

23.1 Background

The GST is payable by a taxable person supplying the taxable goods or services. The taxable person who is required to pay GST shall also obtain registration u/ss. 22 to 25 of the GST Act. He is required to prepare tax invoice for every supply of goods or services made by him. The adjustment in the value shown in the tax invoice shall be made by either debit note or credit note.

The provisions relating to taxable person, specified activities not supply of goods/services, tax invoice and debit and credit note are discussed in this Chapter.

23.2 Contents of the Chapter

- (a) Taxable Person/Registered Person (Refer **para 23.3**)
- (b) Specified activities not supply of goods or services (Refer **para 23.4**)
- (c) Tax invoice (Refer **para 23.5**)
- (c*i*) E-invoicing (Refer **para 23.5A**)
- (d) Debit Note/Credit Note (Refer **para 23.6**)
- (e) E-way Bill (Refer **para 23.7**)
- (f) Electronic Payment - (Refer **para 23.8**)

23.3 Taxable Person/Registered Person

As per section 2(107) of GST Act, taxable person means, the person who is registered or is liable to be registered under section 22 or section 24. As per section 2(94) registered person means person who is registered under section 25 but does not include person having unique identity number. In short, taxable person may be registered or may not be registered. If he is registered, he will be considered as registered person.

Sub-section (4) of section 25 provides that where a person is required to obtain more than one registration in the State, it shall be treated as a

distinct person for the purpose of this Act. More than one registration in each state can be obtained for different business verticals. Sub-section (5) of section 25 also provides that the establishment of a person who has obtained or is required to obtain registration in a State and any of other establishments in another State shall be treated as establishment of a distinct person for the purpose of this Act.

The sections 22 to 24 specifies the person who are required to obtain registration under the Act. Please refer to **Chapter 22** for scope of sections 22 to 24 and procedure for obtaining registration. Thus, in short, the registered taxable person means a person who is engaged in making supply of goods and services and thereby required to pay GST. However, some of the persons have been specifically excluded from the purview of taxable person. These are discussed below:

23.3-1 Exclusion from Taxable Person

The section 23(1) of GST Act specifies that the following persons shall not be considered as a taxable person :

- (a) Agriculturist to the extent of supply of produce out of cultivation of land (refer **paras 23.3-2 & 23.3-3**)
- (b) Person having turnover less than the specified limit (refer **para 23.3-4**)
- (c) Persons engaged in business of exclusively supplying goods and services not liable to tax (refer **para 23.3-5**)

The meaning of these are discussed below:

23.3-2 Statutory Definition

‘Agriculturist’, have been defined in Section 2(7) of the GST Act. These definitions are reproduced below:

“2(7) “agriculturist” means an individual or a Hindu Undivided Family who undertakes cultivation of land—

- (a) by own labour, or
- (b) by the labour of family, or
- (c) by servants on wages payable in cash or kind or by hired labour under personal supervision or the personal supervision of any member of the family.

23.3-3 The essential ingredients of the definition of ‘agriculturist’ are:

- (i) The land shall be cultivated (refer **para 23.3-3a**).
- (ii) The Individual or Hindu Undivided family should cultivate the land (refer **para 23.3-3b**).

23.3-3a CULTIVATION - Cultivation means host of activities by which the plant is grown. The process of cultivation would include levelling of land, operation of tilling of land, sowing of seeds, planting, spraying of pesticides and insecticides and similar operation. These operations are carried out to produce agricultural commodities.

23.3-3b CULTIVATION OF LAND BY SPECIFIED PERSON - The definition of agriculturist provides that an Individual or Hindu undivided family (HUF) shall cultivate the land personally:

- (a) by own labour, or
- (b) by the labour of family, or
- (c) by servants on wages payable in cash or kind or by hired labour under personal supervision or the personal supervision of any member of the family.

The HUF consist of Karta and various coparceners as members of HUF. Thus, the individual person or Karta or coparceners of HUF can personally cultivate the land. In such cases, it will be considered as cultivation of land by own labour.

The clause (b) provides for cultivation of land by the labour of the family. The word 'family' is defined in Section 2(49) of the GST Act. The meaning of the word 'family' is discussed in **Chapter 10**. Kindly refer to the same. If the family members of an individual cultivate their land, it will be considered as cultivation of the land by the labour of the family. For example, say Mr. X the owner of the land, along with his wife and children i.e. son and daughter cultivates the land. The wife, son & daughter who personally cultivate the land will be considered as cultivation of land by the labour of family.

