Practical FAQ's under GST

The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)
New Delhi

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Foreword

The introduction of Goods & Services Tax (GST) in India is one of the most significant indirect tax reforms since Independence. The reform that took more than a decade of mutual co-operation, continuous discussion and intense debate between Central and State Governments about implementation methodology, was finally implemented with effect from 1st July 2017, subsuming almost all indirect taxes at the Central and State levels. As the journey of GST Implementation progressed in India, the authorities have been quick to address the various challenges faced by the Industry and public concerns by issuing a series of notifications, clarifications, press releases and FAQs, to resolve a wide range of concerns.

The implementation of GST regime has brought in various benefits like creation of National market by bringing down fiscal barriers amongst the States and has also mitigated the cascading effect of taxes by allowing seamless credit of input tax across goods and services. GST has also given a major boost to the *'Make in India'* initiative of the Government by making goods and services produced or provided in India competitive in the national and international markets.

The Institute of Chartered Accountants of India (ICAI) through its GST & Indirect Taxes Committee has been playing a vital role in the implementation of GST in India by providing suggestions to the Government at each stage of development of GST. Further, the Institute has been playing proactive role and is a catalyst in knowledge dissemination and creating awareness through technical publications, newsletters, e-learning and organizing various programmes, certificate courses, webcasts etc. for the enrichment of all stakeholders.

I am happy to note that the GST & Indirect Taxes Committee of ICAI has now taken the initiative to issue a series of Handbooks covering various procedural aspects of GST and in that series is bringing out this "***Practical FAQ's under GST"*** with an objective to provide guidance to the readers on practical issues faced by them. This publication addresses queries in lucid language, which would facilitate the readers to easily comprehend the GST laws, enabling its smooth implementation.

I congratulate CA. Rajendra Kumar P, Chairman, CA. Sushil Kumar Goyal, Vice-Chairman and other members of GST & Indirect Taxes Committee for coming out with these Frequently Asked Questions (FAQ's) and for taking active steps in providing regular guidance to the members and other stakeholders at large.

I am sure that members will find this publication very useful in discharging the statutory functions and responsibilities under the GST laws in an efficient and effective manner.

Place: New Delhi
Date: 4th December, 2020

CA. Atul Kumar Gupta
President, ICAI

Preface

Goods and Services Tax (GST) was introduced in India from 1st July, 2017. It is one of the major tax reforms since Independence in the area of indirect taxation. It was introduced with the objective to mitigate the cascading effect of taxes by allowing seamless credit across goods and services, facilitate free flow of goods and services across India and boosting tax revenue from better compliance and widening the tax base. A remarkable feature of GST implementation is that all the States in India came together with the Centre to form a unique federal body called GST Council, which is entrusted with the objective of recommending policies and procedural matters in the formation and implementation of GST legislation. The spirit of co-operative federalism took deep roots thereby ensuring that large federal countries like India implement the GST Law.

In order to facilitate understanding of the various compliances under GST, the GST & Indirect Taxes Committee of ICAI has taken an initiative to prepare handbooks on procedural aspects like registration, refund, return, invoice etc. One of the results of such initiative is this **Practical FAQ's under GST.** An attempt has been made here to cover practical aspects under GST by addressing the queries received in numerous webcasts organised during the lockdown period covering Concept of Supply, Levy of GST, Nature and Place of Supply, Input Tax Credit, Time and Value of Supply, Reverse Charge Mechanism, Interest, Late Fee and Penalty etc. To make the reading and understanding easier, important examples with calculation have been included in this publication.

We stand by the Government in our role as "*Partner in GST Knowledge Dissemination"* and have always been supporting the Government with our intellectual resources, expertise and efforts to make GST error-free.

