

Transition Provisions under GST

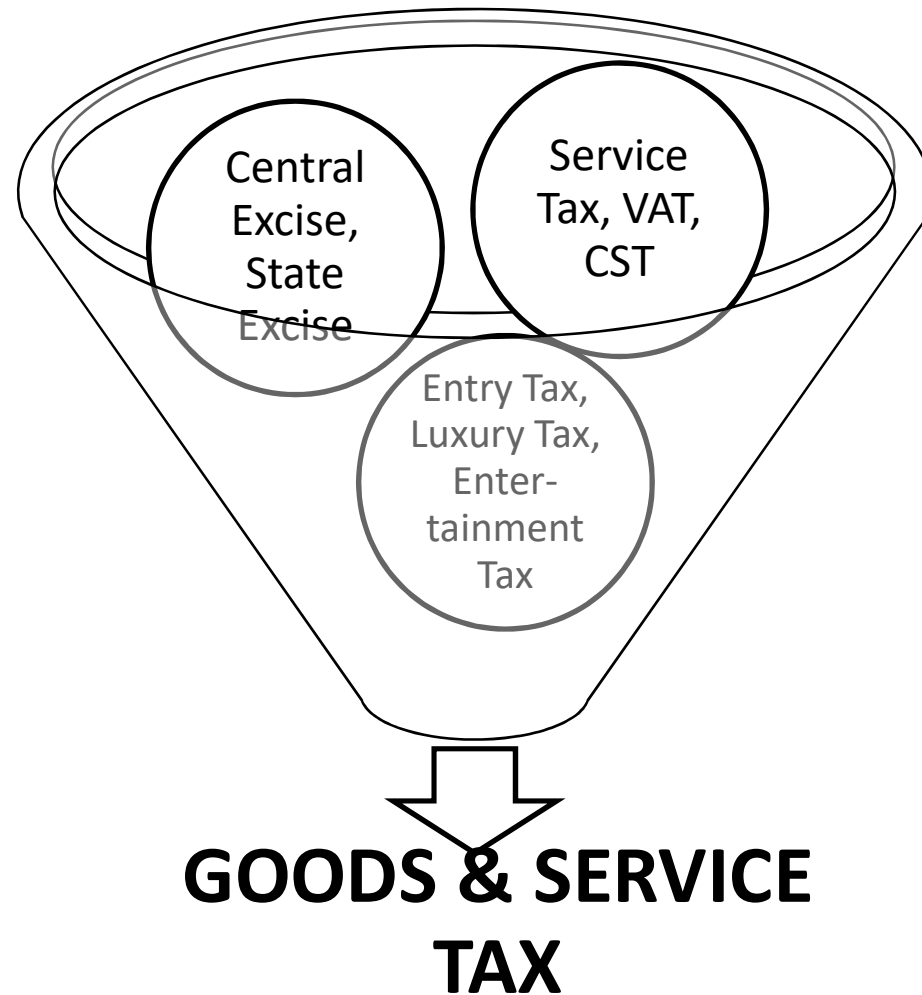
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Athena Law Associates



Biggest indirect tax reform: GST



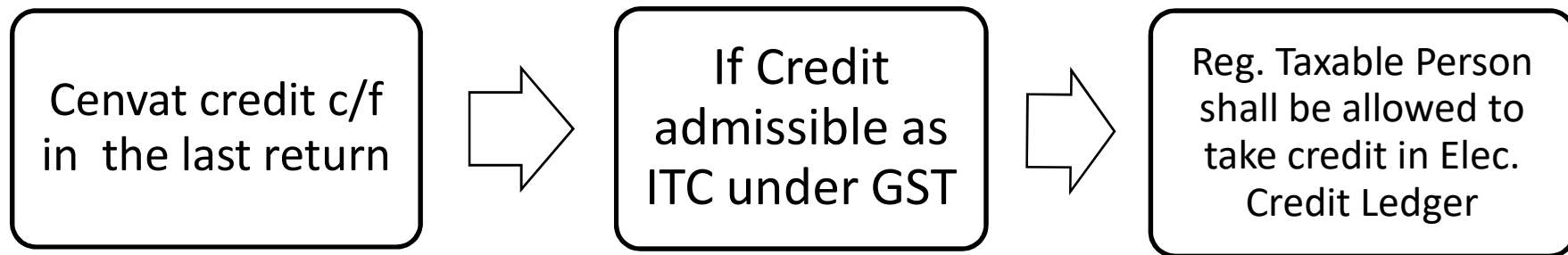
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PART - I

Tax Credit

S. 167: Closing Balance of Cenvat credit



- **Example:** ABC Ltd. a manufacturing Company. has cenvat credit balance of Rs. 50 Lakhs on 31.03.2017 (assuming appointed date).
- ABC Ltd. shall be allowed to take credit of Rs. 50 in its Elec. Credit Ledger provided
 - Credit is carried forward in last return related to taxable period ending before appointed day
 - Credit is admissible as ITC under GST Law
 - Registered under GST Law

S.167: Closing Balance of VAT/Entry Tax

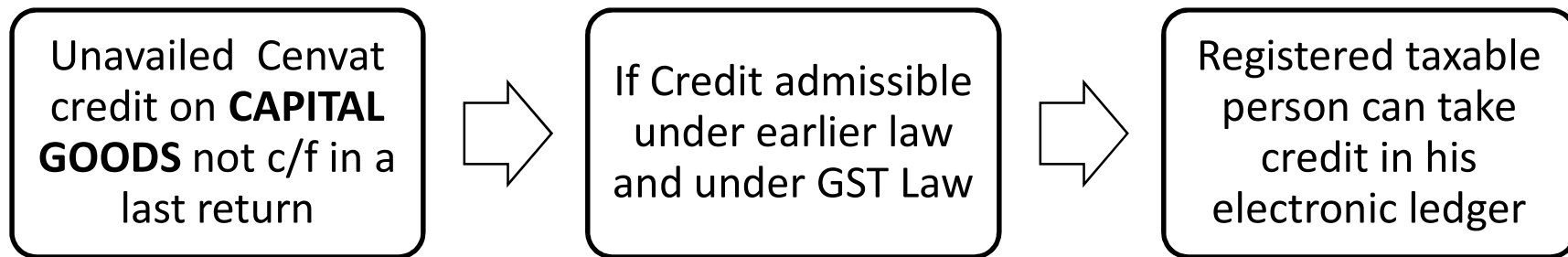


- If sale/stock transfer against **Form C, F, H, E-I/E-II under CST Act** is not substantiated within the period prescribed in Rule 12 of CST Rules (i.e 3 months after the end of period) – Attributable Credit shall not be eligible to be credited in EC Ledger.