The clause (c) provides that cultivation of land by servants on wages payable in cash or in kind or by hired labour under personal supervision or personal supervision of any member of the family. Thus, the labourers employed shall be paid in cash or in kind and not as a share produced. They should be paid the agreed amount of wages. The supervision of the work shall be done by the individual or the family members of the individual.

- ◆ **AGRICULTURE IN COMMON PARLANCE** - MEANING OF 'AGRICULTURE'
- Normally, in commercial parlance, the word 'agriculture' is understood in a very wide manner to include post-harvesting operations also. The Hon'ble Supreme Court in the case of *CIT West Bengal v. Raja Binoy Kumar Sahas Roy* [1957] 32 ITR 466 has explained the meaning of agriculture as follows:

“... agriculture is the basic idea underlying the expression ‘agricultural purposes’ and ‘agricultural operations’ and it is pertinent therefore to enquire what is the connotation of the term ‘agricultural operations’. As we have noted above, the primary sense in which the term agriculture is understood is agar - field and cultivation, i.e. the cultivation of the field and if the term is understood only in that sense, agriculture would be restricted only to cultivation of the land in the strict sense of the term meaning thereby, tilling of the land, sowing of the seeds, planting and similar operations on the land. They would be the basic operations and would require the expenditure of human skill and labour upon the land itself. There are however other operations which have got to be resorted to by the agriculturist and which are absolutely necessary for the purpose of effectively raising the produce from the land. They are operations to be performed after the produce sprouts from the land, e.g. weeding, digging the soil around the growth, removal of undesirable under-growths and all operations which foster the growth and preserve the same not only from insects and pests but also from depredation from outside, tending, pruning, cutting, harvesting and rendering the produce fit for the market. . .”

“... in considering the connotation of the term ‘agriculture’ we have so far thought of cultivation of land in the wider sense as comprising within its scope the basic as well as the subsequent operations described above, regardless of the nature of the products raised on the land. These products may be grain or vegetables or fruits which are necessary for the sustenance of human beings including plantations and groves, or grass or pasture for consumption of beasts or articles of luxury such as, betel, coffee, tea, spices, tobacco etc., or commercial crops like, cotton, flax, jute, hemp, indigo, etc. . .”

Thus, the definition of agriculture is wide to cover Floriculture, Horticulture and Sericulture. It does not include rearing of animals which is discussed below.

- ◆ **REARING OF ANIMALS** - The definition specifically excludes some of the activities like poultry farming where chicken is reared, dairy farming, man-made forest, stock breeding, etc. The definition of agriculture given in Chapter V of the Finance Act, 1994 u/s. 65B(3) specifically included the rearing of animals as a part of agriculture, but for the purpose of GST rearing of animals will not be included in the definition of agriculture. If any person carries out the activity of agriculture as well as rearing like cattle, sheep, pigs, etc. he will not be considered as agriculturist and will not be excluded from the definition of taxable person.

23.3-4 Person having turnover less than specified limit

The section 22(1) of GST Act provides that the person is not required to obtain registration until his aggregate turnover for the financial year exceeds Rs. 20 lakhs but in case of states specified in clause (iii) of the explanation given below section 22, the turnover limit is Rs. 10 lakhs. As per clause (iii) of the explanation all the states specified in clause (g) of Article 279A(4) of the Constitution of India except Jammu & Kashmir are considered as special category states. Thus, the remaining special category states are Assam, Arunachal Pradesh, Sikkim, Manipur, Tripura, Nagaland, Meghalaya, Mizoram, Himachal Pradesh and Uttarakhand. Therefore, if the person is located in the territory of these states, the limit of turnover is Rs. 10 lakhs.

The aggregate turnover has been defined in Section 2(6) of the GST Act. The aggregate turnover of **Rs. 10 Lacs** or **Rs. 20 Lacs** is required to be computed on the basis mentioned in Section 2(6) of the GST Act. These provisions are discussed in **Chapter 22**.

The proviso has been added in section 22(1) and clause (iii) of explanation has been amended w.e.f. 01-02-2019. The impact of the amendment made in the proviso and explanation has been discussed in following sub-paras:

23.3-4a EXCLUSION FROM SPECIAL CATEGORY STATES - The explanation (iii) below section 22 has been amended and certain more states namely Arunachal Pradesh, Assam, Himachal Pradesh, Meghalaya, Sikkim and Uttarakhand have been excluded from special category states. Therefore, after 01-02-2019 threshold exemption of ₹ 10 lakhs will not apply to registered person located in these states. Such person need not obtain registration if his turnover is up to ₹ 20 lakhs. The registered person who has obtained registration earlier can surrender the registration if his aggregate turnover has not exceeded Rs. 20 lakhs.