We sincerely thank CA. Atul Kumar Gupta, President and CA. Nihar Niranjan Jambusaria, Vice-President, ICAI for their encouragement to the initiatives of the GST & Indirect Taxes Committee. We express our gratitude for the untiring effort of CA. Aditya Girdharilal Falor, CA. Ajaykumar Narayan Parnaik, CA. Amey Makarand Dabke, CA. Amish J. Khandhar, CA. Anand Ratanlalji Nahar, CA. Ankit Kanodia, CA. Arjun Shridhar Phatak, CA. Atul C. Doshi, CA. Bikash Agarwala , CA. Chaitanya Sunil Vakharia, CA. Darrshan Sawaiwala, CA. (Dr.) Dilip V. Satbhai, CA. Ganesh Prabhu B,

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We record here the dedicated and devoted work done by the former Secretary of the Committee CA. Sharad Singhal who passed away at a very young age of 36 on 26th September 2020. The World of GST in general and our Committee in particular will miss his intellectual expertise. The will of the almighty prevails over everything and all of us have to accept his decision with a bow.

We trust this publication will be of practical use to all the members of the Institute and other stakeholders. We also welcome suggestions at gst@icai.in and request to visit our website https://idtc.icai.org and provide valuable inputs in our journey to make GST truly a good and simple tax.

CA. Rajendra Kumar P
Chairman
GST & Indirect Taxes Committee

CA. Sushil Kumar Goyal
Vice- Chairman
GST & Indirect Taxes Committee

Place: New Delhi
Date: 4th December, 2020

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Chapter 1
Supply and Levy

Supply

Q1. Whether development of land under Joint Development Agreement (JDA) constitutes a supply under GST?

Ans. **Development of Land:** Land development is the act of altering the landscape in many ways from natural or semi-natural state for a purpose such as agriculture or construction including subdividing it into plots, typically for the purpose of building homes or commercial complex.

Land Development in JDA: In the event of Joint Development, an agreement will be executed between the land owner and the builder. The rights for development will be given by the land owner and development will be carried out by the builder. As consideration for the development undertaken, the builder will be paid in the form of portion of the said developed land.

In order to determine whether a transaction will constitute a supply under GST, the said transaction has to satisfy the rudiments of the definition under Section 7(1) (a) of the Central Goods and Services Tax Act, 2017 ("**the CGST Act**").

An excerpt from the definition is reproduced below:

> *"7 (1) For the purposes of this Act, the expression "supply" includes—*
>
> *(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;"*

The terms that are relevant for our consideration are "supply of service", "made for a consideration" "by a person" and "in the course or furtherance of business"

- "Supply of service": Anything other than goods is regarded as service as per the definition of the term 'service' under the GST law. Hence, the activity of development of land will be considered as service and when it is carried out for other, it becomes supply of service.
- "Made for a consideration": Consideration for developing the land is obtained or normally agreed between the supplier and recipient as a portion or percentage of the developed land as per the agreement.
- "By a person" – the definition of the term "person" is exhaustive and it includes anybody covered within the definition.
- "In the course or furtherance of business" - the activity carried out is obviously in the course of business or furtherance of business.

It is clear from the above that the activity of "development of land" is satisfying the rudiments of the term "supply" under the CGST Act. Hence, development of land under Joint Development Agreement will constitute a supply under GST.

Q2. (a) Would the act of Practicing Chartered Accountant who delivers guest lectures at various Institutes or organizations fall under the scope of supply?

(b) If yes, would any sum received as honorarium and reimbursement of local transport expenses at fixed rate will also have to be added as "consideration"?

Ans. (a) Delivering guest lectures by Practicing Chartered Accountant at various Institutes or organizations for a consideration (contractual basis) falls under the scope of supply under section 7(1) (a) of the CGST Act.

(b) As per section 2(31) of the CGST Act, consideration includes any payment made or to be made, whether in money or otherwise or the monetary value of any act or forbearance in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person.

The sums received as honorarium and reimbursement of local transport expenses at a fixed rate shall be treated as consideration for supply under section 7(1) (a) of the CGST Act.

Q3. What do you understand by the term "*in the course of business* and *furtherance of business"?* What is the tax treatment of the same under GST?

Ans. In GST the two basic elements are supply and ITC. The definition of 'supply' as given in Section 7(1)(a) of the CGST Act includes**-**

> *"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"*

Hence, "in the course of and in furtherance of business" is the primary requirement for supply in GST and supply is the primary and necessary element for levying of GST. The term 'further' enables the entity to supply and receive supplies where the act is towards achieving the goals of the business.

