

forwarded to the concerned PAO after the Letter of Authorization for allocation of budget to CBIC is provided in the next financial year.

- vi) No manual payment will be allowed in the system.

**7. Responsibilities of the PAOs under the Scheme:**

- i) Periodical Reports (Monthly/Quarterly) will be generated by the designated PAOs and shared with the Pr. A.O, CBIC. The Pr. Accounts Office shall further share the report with the Pr. Accounts Office, Ministry of Culture for reconciliation purposes.
- ii) In the case of authorized budget is exhausted, the payments will not be made by the PAO till the budget is augmented by Ministry of Culture.
- iii) At the end of financial year, the Bills which are kept in abeyance for want of sufficient budget provisions will be returned to the concerned Divisions for revalidation and resubmission in next financial year with new e-Bill Number.

**8. Recovery provisions in case of excess/ wrongful payment:**

In case of any excess/wrongful payment is made on the basis if the double sanction or for any other reason, the same will be recovered by the sanctioning authority from the beneficiary. The recovered amount will be received in the form of Banks" DD and will be deposited in the Government Accounts by the concerned DDO through Challans in the scheme Head of Seva Bhoj Yojana. The accounting of such recovery amount will be done by the PAO with whom the concerned DDO is mapped.

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**Clarification on certain issues (sale by government departments to unregistered person; levability of penalty under section 73(11) of the CGST Act; rate of tax in case of debit notes / credit notes issued under section 142(2) of the CGST Act; applicability of notification No. 50/2018-Central Tax; valuation methodology in case of TCS under Income Tax Act and definition of owner of goods) related to GST.**

**Circular No. 76/50/2018-GST**

**31st December, 2018**

Various representations have been received seeking clarification on certain issues under the GST laws. In order to clarify these issues and to ensure uniformity of implementation across field formations, the Board, in exercise of its powers conferred under section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the "CGST Act") hereby clarifies the issues as below:



Sl. No	Issue	Clarification
1.	Whether the supply of used vehicles, seized and confiscated goods, old and used goods, waste and scrap by Government departments are taxable under GST?	<p>1. It may be noted that intra-State and inter- State supply of used vehicles, seized and confiscated goods, old and used goods, waste and scrap made by the Central Government, State Government, Union territory or a local authority is a taxable supply under GST.</p> <p>2. Vide notification No. 36/2017-Central Tax (Rate) and notification No. 37/2017- Integrated Tax (Rate) both dated 13.10.2017, it has been notified that intra- State and inter-State supply respectively of used vehicles, seized and confiscated goods, old and used goods, waste and scrap by the Central Government, State Government, Union territory or a local authority to any <b>registered person</b>, would be subject to GST on reverse charge basis as per which tax is payable by the recipient of such supplies.</p> <p>3. A doubt has arisen about taxability of intra-State and inter-State supply of used vehicles, seized and confiscated goods, old and used goods, waste and scrap made by the Central Government, State Government, Union territory or a local authority to an <b>unregistered person</b>.</p> <p>4. It was noted that such supply to an unregistered person is also a taxable supply under GST but is not covered under notification No. 36/2017-Central Tax (Rate) and notification No. 37/2017- Integrated Tax (Rate) both dated 13.10.2017.</p> <p>5. In this regard, it is <b>clarified</b> that the respective Government departments (i.e. Central Government, State Government, Union territory or a local authority) shall be liable to get registered and pay GST on intra-State and inter-State supply of used vehicles, seized and confiscated goods, old and used goods, waste and scrap made by them to an <b>unregistered person</b> subject to the provisions of sections 22 and 24 of the CGST Act.</p>



Sl. No	Issue	Clarification
2.	Whether penalty in accordance with section 73 (11) of the CGST Act should be levied in cases where the return in <b>FORM GSTR-3B</b> has been filed after the due date of filing such return?	<ol style="list-style-type: none"> <li data-bbox="580 311 1361 499">1. As per the provisions of section 73(11) of the CGST Act, penalty is payable in case self-assessed tax or any amount collected as tax has not been paid within a period of thirty days from the due date of payment of such tax.</li> <li data-bbox="580 499 1361 846">2. It may be noted that a show cause notice (SCN for short) is required to be issued to a person where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised for any reason under the provisions of section 73(1) of the CGST Act. The provisions of section 73(11) of the CGST Act can be invoked only when the provisions of section 73 are invoked.</li> <li data-bbox="580 846 1361 1263">3. The provisions of section 73 of the CGST Act are generally not invoked in case of delayed filing of the return in <b>FORM GSTR-3B</b> because tax along with applicable interest has already been paid but after the due date for payment of such tax. It is accordingly <b>clarified</b> that penalty under the provisions of section 73(11) of the CGST Act is not payable in such cases. It is further <b>clarified</b> that since the tax has been paid late in contravention of the provisions of the CGST Act, a general penalty under section 125 of the CGST Act may be imposed after following the due process of law.</li> </ol>
3.	In case a debit note is to be issued under section 142(2)(a) of the CGST Act or a credit note under section 142(2)(b) of the CGST Act, what will be the tax rate applicable – the rate in the pre-GST regime or the rate applicable under GST?	<ol style="list-style-type: none"> <li data-bbox="580 1285 1361 1541">1. It may be noted that as per the provisions of section 142(2) of the CGST Act, in case of revision of prices of any goods or services or both on or after the appointed day (i.e., 01.07.2017), a supplementary invoice or debit/credit note may be issued which shall be deemed to have been issued in respect of an outward supply made under the CGST Act.</li> <li data-bbox="580 1541 1361 1798">2. It is accordingly <b>clarified</b> that in case of revision of prices, after the appointed date, of any goods or services supplied before the appointed day thereby requiring issuance of any supplementary invoice, debit note or credit note, the rate as per the provisions of the GST Acts (both CGST and SGST or IGST) would be applicable.</li> </ol>