23.3-4b OPTION TO THE STATE – The second proviso to section 22(1) added with effect from 01-02-2019 provides option to the special category states to enhance the aggregate turnover of ₹ 10 lakhs to such amount not exceeding ₹ 20 lakhs subject to the terms and conditions specified therein. Thus, the remaining special category states have been given option to increase the limit of obtaining registration from ₹ 10 lakhs to such amount not exceeding ₹ 20 lakhs as may be decided by them. After their decision the states will have to obtain approval from the GST council before implementation. The limit specified by the states will be applicable to the person registered in that state. Uptill now no state has

exercised option for increase in the limit of aggregate turnover from Rs. 10 lakhs to higher amount.

23.3-5 Exclusively supplying goods and services which are not liable to tax

The 'taxable supply' has been defined in Section 2(47) of the GST Act, it means supply of goods or services or both which is leviable to tax under this Act. Further Section 2(47) defines 'exempt supply' as follows:

(47) "exempt supply" means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and includes non taxable supply;

The Section 11 of the GST Act empowers the Central Government or the State Government to exempt any specified goods or services as either wholly or partly from payment of tax. Further, the tariff rate specified in the schedule appended to the Act is nil for some of the goods or services. The definition of exempt supply includes both types of goods namely:

- (i) One against which the tariff rate is nil;
- (ii) Which is wholly exempt from payment of GST under Notification issued u/s 11 of the GST Act.

In addition to the above, the exempt supplies also include supply of goods or services which are non-taxable. The non-taxable supply has been defined in Section 2(78) of the GST Act as a supply of goods or services or both which is not leviable to tax under this Act or under the Integrated Goods and Services Tax Act. For example, the transactions which are specified in Schedule-III & Schedule-IV of the Act are neither considered as supply of goods or services. Therefore, no GST is payable on such transactions. Hence these supplies will be considered as non-taxable supply. The definition of 'exempt services' includes such supplies also.

- ◆ CENVAT CREDIT - As per Section 17(2) of the GST Act where any goods or services are used by registered taxable person partly for taxable supplies and partly for effecting exempted supplies, the amount of credit is restricted to so much of input tax as is related to taxable supplies.

23.4 Specified activities not supply of goods or services

Section 7(2) of the GST Act reads as follows:

- (2) Notwithstanding anything contained in sub-section (1),—
 - (a) activities or transactions specified in Schedule III; or

- (b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, shall be treated neither as a supply of goods nor a supply of services.

The activities specified in Schedule III supplied by any person will not be considered as supply of goods or services. One of the activities specified in Schedule III is that of services provided by an employee to employer. The employee provides services to the employer and receives consideration in the form of salary. However, in view of the specific provisions of Section 7(2) of the Act, the services provided by an employee will not be considered as supply of service under the GST Act. The scope of description of supply is discussed in **Chapter 6**.

The notified activities will not be considered as supply of goods or services, only when they are undertaken by the Central Government, State Government or any local authority in which they are engaged as public authority. However, if the same services are provided by other person, the supply will be considered as a supply of goods or services.

23.5 Tax Invoice

The Section 31 of GST Act makes provisions for issuance of invoice for supply of goods or services. The Section 31 of the Act describes various situations under which the invoice is required to be issued. It also makes provisions for issuing revised invoice, preparation of documents for receipt of advance, etc. These provisions are discussed in the following paras :

- (a) Meaning of invoice (Refer **para 23.5-1**)
- (b) Difference between tax invoice and proforma invoice (Refer **para 23.5-2**)
- (c) Preparation of invoice for different transactions (Refer **para 23.5-3**)
- (d) Revised invoice (Refer **para 23.5-4**)
- (e) Non-Issuance of Invoice in certain circumstances (Refer **para 23.5-5**)
- (f) Supply of non-taxable goods or under composition scheme (Refer **para 23.5-6**)
- (g) B2B transaction or B2C transaction (Refer **para 23.5-7**)
- (h) Indication of tax amount (Refer **para 23.5-8**)
- (i) Contents of invoice (Refer **para 23.5-9**)

- (j) Manner of issuing invoice (Refer **para 23.5-10**)
- (k) Invoice in special case (Refer **para 23.5-11**)
- (l) Refund voucher (Refer **para 23.5-12**)
- (m) Invoice by ISD (Refer **para 23.5-13**)
- (n) Transportation of goods without invoice (Refer **para 23.5-14**)

23.5-1 Meaning of Invoice

Section 2(66) defines invoice as “invoice” or “tax invoice” means tax invoice referred to it in section 31.