- Manner to compute the amount of credit – as may be prescribed.

- The said credit shall be **refunded** under earlier law when such claims are substantiated under Rule 12.

S.168: Unavailed Cenvat credit on Capital Goods



- **Unavailed Cenvat credit** = Aggregate amount of Cenvat credit entitled to taxable person – Cenvat credit already availed by such taxable person under earlier Law
- *Mutatis mutandis* applicable under *SGST Law* in case of unavailed credit of VAT on Capital Goods

S.169: Credit of inputs held in stock

CGST LAW

- A registered taxable person,
 - who was not liable to be registered under the earlier law **or**
 - who was engaged in the manufacture of exempted goods or provision of exempted service, **or**
 - who was providing works contract service and availing the benefit of N.No. 26/2012-ST, **or**
 - First Stage Dealer or Second Stage Dealer or a registered importer
- Entitled to take, in his EC Ledger, credit of ***eligible duties and taxes*** in respect of **inputs** held in stock and inputs contained in semi-finished or finished goods held in stock.
- Eligible Duties and Taxes:
 - Duty of Excise
 - Additional Duty of Excise (Textile & Textile Articles)
 - ADE (Goods of Special Importance)
 - NCCD
 - CVD, SAD
 - Service Tax
- *S. 2(52): **input** means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business*

Contd...

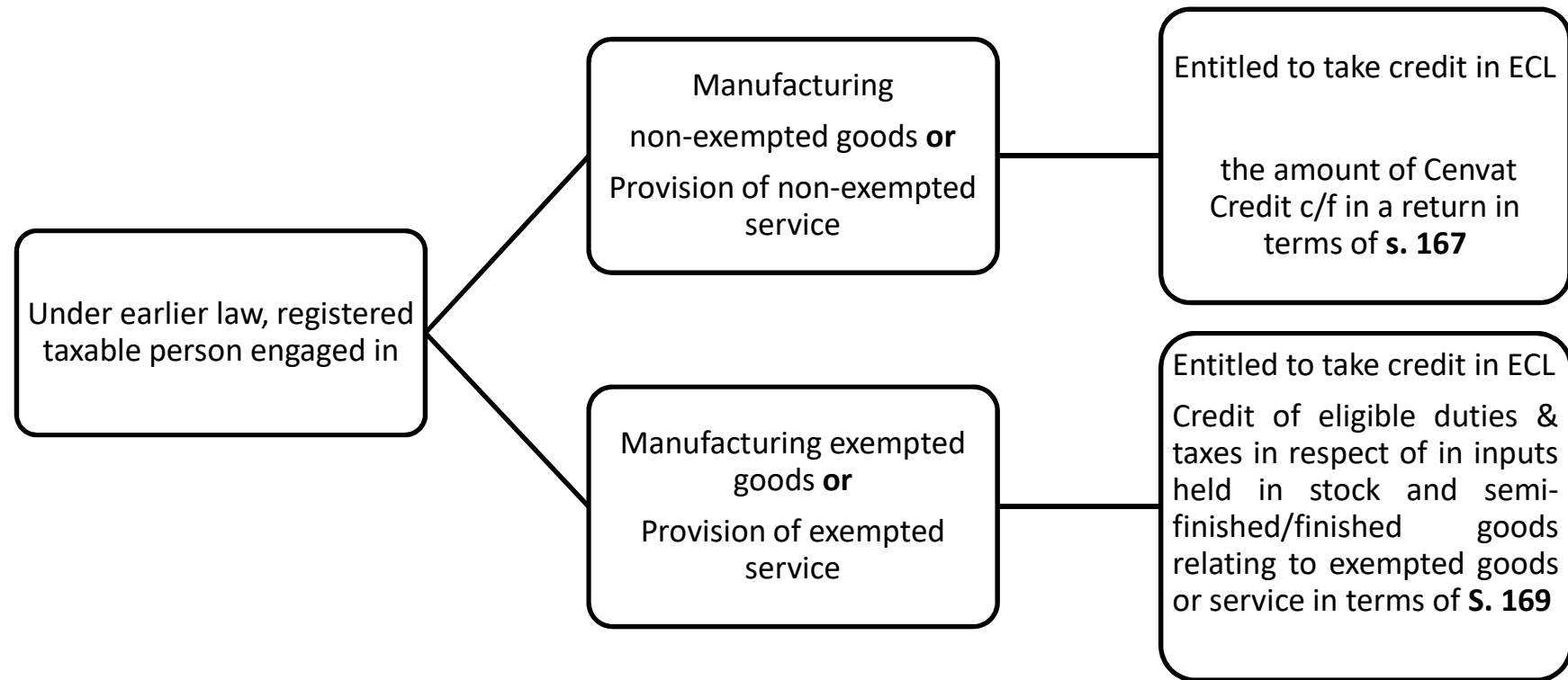
- subject to conditions:
 - such inputs/goods are used or intended to be used for making taxable supplies under this Act, and
 - The said taxable person **passes on the benefit of such credit by way of reduced prices** to the recipient
 - such taxable person was **eligible for ITC** on such inputs **under this act**
 - **In possession of invoice** and/or other prescribed document evidencing payment of tax under earlier law
 - **Invoice date** is not earlier than **12 months** preceding the appointed day
 - Supplier of service is not eligible for any abatement under the Act
 - Proviso for **person** (other than Mfr. or Service Provider) **does not have invoice** – Can take credit subject to conditions, limitation and safeguards as may be prescribed.
 - Credit shall be Calculation in a prescribed manner

Contd...