Further, the condition mandated for availing ITC as mentioned in Section 16(1) of the CGST Act is:

> *"Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person."*

'In the course or furtherance' is not defined under GST Act, but is broad enough to cover any supplies made in connection with the business. The phrase widens the scope of the definition of 'Business' to bring more activities within its ambit. The phrase "course or furtherance" further extends to "course or furtherance of business". Hence, it is important to understand the meaning of business which is defined in Section 2(17) of the CGST Act as under:

"business" includes —

(a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;

(b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);

(c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;

(d) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;

(e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;

(f) admission, for a consideration, of persons to any premises;

(g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;

(h) activities of a race club including by way of totalisator or a license to book maker or activities of a licensed book maker in such club; and

(i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities;

The literal meaning of the said phrase 'in the course of or furtherance of' is '*during the act of or in continuation of carrying out such act in future'*. Thus, in the course or furtherance of business means either of following:

- anything done in relation to business, while carrying out business or
- simply a revenue-generating ordinary activity of that organisation/concern.

Considering the definition of business, the sale of goods or service even as a vocation is a supply under GST.

However, there is one exception to this 'course or furtherance of business' rule i.e., import of services for a consideration. Import of services for consideration, even if not in the course -or furtherance of business are liable to GST. No GST on supply not in the course or furtherance of business As elaborated above, supplies in the course or furtherance of business qualify as supply under GST. Hence, supplies made by an individual in his personal capacity do not come under the ambit of GST unless they fall within the definition of business as defined in the Act. It has been clarified v*ide C.B.E.&C. Press Release No. 78/2017, dated 13.7.2017* that sale of old gold jewellery by an individual to a jeweller will not constitute supply as the same cannot be said to be in the course of furtherance of business of the individual.

Q4. Whether developmental rights in land given by a land owner to a developer (in case of an agreement for area sharing or revenue sharing between the two) are to be considered as supply by the land owner in the course or furtherance of business?

Ans. The moot question is whether the transfer of development rights (TDR) being a "benefit arising out of land" can be deemed to be a supply under GST based on the judicial precedents given under the erstwhile indirect tax regime. However, *Notification No. 4/2018 Central Tax (Rate) dated 25.01.2018* was issued notifying the applicability of GST on TDR. This notification deemed that the transfer of TDR will be a supply and liable under GST. Thus, the transfer of development rights by landowner to developer is treated as supply in which development rights are transferred in return for consideration that involves in kind, wholly or partly, in the form of construction service of complex, building or civil structure. Developmental rights in land given by a land owner to a promoter (in case of an agreement for area sharing or revenue sharing between the two) are to be considered as supply by the land owner in the course or furtherance of business. Further, *Notification No. 05/2019-Central Tax (Rate) dated 29.03.2019* ***["NN 5/2019-CTR"]*** was issued notifying that the 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 would be chargeable to GST under RCM as per section 9(3) of the CGST Act, w.e.f. 1st April, 2020.

Q5. Group insurance and LIC premium collected from employees salary by employer contains GST. The amount along with GST is remitted to the concerned insurance company. Is this supply for employer?

Ans.

- In order to constitute a 'supply', the following elements are required to be satisfied:

  (i) there should be supply of "goods" and / or services";

  (ii) supply is for a "consideration";

  (iii) supply is made "in the course or furtherance of business":

- From the above, it is clear that any activity done against consideration is treated as supply; however, such an activity must be in the course of business or for the furtherance of business.

- The term *"in the course of business"* or *"furtherance of business"* is not defined under the CGST Act. However, the term *"business"* has been defined in section 2(17) of the CGST Act [Please refer Q3 for term "business"]. The term "business" broadly means any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity whether or not it is for pecuniary benefits. Any activity ancillary or incidental to these activities is also covered as business. It has also been provided that any activity or transaction falling in above categories would be business whether or not there is volume, frequency, continuity or regularity in transactions.

- In the instant case, Group insurance and LIC premium are collected from employees by the employer who is not engaged in the business of providing insurance services. The service of insurance is actually provided by the insurance company for which the insurance company is charging GST. The employer is just paying the insurance premium amount to the insurance company and recovering premium amount from the employees.

