

1. Is GST applicable on commission paid to foreign agents for export related services?

Yes. **With effect from 30.03.2026**, an amendment to Section 13(8) of the IGST Act, 2017 has changed the tax treatment of commission paid to foreign agents. Such services involving procuring export orders or facilitating payment collection etc are now liable to GST under the Reverse Charge Mechanism (RCM).

Accordingly, the Indian exporter must pay GST at 18% on the commission amount. However, Input Tax Credit (ITC) can be availed on the GST paid, subject to eligibility conditions.

Ref: Clause 141 Finance Bill, 2026/Presidential assent to Finance Bill effective from 30.03.2026

2. What is the difference between detention & confiscation of goods during transit under GST and what procedural steps should members adopt?

Detention (Section 129) is for **procedural lapses** during transit (e-way bill errors, minor mismatches). No intent to evade tax is required and goods are released on **payment of tax and penalty**.

Confiscation (Section 130) is a **serious penal action** used only when there is **intent to evade tax** (e.g., fake invoices, unaccounted goods). It requires proper notice & adjudication and **cannot be routinely invoked after detention**.

Advisory:

Ensure accurate documentation, match goods with invoices/e-way bills and train dispatch teams. If detained, seek release under Section 129 for minor errors. If confiscation is proposed, **contest by proving absence of intent to evade tax**.

3. What is the GST treatment for sale of capital goods based on the 5-year (60 months) rule?

Under GST, when capital goods (on which Input Tax Credit has been availed) are sold, the tax liability is determined based on a **deemed useful life of 5 years (60 months)**, it is assumed that the asset/machinery will be used for 5 years (60 months).

A. If the machinery is sold within the 5 year period, it means that the full credit has **not been “used up”**, so the **unused portion must be paid back**.

Steps to be adopted

1. ITC is “consumed” over time

- ITC is reduced at **5% per quarter (3 months)**
- Over a period of 5 years = 20 quarters = 100% ITC consumed

So, earlier the sale more ITC still “unused”

2. Calculation of reduced ITC

ITC to be reduced based on how long the asset was used.

Formula:

Remaining ITC = Original ITC – (5% × No. of quarters used)

3. Comparison of two values

- Reduced ITC (remaining credit)
- GST on sale price (transaction value)

4. Payment of whichever is higher - key compliance rule

- If **remaining ITC is higher** → the said amount to be paid
- If **GST on sale value is higher** → the said amount to be paid

Why “higher of two” rule?

Because government wants to ensure:

- Assessee **does not benefit from excess ITC**, and
- Assessee **does not underpay GST by selling at a low value**

Example

- ITC claimed: ₹1,00,000
- Sold after 2 years = 8 quarters

ITC reduction = 5% × 8 = 40%

Remaining ITC = ₹60,000

Higher of the two:

- GST on sale value = ₹45,000
- Remaining ITC = ₹60,000

Assessee must pay **₹60,000 (higher amount)**

Departmental **scrutiny is common in this issue** because:

- Many taxpayers **incorrectly pay only GST on sale value**
- Errors happen in:
 - counting quarters
 - ITC calculation
 - ignoring “higher of” rule

This leads to **notices, interest, and corrections**

B. If capital goods are sold after 5 years (i.e., after 60 months):

- The ITC is treated as **fully exhausted**.

- Hence, **no ITC reversal is required** (reduced ITC = NIL).
- **GST is payable only on the transaction (sale) value** at the applicable rate.
- 4. Is issuing a **single Show Cause Notice covering multiple financial years** statutorily valid under GST Law?

Issuing a **single GST Show Cause Notice covering multiple financial years** is generally **not considered proper practice**, though it is **not expressly prohibited in all situations**. The reasons include:

Limitation Period Issues

- GST law prescribes **different time limits** for issuing SCNs:
 - Section 73 (No fraud / no suppression - only Bonafide error) → 3 years
 - Section 74 (Fraud / suppression / wilful misstatement, intent to evade tax) → 5 years
 - Each financial year has its **own limitation clock**.
- If multiple years are combined:
 - Some years may be **time-barred**, while others are valid.
 - A single SCN may **mask this defect**, which is legally impermissible.
- Common SCN is permissible **only if**:
 - Issues are identical across years
 - Demand is clearly bifurcated year-wise, AND
 - Limitation is independently satisfied for each year.

Ref: M/s Aasawa Brothers Corporate Avenue Vs Union of India (Bombay High Court)