SGST LAW

- A registered taxable person,
 - who was not liable to be registered under the earlier law **or**
 - who was engaged in sale of exempted goods
- Entitled to take, in his EC Ledger, credit of ***VAT & Entry Tax*** in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock,
- subject to conditions:
 - such inputs/goods are used or intended to be used for making taxable supplies under this Act, and
 - The said taxable person **passes on the benefit of such credit by way of reduced prices** to the recipient
 - such taxable person was **eligible for ITC** on such inputs **under this act**
 - Inputs not in negative list under earlier law i.e. Inputs were not specified under a Schedule or Notification under earlier law as inputs on credit was not admissible
 - **In possession of invoice** and/or other prescribed document evidencing payment of tax under earlier law
 - **Invoice date** is not earlier than **12 months** preceding the appointed day

S.170: Person engaged in Exempted & Non-Exempted Goods/Service



S.171: Credit of inputs/input services during transit



- Provided **invoice/duty paying document is recorded** in books **within 30 days** from appointed day (Period may, on sufficient cause, be extended for maximum 30 days)
- Furnish a statement regarding credit taken under this section

SGST LAW

These provisions apply *mutatis mutandis* to **VAT and Entry Tax paid** under the State VAT laws before appointed day.

S. 172: Credit to person switching over from Composition Scheme

- A registered taxable person
- paying tax at a fixed rate or paying fixed amount in lieu of tax payable under earlier law
- shall be entitled to take in his Electronic Credit Ledger
- credit of eligible duties and taxes
- in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock, subject to the following conditions:-
 - Such inputs and/or goods are used or intended to be used for making taxable supplies under this Act;
 - The said person is not paying tax under Section 9 (Composition Levy under GST Law);
 - The said taxable person is **eligible for input tax credit under this Act**;
 - The said taxable person is **in possession of invoice** and/or other prescribed documents evidencing payment of duty/tax under the earlier law in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day; and
 - Such **invoices** and/or other prescribed documents were **issued not later than twelve months** immediately preceding the appointed day.

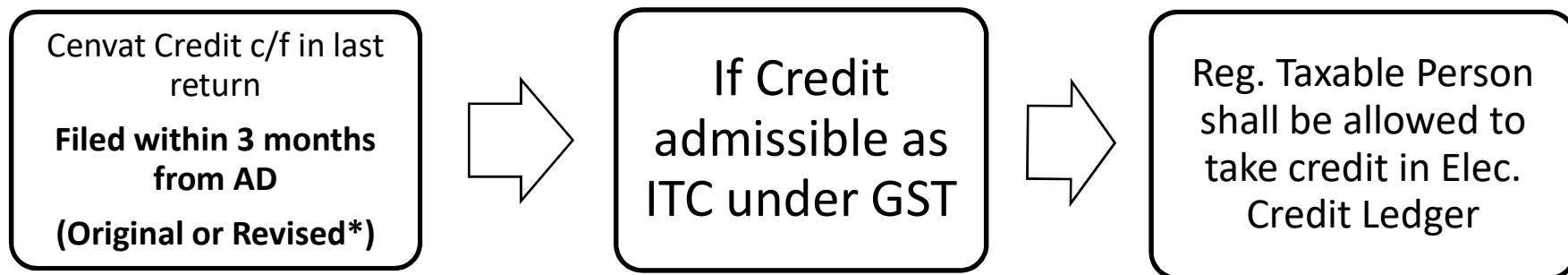
SGST Law

- These provisions apply *mutatis mutandis* to **credit of VAT and Entry Tax** under SGST Law.

S.190: Credit Distribution by ISD

- Cenvat Credit on account of any services received before AD
- By an Input Service Distributor
- Eligible for distribution as credit under GST Act
- even if the invoice(s) relating to such services are received on or after the appointed day.

S.191: Centralized Reg. - Transfer of unutilized Cenvat credit



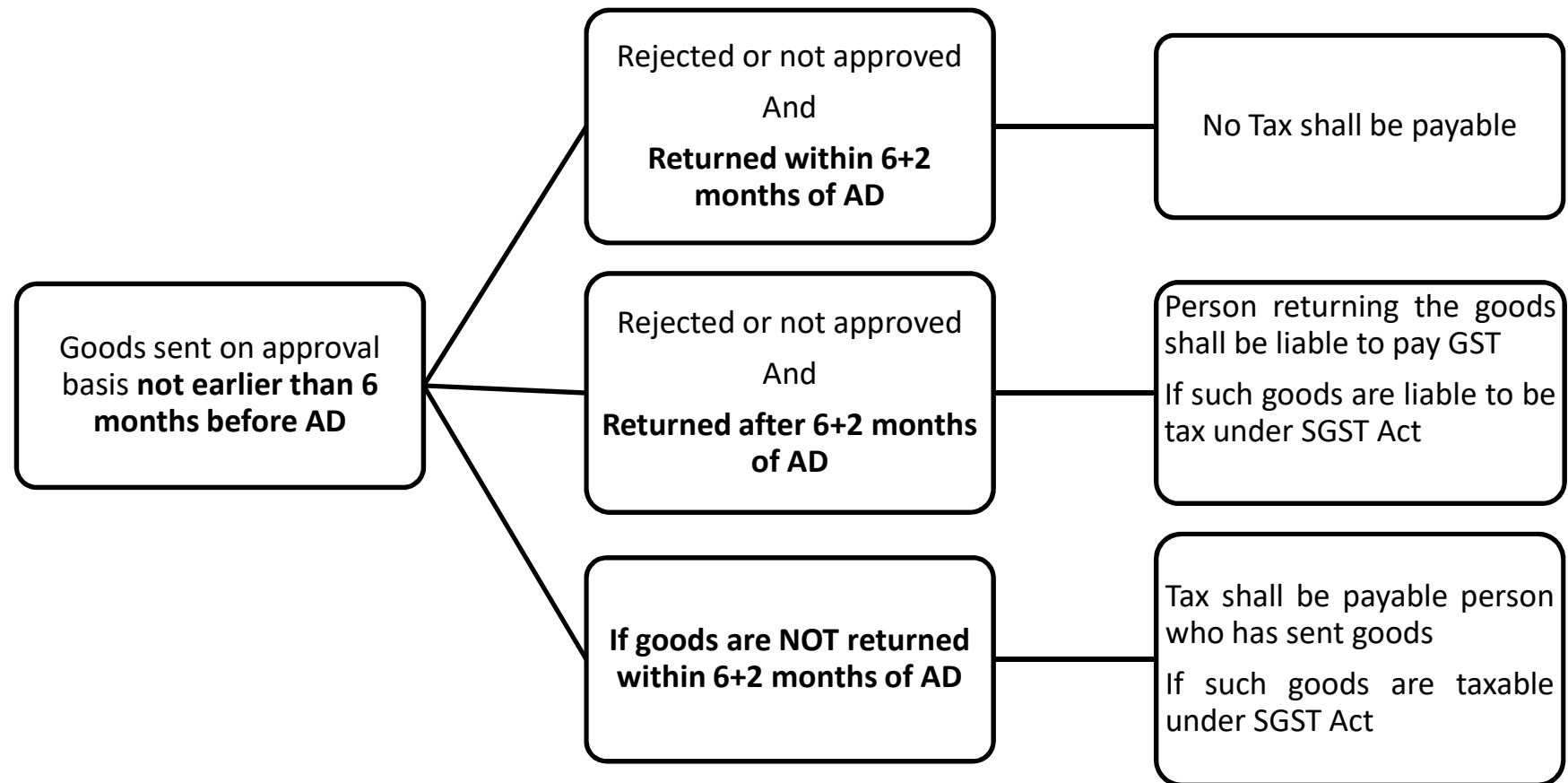
- *Revised return – where the credit has been **reduced** from that claimed earlier
- Credit may be t/f to **ANY** registered taxable person having same PAN for which the centralized registration was obtained under earlier law.