- Thus, it is clear that the employer is not in the business of providing insurance services. Therefore, activity of recovery of insurance premium cannot be treated as an activity done in the course of business or for the furtherance of business.
- Accordingly. based on the reading of sections 7 and 2(17) of the CGST Act, *providing insurance service and recovery of premium amount is not in the course or furtherance of business and hence cannot be considered as "supply of service".*

Q6. If a person gives his property on rent for commercial purpose and the property has been purchased for investment, whether the same shall be considered as supply being in the course of business and hence taxable?

Ans. There are 3 questions in the above query:

1. Whether the above transaction shall be considered as supply being in the course of business?
2. If yes, whether the same is taxable?
3. Will it make any difference if the commercial property is shown as investment and not as business asset in the books of accounts?

Section 7 of the CGST Act, outlines the scope of 'supply'. The expression 'supply' includes – *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*. Renting of immovable property is covered in the first part of the definition. Further such transaction should be in the course or furtherance of business to be treated as supply.

To decide whether a transaction is in the course or furtherance of business, we have to refer to definition of the term 'business' which is given in Section 2(17) of the CGST Act.

The definition of 'business' starts with the words "*it includes*". While interpreting the words "*it includes*" whatever is clearly mentioned as business shall be considered, and any activity similar in nature even though not mentioned will be covered by the word "*it includes*". The

definition further covers any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity.

The definition of '*business*' specifically mentions "*similar activities"*. Hence it appears that intention of legislature is that any activity which generates revenue/income is business activity.

Therefore, the above transaction is supply in the course of business.

Now the second question is, whether the same is taxable. There is no specific exemption to renting of commercial premises and hence the same will be taxable.

Coming to the last question, whether it will make any difference by giving different accounting treatment? Since the activity is supply as per provisions of Section 7 of the CGST Act, it will not make any difference whether the commercial premises is shown as business asset or investment in the books of accounts.

In the service tax regime, renting of immovable property was taxable. GST is continuation of earlier laws in a consolidated form.

Q7. Is there a supply between member of an AOP and the AOP?

Ans. As per Section 2(17)(e) of the CGST Act, the term "business" includes *provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members.*

As per Entry No. 7 of Schedule II of the CGST Act, supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration shall be treated as supply of goods.

Circular No. 35/9/2018 -GST dated 5.03.2018, provides that supply of services by an unincorporated association or body of persons (AOP) to a member thereof for cash, deferred payment or other valuable consideration, shall be treated as supply of services.

On the basis of the above, supply of goods / services between AOP and its members would be treated as supply and liable to GST.

Q8. Whether transfer of business assets including stock from proprietary concern which is converted into private limited company/ partnership firm constitutes supply under GST? Will it have any effect if the proprietary is/ is not a partner in the new firm?

Ans. The definition of 'business' is given in Section 2(17) of the CGST Act. Sub-clause (d) of Section 2(17) of the CGST Act provides that-

"business includes —

(a) ……..
…..……..

(d) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;
……"

Thus, transfer of business assets to another entity due to closure of business will be treated as a supply. In the instant case, when the proprietary concern is converted into a private limited company/firm, the proprietary concern ceases to exist and the transfer of business assets will be treated as a supply. The transfer of all business assets including stock to the newly formed entity, by virtue of Schedule II of the CGST Act, is deemed to be treated as a supply of services even though the assets (goods) are being transferred. However, if the business is transferred as a going concern (i.e.) lock, stock and barrel] and the business of the proprietary concern is carried out by the new entity, then such transfer of business as a going concern is exempt from tax *vide* Sl.No. 2 in *Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 ["**NN 12/2017-CTR"]/ Notification No. 9/2017- Integrated Tax (Rate) dated 28.06.2017 ["**NN 9/2017-ITR**"]*, which is reproduced as under:

Sl. No.	*Chapter, Section, Heading, Group or Service Code (Tariff)*	*Description of Services*	*Rate (per cent.)*	*Condition*
(1)	*(2)*	*(3)*	*(4)*	*(5)*
2	*Chapter 99*	*Services by way of transfer of a going concern, as a whole or an independent part thereof.*	*Nil*	*Nil*

The point to be noted is that the business of the ceased entity should be carried on as a going concern by the new entity. It is irrelevant if the proprietor is part of the new entity or not.

Q9. Whether distribution of Head Office expenses to Branch Office would constitute supply?

Ans.