In common parlance, invoice is a document issued to the addressee specifying the nature of taxable supply made and also the value of taxable supply in addition to other information. It indicates the amount receivable by the person issuing the invoice from the person to whom the invoice is issued. It is normally issued after the completion of supply of goods or services.

The CBEC *vide* Circular No. 144/13/2011 dated 18/07/2011 has also clarified that the invoice shall be issued after the completion of incidental and auxiliary activities which puts the supplier in a position to issue the invoice.

As per the explanation attached to section 31 of the GST Act tax invoice shall include any revised invoice issued by the supplier in respect of a supply made earlier.

23.5-2 Difference between tax invoice and proforma invoice

As mentioned above the tax invoice is issued on making of a taxable supply that is when the supply has been completed. The proforma invoice is issued to the person informing him about the nature of supply and value before the supply is made. Thus, proforma invoice cannot be equated with the tax invoice.

23.5-3 Preparation of invoice for different transaction

Section 31 of GST Act makes provision relating to issue of invoice on supply of goods or services. The sub-section (1) provides that taxable person supplying taxable goods shall before or at the time of,—

- (a) *removal of goods for supply to the recipient, where the supply involves movement of goods; or*
- (b) *delivery of goods or making available thereof to the recipient, in any other case,* issue a tax invoice giving various details which are described in **para 23.5-9**. The proviso further empowers the

Government to specify the category of goods and/or supplies in respect of which tax invoice shall be issued within prescribed period.

As per sub-section (2) a registered person supplying the service shall before or after the provision of services issue invoice within the specified period. As per Rule 47 of Chapter VI of CGST Rules, 2017 invoice shall be issued within the period of thirty days from the date of supply of service. The first proviso further provides that the invoice shall be issued within a period of 45 days from the date of supply of service in case where the supplier is an insurer or banking company or a financial institution including Non-Banking Financial Companies. The invoice shall contain the details as discussed in **para 23-5.9**.

The preparation of invoice under different circumstances or by different persons are discussed in the following sub-paras:

- (a) Receipt voucher (Refer **para 23.5-3a**)
- (b) Invoice in case of reverse charge (Refer **para 23.5-3b**)
- (c) Continuous supply (Refer **para 23.5-3c**)
- (d) Ceasing of contract (Refer **para 23.5-3d**)
- (e) Goods sent on approval (Refer **para 23.5-3e**)
- (f) Invoice by agent (Refer **para 23.5-3f**)

23.5-3a RECEIPT VOUCHER OR ANY OTHER DOCUMENT FOR ADVANCE PAYMENT - Clause (d) of Section 31(3) provides that registered person shall, on receipt of advance payment shall issue receipt voucher or any other document including such particulars as may be prescribed evidencing receipt of payment.

The provisions relating to time of supply of goods or services are made in Section 12 and Section 13 of the GST Act. As per these provisions, in case the advance amount is received for supply of goods or services, the time of supply is the date of receipt of amount and not the date of actual supply of goods or services.

Section 31(3)(d) of the GST Act provides that the registered person on receipt of advance payment shall issue a receipt voucher or any other document with such particulars as may be prescribed.

Sometimes the receipt of advance and the actual supply will be in the same month. Therefore, in such cases the taxable person shall prepare the invoice for the supplies made and pay the tax on that basis. There is no need for making payment of tax on advances.

In other situation, the advance may be partly adjusted against the supply in the same month. For example, a person has received the amount of

₹ 10 Lacs during the month of Aug-2017. He made supply in the month Aug-2017 for ₹ 4 lacs and has adjusted advance to that extent against said supply. He shall pay the tax on the actual value of supply. For the balance amount of ₹ 6 Lacs (₹10 lacs - 4 lacs) which has not been adjusted, it is suggested that the receipt voucher or any other document made for compliance u/s 31(3)(d) of the Act shall be made.

The details of the said document are required to be uploaded in Form GSTR-1. Therefore, it is suggested that such document should have separate serial number to ensure that the details of all such documents prepared during the month has been declared in Form GSTR-1.