S.192/193:ITC on Goods/Capital Goods lying with agents

SGST Law

- An agent shall be entitled to take credit of the tax paid on the **goods or capital goods** belonging to principal and lying at the premises of the agent, subject to conditions:
 - Agent is a **registered taxable person**
 - Agent and principal have made a **declaration** of the stock lying with agent day before AD
 - **Date of invoices** of such goods not older than **12 months**.
 - Principal has either reversed or not availed **ITC** in respect of such goods.

S.195: Goods sent on approval basis before AD



S.194, 195 & 196

S. 194: Treatment of Branch Transfer - SGST Law

- Any amount of ITC reversed prior to the appointed day
- shall not be admissible as credit of input tax under SGST Act.

S. 196: Deduction of tax at source

- Where a supplier has made sale of goods and also issued invoice before AD
- on which tax was required to be deducted under earlier law
- No TDS under s. 46 of GST Act – on payment made to supplier on or after AD

S.197: Availability of credit on payment of consideration to Service Provider

- Where availed Cenvat Credit on input services reversed due to non-payment to vendor within 3 months
- Credit can be reclaimed – provided taxable person made payment of consideration **within 3 months from the AD**

PART - II

Business Transactions

S.173: Exempted goods returned to place of business

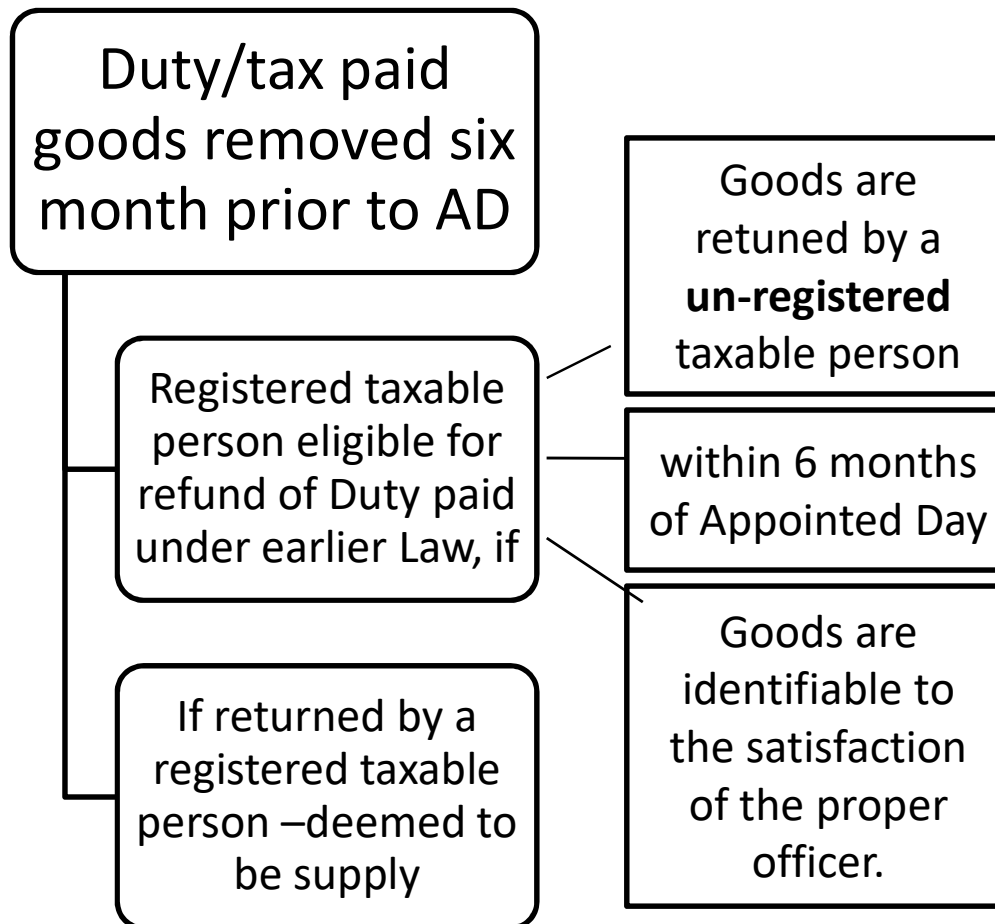
Exempted goods removed six month prior to GST (AD)

No tax payable if goods returned within 6 months from Appointed Day

Goods have to be identifiable to the satisfaction of the proper officer

- Tax to be paid by the person Returning the Goods - if goods are liable to tax under GST and are returned after 6 months
- No tax to be paid if goods are returned by a person not registered under GST

S.174: Goods returned to place of business



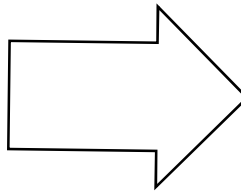
Provision to apply *mutatis mutandis* to goods on which VAT had been paid at time of its sale, and returned to the supplier on or after the appointed day.