- The concept of distinct persons has been introduced in GST. In terms of Section 25(5) of CGST Act, Head Office and Branch Office shall be treated as distinct entities and any service provided by Head Office to Branch Office shall be regarded as supply under GST law and shall attract GST.
- However, mere allocation or distribution of costs/expenses is different from supply of service from Head Office to Branch Office.
- Therefore, cost allocation/distribution activity *per se* shall not be construed as supply of service from Head Office to Branch Office and GST shall not be leviable on such cost allocation, unless there exists an element of supply.
- But in all those cases where a Head Office is giving any kind of service(s) to its Branches (which would be a taxable supply), then certainly these expenses would play an important role while calculating the value of supply of services under cross charge.

Q10. Can subsidy received under Credit Linked Subsidy Scheme (CLSS) be treated as supply under GST?

Ans.

- **The Pradhan Mantri Awas Yojana - Credit Linked Subsidy Scheme was implemented to help the urban poor population by increasing the institutional credit flow to meet their housing needs.**
- Section 7 of the CGST Act provides that the expression "supply" includes 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.
- In terms of Section 2(31) of the CGST Act, any subsidy given by the Central Government or a State Government shall not be included in consideration.

  Further, as per Section 15 of the CGST Act, subsidies provided by the Central Government and State Governments shall not be included in the value of supply.
- In view of the above, subsidy received under CLSS from Central Government shall not fall under the scope of supply.

Q11. What do you understand by – exempted supply/nil rated supply, non-taxable supply / non-GST supply, no supply and zero-rated supply? Explain with examples.

Ans. **<u>Exempt Supplies / Nil rated supplies</u>**

- As per Section 2(47) of the CGST Act: *"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;*
- Exempt supplies mean-
  - Supplies which attract nil rate of tax as per the tariff itself
  - Supplies which are exempt under Section 11 of the CGST Act or Section 6 of the Integrated Goods and Services Tax Act, 2017 ("**the IGST Act**"). These sections grant power to

the Government to exempt generally, either absolutely or subject to such conditions as may be specified therein, supply of goods or services or both of any specified description from the whole or any part of the tax leviable thereon with effect from such date as may be specified in such notification and

— Includes non-taxable supplies.

Non-Taxable Supplies / Non-GST Supplies

- As per Section 2(78) of the CGST Act: *"non-taxable supply" means 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;*
- Supplies which are excluded from the charging section (i.e.) Section 9(1) and section 9(2) of the CGST Act, are to be considered as non-taxable supplies as they are not leviable to tax under this the said Act. Supply of alcoholic liquor for human consumption, petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel as stipulated in Section 9(2) of CGST Act have been excluded from the scope of the levy and thus, will be considered as non-taxable supplies.

No Supply

- A transaction or activity must fall under the ambit of '*supply*' as defined under the GST law, to qualify as a non-taxable supply under the GST law. Supplies which are not leviable to tax are known as non-taxable supplies.
- Therefore, transactions specified in Schedule III which are treated neither as supply of goods nor as supply of services, would be considered as "no supply" for the purpose of GST law and qualify as non-taxable supplies for the purposes of calculating the threshold limit for registration.

Zero-rated supply

- As per Section 2(23) of the IGST Act, "zero-rated supply" shall have the meaning assigned to it in section 16 of the IGST Act.

- Under Section 16(1) of the IGST Act, following are treated as zero-rated supplies:
  1. Export of goods or services or both
  2. Supply of goods or services to Special Economic Zone developer or a Special Economic Zone unit.
- Zero-rated supply does not mean that the goods or services are nil rated or are taxed at 0 % tax. In respect of such zero-rated supplies, there are options to neutralize the incidence of GST, by allowing ITC on inward supplies to such suppliers and by allowing refund of unutilised credits.

Examples

- A2Z Beverages India Private Limited is engaged in the following businesses ::
  - Supply of alcohol for human consumption – Non-taxable supplies as they are currently outside the purview of GST.
  - Supply of non-alcoholic toddy – Exempt supply by virtue of Exemption Notification.
  - Supply of concentrated juice essence from a company in Spain to a company in Germany – is not a supply. No supply by virtue of Schedule III to the CGST Act.
  - Supply of sweetened aerated drinks from its factory at Chennai to a customer in Indonesia – *Zero rated supplies (Exports).*

Q12. What is the concept of deemed supply under GST law?