◆ **Contents of Receipt Voucher** - As per Rule 50 of Chapter VI of CGST Rules, 2017 the receipt voucher shall contain the following information:

- (a) name, address and GSTIN of the supplier;
- (b) a consecutive serial number not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters -hyphen or dash and slash symbolised as “-” and “/” respectively, and any combination thereof, unique for a financial year
- (c) date of its issue;
- (d) name, address and GSTIN or UIN, if registered, of the recipient;
- (e) description of goods or services;
- (f) amount of advance taken;
- (g) rate of tax (central tax, State tax, integrated tax, Union territory tax or cess);
- (h) amount of tax charged in respect of taxable goods or services (central tax, State tax, integrated tax, Union territory tax or cess);
- (i) place of supply along with the name of State and its code, in case of a supply in the course of inter-State trade or commerce;
- (j) whether the tax is payable on reverse charge basis; and
- (k) signature or digital signature of the supplier or his authorized representative;

Provided that where at the time of receipt of advance :

- (i) the rate of tax is not determinable, the tax shall be paid at the rate of eighteen per cent;

(ii) the nature of supply is not determinable, the same shall be treated as inter-State supply.

- ◆ **Description of product or place of supply not known** - In many cases, the purchase order may specify the number of items which the recipient may intend to purchase. These items may attract GST at different rates. The recipient may also provide *ad hoc* amount of advance to be adjusted against supply. For example, say purchase order is placed by Mr. X for following products:

Sr. No.	Description	Rate of GST	Value of purchase
1	A	12%	Rs. 5 lakhs
2	B	18%	Rs. 4 lakhs
3	C	5%	Rs. 6 lakhs
		Total	Rs. 15 lakhs

Say Mr. X gives Rs. 5 lakh advance. It is impossible for the supplier to determine the adjustment of advance against a particular supply. Further, in some case, the place of supply may subsequently specified by the recipient. In these circumstances, question arise as to the rate of tax which is payable by the supplier on the advance and the nature of tax payable. The proviso makes deeming provision that requires the supplier to apply the GST rate of 18% and pay IGST. Thus, the supplier in this case will pay Rs. 90,000 on advance of Rs. 5 lakhs as IGST.

- ◆ **Adjustment of IGST is not known** - It is quite possible that actual supply made by the supplier attracts CGST and SGST as intra-State supply. However, the proviso does not provide how adjustment of IGST against CGST and SGST payable. This needs clarification from the Board.
- ◆ **No requirement to issue receipt voucher** - Time of supply in case of goods and services is given in sections 12 and 13 of the GST Act respectively. One of the criteria to determine time of supply is date of receipt of payment. Thus, where supplier has received advance then in such case he is liable to pay tax on such amount and require to issue receipt voucher. The government on recommendation of council *vide* Not. No. 40/2017-CT dated 13-10-2017 has granted relief to specified supplier for not making payment of tax on receipt of advance and consequently no receipt voucher is required to be issued. The same has been discussed in detail in **para 8.16-4**.

- ◆ **Benefit of no payment of tax on advance extended** - As it is mentioned above person having aggregate turnover of Rs 1.5 cr other than person who has opted for the composition scheme is not required to make payment of tax in case of supply of goods on receipt of advance. The Central Government on recommendation of council *vide* Not. No. 66/2017-CT dated 13-10-2017 has granted relief to all supplier engaged in supply of goods for not making payment of tax on receipt of advance. This notification is not applicable to person who have not opted for the composition levy. The same has been discussed in detail in **para 8.16-4a**.

23.5-3b ISSUE OF INVOICE IN CASE OF REVERSE CHARGE - Sections 9(3) & (4) of the GST Act and 5(3) & (4) of the IGST Act empowers the Government to specify supply of goods or services and the person liable to pay tax including recipient.

The person supplying goods or service may not be registered then tax shall be paid on reverse charge basis by recipient by virtue of the provisions of sections 9(4) of the GST Act excluding IGST Act and 5(4) of the IGST Act. In such case clause (f) of Section 31(3) provides that the invoice shall be prepared by recipient of service. The similar details will have to be declared whenever the tax is paid on reverse charge in other cases.

It is suggested that the taxable person shall inquire with each of the supplier of goods or services about their registration number. In case, the supplier of goods or services is not registered, the transaction shall be considered as a transaction from an unregistered person. As per Table-4 of Form GSTR-2, the name of the unregistered supplier is required to be declared.

Further the clause (g) of section 31(3) provides where registered person is liable to pay under sub-section (3) or (4) of section 9 then such person shall issue payment voucher at the time of making payment to the supplier. The recipient may make an invoice on a monthly basis for each such supplier.

As per rule 7 of Tax invoice, Credit and Debit notes rules the payment voucher shall contain the following information :

- (a) name, address and GSTIN of the supplier if registered;
- (b) a consecutive serial number not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters -hyphen or dash and slash symbolised as "-" and "/" respectively, and any combination thereof, unique for a financial year