S.175: Inputs sent for Job-work

Prior to AD

Inputs received in factory are removed

- As such or Partially processed
- For Job Work for testing etc.
- In accordance with provisions of earlier law



Under GST

No tax shall be payable

- If inputs returned to factory after completion of job work within 6+2 months
- Declaration Filed by Mfr. & JW

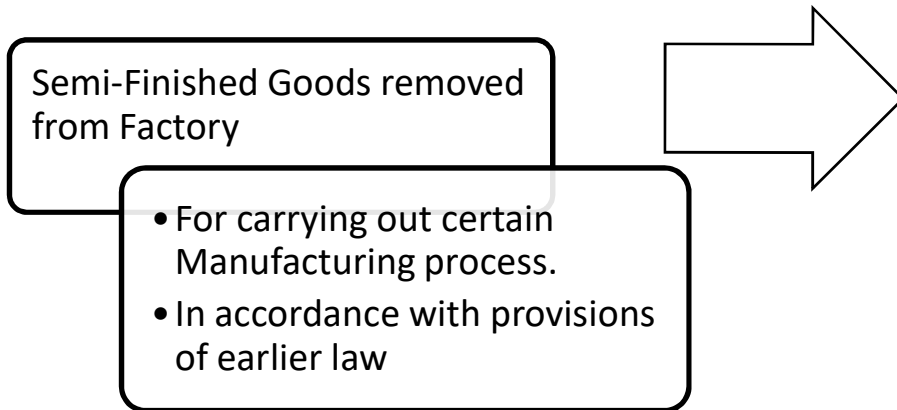
- **If not returned in 6+2 months:** ITC to be recovered in terms with section 184
- **Declaration:** Manufacturer and job-worker has to declare the details of inputs held in stock by job worker on behalf of manufacturer on the Appointed Day.

SGST Law

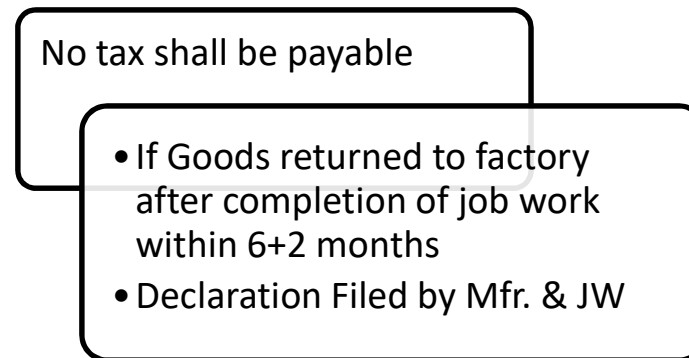
- Provisions to apply *mutatis mutandis* under the SGST law

S.176: Semi-finished goods sent for job-work

Prior to AD



Under GST



- **If not returned in 6+2 months:** ITC to be recovered in terms with section 184
- **Transfer of goods:** Manufacturer may, in accordance with provisions of earlier law, transfer said goods to a premises of registered taxable person for the purpose of supplying therefrom on payment of tax in India or without payment of tax for export within 6+2 months from appointed day.
- **Declaration:** Manufacturer and job-worker has to declare the details of inputs held in stock by job worker on behalf of manufacturer on the Appointed Day.

SGST Law

- Provisions to apply *mutatis mutandis* under the SGST law

S.177: Finished goods removed for testing etc.

- If any excisable goods are removed without payment of duty
 - For carrying out test or other process not amounting to manufacture
 - to any other premises, whether registered or not, in accordance with the provisions of earlier law
 - prior to appointed day
- No Tax shall be payable if
 - such goods are returned within 6+2 months of appointed day
- ITC to be recovered in terms of section 184 if
 - Such goods returned after 6+2 months of appointed day
- **Transfer of goods:** Manufacturer may, in accordance with provisions of earlier law, transfer said goods to a premises of registered taxable person for the purpose of supplying therefrom on payment of tax in India or without payment of tax for export within 6+2 months from appointed day.

SGST Law

- Provisions to apply *mutatis mutandis* under the SGST law

S.178: Revision of price

- Where, in pursuance of contract entered prior to the appointed day
 - Price of any goods/service is revised upwards
 - taxable person removing goods / services shall issue a supplementary invoice or debit note
 - Within 30 days of revision of price
 - Such invoice/DN deemed to be issued for supply under GST Law
 - Price of any goods/service is revised downwards
 - taxable person removing goods / services shall issue a supplementary invoice or credit note
 - Within 30 days of revision of price
 - Such invoice/CN deemed to be issued for supply under GST Law
 - Reduction in tax liability of taxable person - only if recipient of invoice/CN reduced ITC

SGST Law

- Provisions to apply *mutatis mutandis* under the SGST law

Long term construction/works contracts

Section 186 – Treatment of Long term construction/works contract

- Goods and services supplied after the appointed day
- for a contract entered into prior to AD
- Leviable to GST

Section 187 – Progressive or periodic supply of goods or service

- Notwithstanding contained in section 12 & 13
- No GST shall be payable
- on the supply of goods / services made on or **after** appointed day
 - if **consideration** for the same has been received **prior to AD** and
 - duty or tax on the same has already been paid under the earlier law.