Ans. Section 7 of the CGST Act prescribes that 'supply' includes all forms of supply of goods and /or services for consideration. However, there are certain activities which are to be treated as 'supply' under GST even though they are without consideration. Such activities are deemed to be 'supply' under GST law i.e. even though there is no consideration payable in respect of such supply, the GST law treats them as deemed supply. Such activities have been enumerated in Schedule I to the CGST Act. The following are the list of such activities:

1. Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.
2. Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business:

   Provided that gifts not exceeding fifty thousand rupees in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.
3. Supply of goods —
   (a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or
   (b) by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.
4. Import of services by a person from a related person or from any of his other establishments outside India, in the course or furtherance of business.

Q13. Whether permanent transfer of business asset, where no ITC is availed, if made without consideration is liable to tax under GST law?

Ans. Entry No. 1 of Schedule I of the GST law (the CGST Act) treats a permanent transfer or disposal of business assets where ITC has been availed, as a deemed supply, even if it is without consideration.

In the present case, since no ITC is availed, the permanent transfer of business asset without consideration may not be treated as supply under GST and therefore, no GST shall be leviable.

Q14. A Company gives Diwali gifts to its employees, where the overall cost is in lakhs of rupees but individual employee gift cost does not exceed 50,000/-. Whether it will constitute supply in terms of Entry No. 2 of Schedule I of Section 7 of the CGST Act?

Ans.
- Schedule I to the CGST Act, spells out the activities which shall be treated as supply even without consideration.

- Entry No. 2 of the Schedule I provides that –

  "*Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business:*

  Provided that gifts not exceeding fifty thousand rupees in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both."

- The Government also *vide* a Press Release *[C.B.E. & C. Press Release No. 73/2017, dated 10.7.2017]* clarified that gifts up to a value of Rs 50,000/- per year by an employer to his employee are outside the ambit of GST.
- Therefore, the threshold limit of ₹ 50,000 shall be applicable on per employee basis in a financial year.
- In view of the above, as the value of the gift to an individual employee is less than ₹ 50,000/- in the instant case, GST shall not be applicable.

Q15. A company is in the business of manufacturing and supplying of goods from its factory in the State of Andhra Pradesh (AP). Its corporate office is located in the State of Tamil Nadu (TN) and the orders & procurement processes are managed from TN. Will the services provided by the different arms of the company from TN to AP be considered as supply of service in the context of Entry No.2 of Schedule I of the CGST Act?

Ans. Yes, the services provided by different arms of the company from TN (corporate office) to AP (manufacturing unit) with or without consideration will be treated as supply as per Entry No. 2 of Schedule I (Activities to be treated as supply even if made without consideration) of the CGST Act. The value of such supply shall be determined as per section 15 of the CGST Act read with the applicable the Central Goods and Services Tax Rules, 2017 ("**the CGST Rules**").

Q16. Whether the conversion of stock in trade into capital asset constitutes supply under GST law?

Ans. The concept of conversion of stock in trade to capital asset is

prevalent in the Income Tax Law. But similar concept is not found or dealt with in the GST Law.

However, where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, such transfer or disposal is deemed as supply of goods by the person.

As per Entry No. 1 of Schedule I of the CGST Act, *permanent transfer or disposal of business assets where ITC has been availed on such assets* is an activities to be treated as supply even if made without consideration.

Further, Entry No. 4(b) of Schedule II of the CGST Act states that *where, by or under the direction of a person carrying on a business, goods held or used for the purposes of the business are put to any private use or are used, or made available to any person for use, for any purpose other than a purpose of the business, the usage or making available of such goods is a supply of services.*

Hence, conversion of stock in trade into capital asset, used for other than business purposes or used for privately, could be treated as supply of service and accordingly GST would be applicable.

Q17. Is GST leviable on disposal of business assets where ITC has not been availed (VAT credit availed)? Will this transaction still come under the ambit of Entry No.1 of Schedule I?

Ans. GST is applicable on the disposal of business assets as it is covered within the definition of supply given in section 7(1) of the CGST Act.

If disposal of business asset is for a consideration, then the GST will be applicable on such consideration.