Sl. No	Issue	Clarification
4.	Applicability of the provisions of section 51 of the CGST Act (TDS) in the context of notification No. 50/2018-Central Tax dated 13.09.2018.	<ol style="list-style-type: none"> <li>1. A doubt has arisen about the applicability of long line mentioned in clause (a) of notification No. 50/2018-Central Tax dated 13.09.2018.</li> <li>2. It is <b>clarified</b> that the long line written in clause (a) in notification No. 50/2018- Central Tax dated 13.09.2018 is applicable to both the items (i) and (ii) of clause (a) of the said notification. Thus, an authority or a board or any other body whether set up by an Act of Parliament or a State Legislature or established by any Government with fifty-one per cent. or more participation by way of equity or control, to carry out any function would only be liable to deduct tax at source.</li> <li>3. In other words, the provisions of section 51 of the CGST Act are applicable only to such authority or a board or any other body set up by an Act of parliament or a State legislature or established by any Government in which fifty one per cent. or more participation by way</li> </ol>
<sup>1</sup> [5.	What is the correct valuation methodology for ascertainment of GST on Tax collected at source (TCS) under the provisions of the Income Tax Act, 1961?	<ol style="list-style-type: none"> <li>1. Section 15(2) of CGST Act specifies that the value of supply shall include "any taxes, duties cesses, fees and charges levied under any law for the time being in force other than this Act, the SGST Act, the UTGST Act and the GST (Compensation to States) Act, if charged separately by the supplier."</li> <li>2. For the purpose of determination of value of supply under GST, Tax collected at source (TCS) under the provisions of the Income Tax Act, 1961 would not be includible as it is an interim levy not having the character of tax.]</li> </ol>
6.	Who will be considered as the 'owner of the goods' for the purposes of section 129(1) of the CGST Act?	It is hereby <b>clarified</b> that if the invoice or any other specified document is accompanying the consignment of goods, then either the consignor or the consignee should be deemed to be the owner. If the invoice or any other specified document is not accompanying the consignment of goods, then in such cases, the proper officer should determine who should be declared as the owner of the goods.

**Note:**

1. Substituted vide Corrigendum dated 07-03-2019 before it was read as



"5.	What is the correct valuation methodology for ascertainment of GST on Tax collected at source (TCS) under the provisions of the Income Tax Act, 1961?	<ol style="list-style-type: none"> <li>1. Section 15(2) of CGST Act specifies that the value of supply shall include "any taxes, duties cesses, fees and charges levied under any law for the time being in force other than this Act, the SGST Act, the UTGST Act and the GST (Compensation to States) Act, if charged separately by the supplier."</li> <li>2. It is <b>clarified</b> that as per the above provisions, taxable value for the purposes of GST shall include the TCS amount collected under the provisions of the Income Tax Act since the value to be paid to the supplier by the buyer is inclusive of the said TCS."</li> </ol>
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### Denial of composition option by tax authorities and effective date thereof.

Circular No. 77/51/2018-GST

31st December, 2018

Rule 6 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the "CGST Rules") deals with the validity of the composition levy. As per the said rule, the option exercised by a registered person to pay tax under the composition scheme shall remain valid so long as he satisfies the conditions mentioned in section 10 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the "CGST Act") and the CGST Rules. The rule lays down the procedure for withdrawal from the composition scheme by a taxpayer who intends to withdraw from the said scheme and also the procedure for denial of option to the taxpayer to pay tax under the said scheme where he has contravened the provisions of the CGST Act or the CGST Rules.

2. In this connection, doubts have been raised as to the date from which withdrawal from the composition scheme shall take effect in a case where the composition taxpayer has exercised such option to withdraw. Doubts have also been raised regarding the effective date of denial of the option to pay tax under the composition scheme where action has been initiated by the tax authorities to deny such option to the composition taxpayer. Further, clarification has been sought regarding the follow up action to be taken by the tax authorities when the composition option is denied to the taxpayer retrospectively. In order to clarify these issues and to ensure uniformity in the implementation of the provisions of the law across field formations, the Board, in exercise of its powers conferred by section 168 (1) of the CGST Act, hereby clarifies the issues raised as below.
3. Sub-rule (2) of rule 6 of the CGST Rules provides that the composition taxpayer shall pay tax under sub-section (1) of section 9 of the CGST Act as a normal taxpayer from the day he ceases to satisfy any of the conditions of the composition scheme and shall issue tax invoice for every taxable supply made thereafter. Sub-rule (3) of rule 6 of the CGST Rules provides that the registered person who intends to withdraw from the composition scheme shall, before the date of such withdrawal, file an application in **FORM GST CMP-04** on the common portal. He shall file intimation for withdrawal from the scheme in **FORM GST CMP-04** within seven days of the occurrence of such event.