SGST Law

- Provisions to apply *mutatis mutandis* under the SGST law

Taxability of Service/Goods in certain case

Section – 188 – Taxability of supply of Service

- Point of Taxation arose before the appointed day - Tax shall be payable under earlier law
- Remaining portion of service is taxable under GST Law

Section – 189 – Taxability of supply of Goods

- Point of Taxation arose before the appointed day - Tax shall be payable under earlier law
- Remaining portion of service is taxable under GST Law

SGST Law

- Provisions to apply *mutatis mutandis* under the SGST law

PART - III

Refund Claims/Assessments/Appeal etc.

S.179: Pending refund claims

- Every refund claim filed BEFORE OR AFTER appointed day
- for refund of Cenvat Credit, Duty, Tax or interest paid BEFORE appointed day
- shall be disposed of in cash in accordance with earlier law.
- where any claim for refund of cenvat credit is fully or partially rejected, the amount so rejected shall lapse.
- No refund to be allowed of any amount of Cenvat credit where the balance of the said amount has been carried forward under this Act.

SGST Law

- Provisions to apply *mutatis mutandis* under the SGST law

S.180: Refund claims filed after AD

- Every claim for refund filed AFTER appointed day
- of any duty/tax paid under earlier law
- for the goods or services exported BEFORE OR AFTER appointed day
- Shall be disposed in accordance with earlier law
- where any claim for refund of cenvat credit is fully or partially rejected, the amount so rejected shall lapse.
- No refund to be allowed of any amount of Cenvat credit where the balance of the said amount has been carried forward under this Act.

S.181: Refund where services not provided

- Tax deposited under earlier law
- but services not provided
- refund claimed AFTER appointed day
- shall be disposed of in accordance with earlier law and
- Shall be paid in cash

S.182: Cenvat credit - Proceedings

Proceedings for claim of cenvat credit

- All proceedings of appeal, revision, review or reference
- relating to a **claim** for CENVAT credit
- Initiated whether before, on or after appointed day under the earlier law
- shall be disposed of in accordance with the provisions of earlier law
- Credit found admissible – to be refunded in cash and not be admissible as ITC under GST Act
- No refund shall be allowed of any amount of Cenvat credit where the balance of the said amount has been carried forward under this Act.

Proceedings for recovery of cenvat credit

- All proceedings of appeal, revision, review or reference
- relating to a **recovery** for CENVAT credit
- initiated whether before, on or after appointed day under the earlier law
- shall be disposed of in accordance with the provisions of earlier law
- Amount of credit found recoverable – shall be recovered as an arrear of tax under GST Act.
- Amount so recovered shall not be admissible as ITC under GST Act.

SGST Law

- Provisions to apply *mutatis mutandis* under the SGST law

S.183: Output duty/tax liability proceedings

Proceedings for output duty or tax liability

- Every proceedings of appeal, revision, review or reference
- relating to any **output duty or tax liability**
- initiated whether before, on or after appointed day under the earlier law
- shall be disposed of in accordance with the provisions of earlier law
- Amount become recoverable – shall be recovered as an arrear of tax under GST Act.
- Amount found to be admissible to the claimant – shall be refunded in Cash
- Amount so recovered shall not be admissible as ITC under GST Act.

SGST Law

- Provisions to apply *mutatis mutandis* under the SGST law

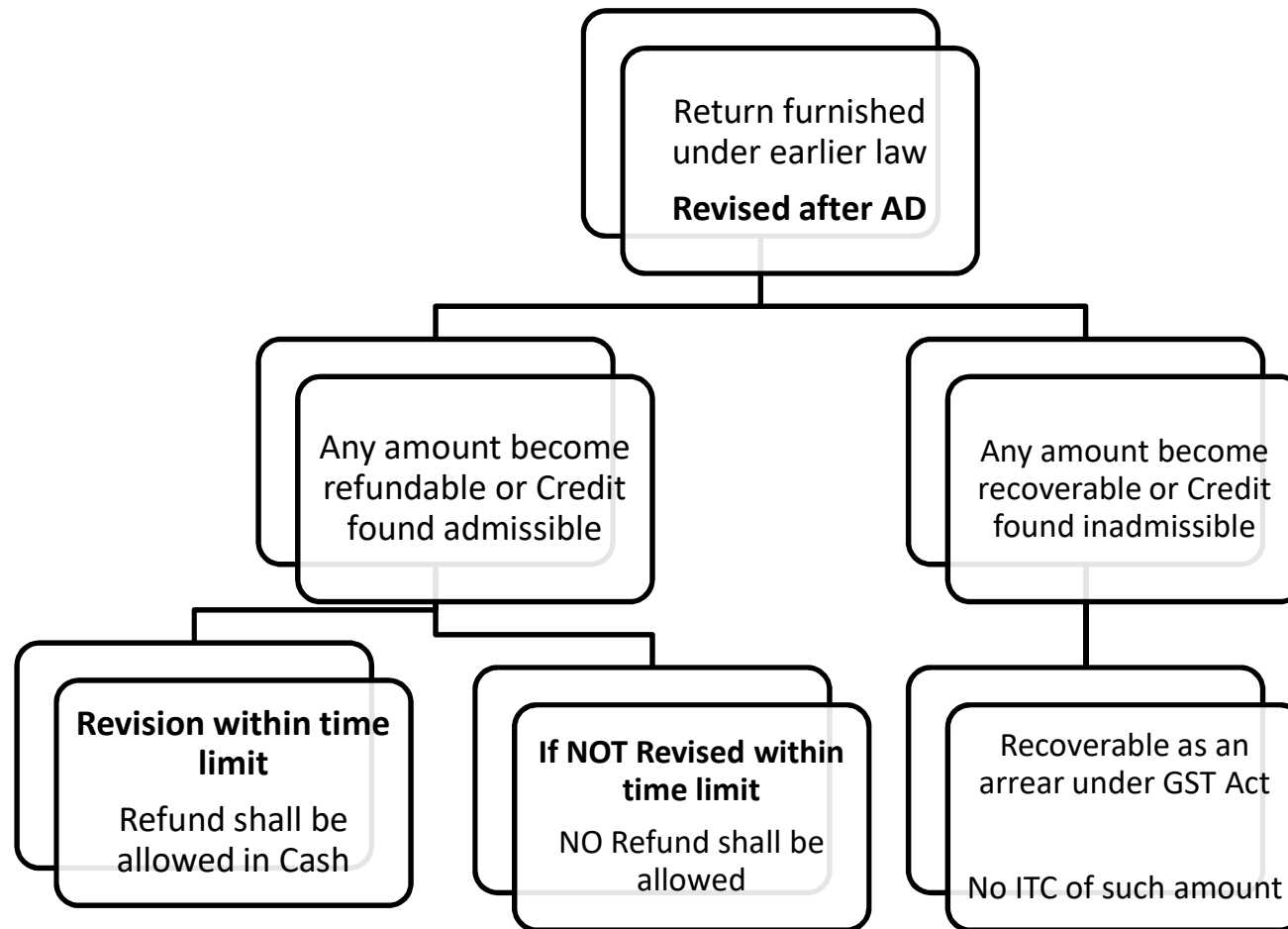
S.184: Assessment or Adjudicating Proceedings