If disposal of business asset is without consideration, then Schedule I applicability needs to be checked.

- If ITC has been availed on such business asset, then it will be treated as a supply and valuation of such disposal has to be done in accordance with section 15 read with related Rules.
- If no ITC has been availed, then in the absence of consideration, the disposal will not be treated as a supply and thus no tax will be attracted.

In the instant case, VAT credit that had been availed on the business asset would have been transitioned into the GST regime by filing **Form GST TRAN-1**. This credit availed through **Form GST TRAN-1** is available for set off against the GST liability. Hence, it will be deemed that the ITC has been availed on such business assets and if there is no consideration charged for the disposal of business assets, then Schedule I is attracted. However, it is possible that a different view may be taken in this case, due to interpretation of the provision. Hence, before taking a decision all pros and cons may be ascertained by the person concerned.

Q18. Whether ITC is required to be reversed in case of free samples under section 17 (5) even on those goods which have been exported under LUT or it is a taxable supply as per Schedule I, i.e. permanent disposal of a business asset, which does not require ITC reversal but to pay tax on outward supply?

Ans. The Central Board of Indirect Taxes and Customs **("CBIC")** *vide Circular No. 92/11/2019 – GST dated 07.03.2019* has *inter alia,* clarified the following:

"A. Free samples and gifts:

i. It is a common practice among certain sections of trade and industry, such as, pharmaceutical companies which often provide drug samples to their stockists, dealers, medical practitioners, etc. without charging any consideration. As per sub clause (a) of sub-section (1) of section 7 of the said Act, the expression "supply" includes 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. Therefore, the goods or services or both which are supplied free of cost (without any consideration) shall not be treated as "supply" under GST (except in case of activities mentioned in Schedule I of the said Act). Accordingly, it is clarified that samples which are supplied free of cost, without any consideration, do not qualify as "supply" under GST, except where the activity falls within the ambit of Schedule I of the said Act.

ii. Further, clause (h) of sub-section (5) of section 17 of the said Act provides that ITC shall not be available in respect of goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples. Thus, it is clarified that input tax credit shall not be available to the supplier on the inputs, input services and capital goods to the extent they are used in relation to the gifts or free samples distributed without any consideration. However, where the activity of distribution of gifts or free samples falls within the scope of "supply" on account of the provisions contained in Schedule I of the said Act, the supplier would be eligible to avail of the ITC."

From the above clarification, we can infer that the activity does not amount to supply in the absence of consideration. However, the items specified in Schedule I are an exemption to the above-given rule. The queriest justifies that the free samples is a part of Schedule I of the CGST Act and hence, taxable as outward supply. The entry is reproduced below:

1. Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.

Let us determine whether the sample sales are covered under Schedule I or Section 17 (5).

The term '*business asset'* has not been defined under the GST law. It is a settled principle that words must be given their plain, ordinary and literal meaning unless a statute defines it otherwise. Accordingly, the term 'business asset' is commonly understood as assets in the company's balance sheet. Thus, as per the said entry the goods being business assets, disposal as free sample without making any distinction between related party and unrelated party, is a supply.

When the activity is a supply, the registered person has to raise a tax invoice and in the given scenario is also required to issue such documents. However, with respect to the value on which the tax has to be charged, one has to invoke the valuation rules, since the transaction does not have consideration.

On examination of the Rules it appears that no specific rule has been framed for the given transaction, and accordingly the

registered person has either to pay the tax as per rule 30 say, cost plus 10% or rule 31 which is to determined using reasonable means consistent with the principles and the general provisions of section 15 and the provisions of the Act.

Therefore, a view can be taken that where GST is charged on the free samples, ITC reversal is not required.

CBIC in one of the FAQs had replied that the free samples are taxable and invoice has to be raised; when samples are cleared along with other goods. The relevant FAQ is reproduced below:

> *"How the Invoicing should be done for free goods given along with sale so that corresponding input tax credit is not required to be reversed for products under scheme?*
>
> *Invoice Value would include value of all goods including those supplied free. In such cases, ITC is not required to be reversed."*

The FAQ is applicable for the cases where the goods are cleared as either composite or mixed supply.

