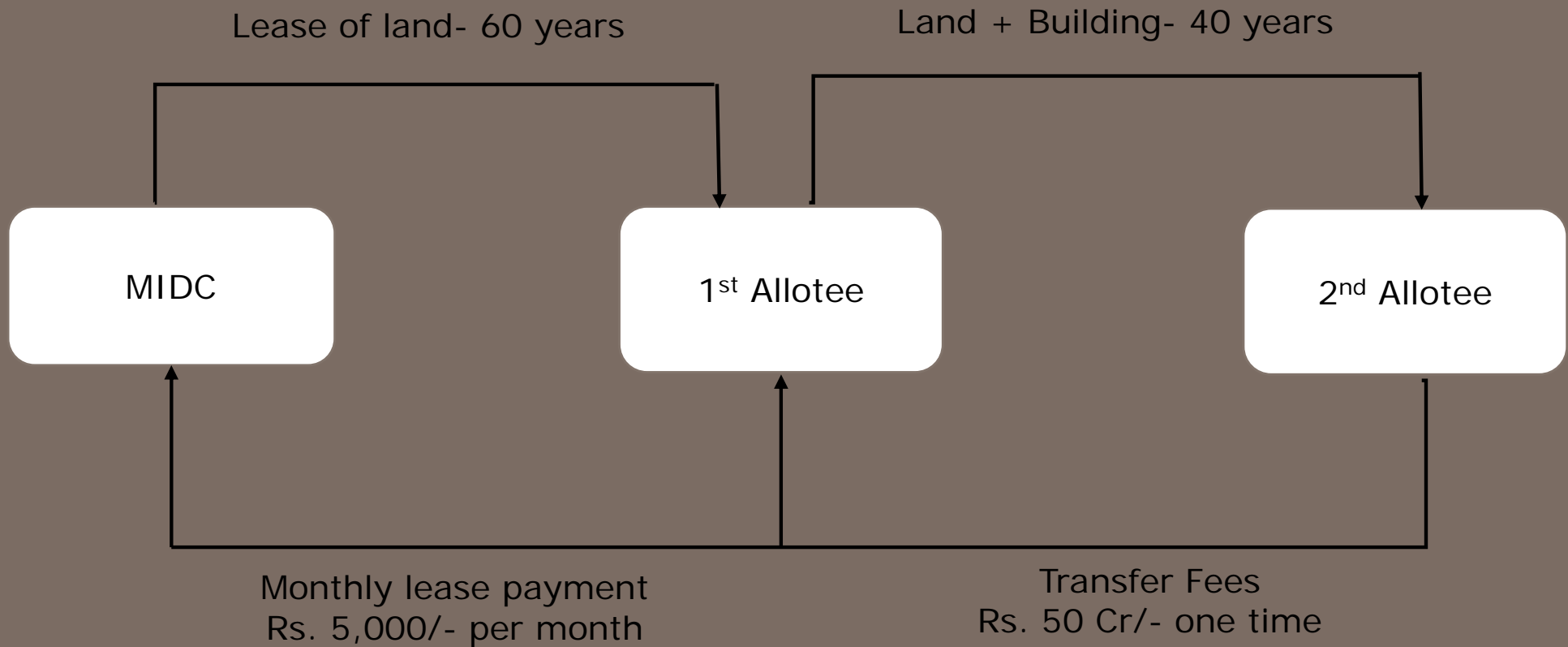
Arguments by Tax Payer





Long term lease

Transfer of Lease hold rights



S. 7(1)

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

Schedule II

2(a) any lease, tenancy, easement, licence to occupy land is a supply of services;

Schedule III

Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building

S. 17(5) of CGST Act

**NN
12/2017**

Upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable in respect of service by way of granting of long term lease of thirty years, or more) of industrial plots or plots for development of infrastructure for financial business, provided by the State Government Industrial Development Corporations or Undertakings or by any other entity having 20 per cent. or more ownership of Central Government, State Government, Union territory to the industrial units or the developers in any industrial or financial business area.."

S. 17(5) of CGST Act

- ***Bombay High Court- Builders Association of Navi Mumbai [2018 (12) G.S.T.L. 232]***
GST applicbale on leasing as renting of premises
Challenged before Supreme Court- stay not granted
- ***Rajasthan AAR- Greentech Mega Food Park Pvt Ltd [RAJ/AAR/2019-20/10]***
Long term lease is supply of services and hence liable to 18% GST
- **Greentech Mega Food Park [2019 (27) G.S.T.L. 143 (A.A.R. - GST)]**
Mere long period of lease does not make it a sale transaction. Liable to GST
- **Goa Tourism Development Corporation [2018 (19) G.S.T.L. 700 (A.A.R. - GST)]**
Consideration received against services to be provided for next 60 years, i.e., the supply of service in the nature of continuous supply of service

Judicial Jurisprudence

- Gujarat Chamber of Commerce & Industry [Guj High Court]
- TOKHEIM INDIA PVT. LTD. Versus UNION OF INDIA (2025) 29 Centax 461 (Bom.)
- PANACEA BIOTEC LTD. Versus UNION OF INDIA (2025) 26 Centax 373 (Bom.)
- *B. SORABJI Versus Union of India* (2025) 30 Centax 438 (Bom.)

Stay by Hon'ble High Court

1.

New transactions- Not to pay GST

2.

Old transactions where GST is not paid- Litigate on the basis of Guj HC

3.

Old transactions where GST is paid and ITC is claimed- Status Quo

Grounds for challenge & Way forward



GST TDS MISMATCH

- **Legal Reference:** Section 51 & Rule 66 of
- **Applicable to:** Government Departments/Local Authorities/Notified persons deducting TDS
- **Time of Deduction:** At the time of payment or credit, whichever earlier.
- **Threshold:** 2.5 lakh (excluding GST) per contract
- **Rate:** 2%
- **Return:** Form GSTR-7 to be filed within 10 days after month end

GST TDS

F.Y.	GSTR 3B		TDS	
	NET VALUE	GST	NET VALUE	GST
F.Y. 2022-23	10,00,000	1,80,000		
F.Y. 2023-24	10,00,000	1,80,000	10,00,000	1,80,000
F.Y. 2024-25	10,00,000	1,80,000	10,00,000	1,80,000
F.Y. 2025-26			10,00,000	1,80,000
Total	30,00,000	5,40,000	30,00,000	5,40,000

Mismatch GSTR-3B VS TDS

Mis-match between Sales as per GST returns & sales as TDS

Sr.No.	Category	GST returns	TDS
1.	Invoice raised but payment not received	YES	NO
2.	Invoice raised in previous year but payment received in current year	NO	YES
3.	Invoice raised but value below threshold	YES	NO
4.	TDS passed on to sister concern	YES	NO
5.	Non filing of TDS returns	YES	NO

REASON FOR MIS-MATCH



THANK YOU



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