- Where any tax, interest, fine or penalty become recoverable AFTER appointed day
- In pursuance of assessment or adjudicating proceedings
- instituted whether before, on or after appointed day under the earlier law
- shall be recovered as an arrear of tax under GST Act.
- Amount so recovered shall not be admissible as ITC under GST Act.
- If tax etc. become refundable– shall be refunded in Cash

SGST Law

- Provisions to apply *mutatis mutandis* under the SGST law

S.185: Revision of returns after AD



PART - IV

Migration of existing taxpayer

Introduction

- Goods and Services Tax (GST) is expected to be implemented from 1st April 2017. GST is an entirely new tax regime which requires major changes in any business; ranging from supply chain to ERP systems, invoicing mechanism to returns filing.
- The first step towards implementation of GST shall be of transition of existing taxpayers under the current Indirect tax regime to the GST regime.
- For the smooth transition, GSTN has initiated w.e.f. 8.11.2016, ***enrolment*** activity of ***existing taxpayers*** on the GST portal.
- ***Enrolment activity means*** validating the data of existing taxpayers and filling up the remaining key fields by the taxpayer in the Enrolment Application at the GST Common Portal. This activity will ensure that the latest data of taxpayers is available in the GST database.

Introduction

- All existing tax payers are required to provide their details on GSTN for migrating themselves to GST regime.
- An *existing taxpayer* include taxpayers already registered under :-
 - Central Excise
 - Service Tax
 - State Sales Tax or VAT (except exclusive liquor dealers if registered under VAT)
 - Entry Tax
 - Luxury Tax
 - Entertainment Tax (except levied by the local bodies)
- To begin with the tax payers registered under State VAT department need to provide their details.
- Enrolment procedure is being taken up in a phased manner. A state wise list of enrolment is attached in the slide to follow.

Schedule of enrollment

- The schedule of the enrolment activation drive for different states is given below. It is encouraged that the enrolments be completed during the specified dates.

States/ Category	Start Date	End Date
Pondicherry, Sikkim	08/11/2016	23/11/2016
Chhattisgarh, Dadra Nagar Haveli, Daman and Diu, Goa, Gujarat, Maharashtra	14/11/2016	29/11/2016
Arunachal Pradesh, Assam, Bihar, Jharkhand, Madhya Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Odisha, Tripura, West Bengal	30/11/2016	15/12/2016
Chandigarh, Delhi, Haryana, Himachal Pradesh, Jammu and Kashmir, Punjab, Rajasthan, Uttarakhand, Uttar Pradesh	16/12/2016	31/12/2016
Andhra Pradesh , Karnataka, Kerala, Tamil Nadu,, Telangana	01/01/2017	15/01/2017
Enrolment of Taxpayers who are registered under Central Excise Act/ Service Tax Act but NOT registered under State VAT	01/01/2017	31/01/2017
Delta All Registrants (All Groups) – Missed Out	01/02/2017	20/03/2017

S.166 - Migration of Existing Tax Payers

- **Provisional registration certificate** - every person registered under earlier law and holding a valid PAN
- **Certificate validity – 6 months**; can be extended on recommendation of GST Council
- **Information** – To be furnished within 6 months
- **Final Registration Certificate**– on furnishing of information, subject to Section 23
- **Cancellation of Prov. Certificate** - if information not furnished within 6 months
- **Cancellation on application** – Deemed to have not been issued Provisional RC
- **Persons eligible for composition levy**
 - Person to whom provisional RC issued may opt to pay tax under section 9 within such time and manner as may be prescribed.
 - **If not opted** within prescribed time – liable to pay tax under section 8.

Points to consider – migration/ enrolment

Points to consider

- Enrolment under GST is common for both Central GST and the State GST.
- No fee/ charge is payable for enrolment of existing taxpayer with GST system portal.
- Following information/ documents should be available before enrolling with GST system portal.
 - Provisional ID received from the concerned tax authorities
 - Password received from the concerned tax authorities
 - Valid E-mail Address & Mobile Number
 - Bank Account Number with IFSC
 - Various documents as discussed in Slide No. 11
- GSTN has issued FAQ's on enrolment and can be viewed at www.gst.gov.in.
- Additionally a video tutorial has also been provided for ease of assesseees by GSTN.

Modalities for Migration/ enrolment



Process for Migration/ enrolment

- User name and password for the GST portal (www.gst.gov.in) would be received from the tax authorities
 - In case no user name and password is received then you can contact your jurisdictional state/ Centre authorities
- Login on www.gst.gov.in as new users, using username and password provided by tax authorities
 - After first login, user name can be changed as per your choice provided it is available on data base
- Provide Mobile Number and e-mail ID of authorized signatory
 - All future correspondence from the GST portal will be sent on this registered Mobile Number and Email Address
- Verify the mobile no and the e-mail id's by way of OTP received on them
- Fill in the details contained in the enrollment application and the fields marked with red asterisk are to be filed necessarily to proceed with enrolment

Process for Migration/ enrolment

- Upload the specified documents in the formats and sizes as prescribed (discussed in slide 11)
- Sign and submit the application
 - DSC is mandatory for enrolment by Companies, Foreign Companies, Limited Liability Partnership (LLPs) and Foreign Limited Liability Partnership (FLLP)
 - For others, e-sign will also be allowed

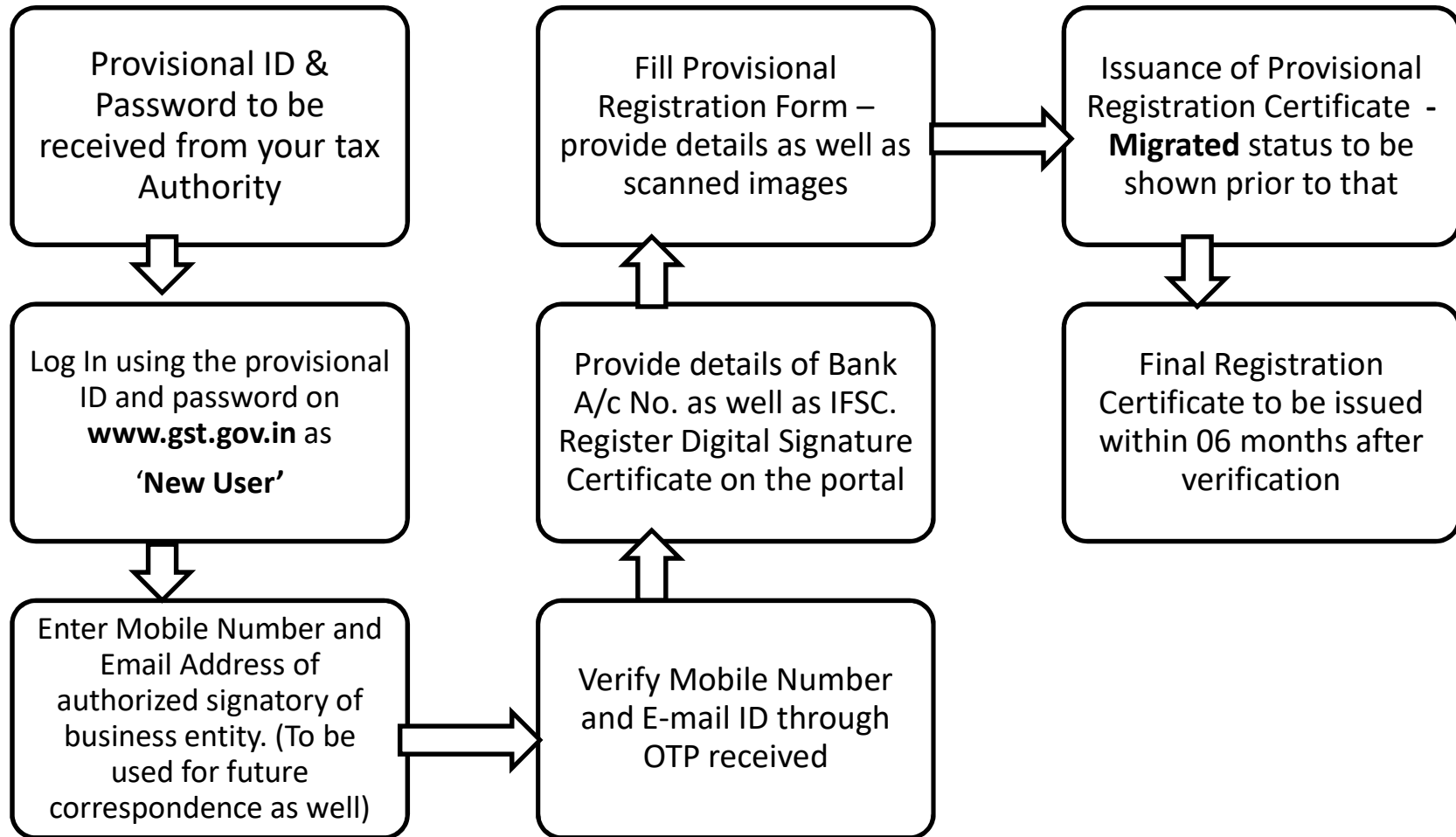
Documents required for migration/ enrolment

Nature of document	Name of document
Proof of Constitution of Business	In case of Partnership firm: Partnership Deed of Partnership Firm In case of Others: Registration Certificate of the Business Entity
Details of Promoters/ Partners/ Karta of HUF	Photograph and address proof
Details of Authorized Signatory	Proof of Appointment, DSC & Photograph. Aadhaar of the Authorized Signatory in cases other than Companies, Foreign Companies, Limited Liability, Partnership (LLPs) and Foreign Limited Liability Partnership (FLLP)
Bank Details	Copy of Bank Passbook containing Bank Account Number, Address of Branch. Address of Account holder and few transaction details

Steps after enrolment

- Application Reference Number (ARN) will be generated after the successful submission of the enrolment application at the GST system portal. ARN can be used to track the status of the enrolment application.
- If the enrolment application is filed successfully, a provisional registration certificate will be available on your Dashboard on the “appointed date”. **[Form GST REG - 21]** which will be valid for a period of six months or any extended period as may be notified.

Process flow for enrolment and final registration of Existing Assesseees



Paramount considerations during enrolment and Role of a Professional

Paramount considerations during transition

- **nature of registration**: With various registration options available, it must be strategically decided as to what kind of registration/s are to be sought, i.e., whether as compounding dealer, or based on segmental reporting and options for a Input Service Distributor, etc. Implications of each type of registration must be considered.
- **optimum locations for registration**: As separate registrations shall be required at each state from where supply of goods/ services are being made, it is necessary that decision as to from which places supplies are to be made becomes crucial and requires proper planning.
- Present and future business transactions must be taken into consideration. Each additional location shall entail additional compliance.

THANK YOU

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