In a situation, where the free sample alone has been cleared, then the above FAQ will not apply and CBIC has also replied in another FAQ that such transaction is subject to reversal of ITC as per section 17 (5) (h) of the CGST Act. The FAQ is given below:

> *"What are the requirements for clearance of physician samples distributed free of cost?*
>
> *In case of clearance of physician samples distributed free of cost, ITC availed on the said samples has to be reversed in view of the provisions under section 17(5)(h) of the CGST Act, 2017. No tax is payable on clearance of physician samples distributed free of cost as the value of supply is zero and no credit has been availed."*

Hence the supply of goods as free samples will not qualify as supply and ITC should be reversed under section 17 (5) (h) of the CGST Act, even if the transaction qualifies the term "*export of goods*" in the IGST Act. [Refer section 16 (2) of the IGST Act].

Q19. If Mr. A, a Chartered Accountant is filing a IT return for his brother Mr. B, whether it constitutes supply? If yes, what is the value of such supply?

Ans.

- In terms of Clause (a) (viii) of Explanation to Section 15 of CGST Act, both CA. A and his brother Mr. B shall be deemed to be "related persons" as they are members of the same family.
- Therefore, valuation of such supply shall be governed as per Rule 28 of the CGST Rules, which provides for the valuation of the supply of goods or services or both where the supplier and recipient are related. The relevant extract is as follows:

  (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"
- Further, as per Entry No.2 of Schedule I to CGST Act, Supply of goods or services or both between related persons, when made in the course or furtherance of business shall be treated as supply, even if made without consideration.
- However, filing of IT return of a brother is out of natural love and affection, rather than a business transaction and may not be considered as a supply under Schedule I, as the same would not be made in the course or furtherance of business.

Q20. A Ltd. has given ATM machines to various banks on finance lease basis. Installation of these machines is done by third parties to banks. Banks have the practice of shifting the ATM machines from one place to another place. While shifting, it may so happen that the machines are shifted from one State to another State. Whether such transfer constitutes a supply? Who is required to prepare the documents like invoice, e-way bill etc. whether A Ltd. or the banks?

Ans. A Ltd. has primarily entered leasing transactions with the banks. In this context the following entries of Schedule II of the CGST Act are worth reading:

- any transfer of right in goods or of undivided share in goods without the transfer of title thereof, is a supply of services;

- any transfer of the title in goods is a supply of goods;
- any transfer of title in goods under an agreement which stipulates that property in goods shall pass at a future date upon payment of full consideration as agreed, is a supply of goods."
- A finance lease is a lease that transfers substantially all risks and rewards incidental to ownership of an asset. If the title to the goods is transferred as per the agreement at the future date then, it would be regarded as goods. If title to the goods is not transferred and mere right in goods without transfer of title thereof is transferred then, it would be a service.
- In view of the above discussion, the answer to the question is as follows:
    - In case title to goods from the leasing company to the bank is transferred in the given example, then entire ownership and control on the machines are transferred. When banks transfer these machines from one State to another State branch permanently i.e. assets are shifted from transferor branch balance sheet to transferee branch balance sheet, then it would amount to deemed supply of goods by the bank branch / HO of one State to branch in other State as per Schedule I of the CGST Act. The transferor branch is liable to raise tax invoice and charge GST in line with Rule 28 of the CGST Rules, raise e-way bill etc., However, if assets are not shifted from the balance sheet and machines are transferred temporarily, then it would amount to deemed supply of service by the branch of one State to a Branch in the other State as per Schedule I of the CGST Act. Transferor branch is required to raise delivery challan in terms of Rule 55(1) (c) of the CGST Rules "transportation of goods for reasons other than by way of supply" and e-way bill as per the provisions of Rule 138.
    - In case title to goods from the leasing company to the bank is not transferred and merely the right to use is transferred, then ownership lies with leasing company. When bank transfers these machines from one State to another State, this would naturally be a case of temporary transfer without transfer of title to machines. In this case, the transferor

branch is required to raise delivery challan in terms of Rule 55(1)(c) of the CGST Rules, "transportation of goods for reasons other than by way of supply", and e-way bill in terms of Rule 138. A Ltd. is not required to raise the documents because the person causing movement of goods is the bank and not A ltd.

Q21. Whether sale of business without any transfer of assets constitutes supply under GST?

Ans. Yes, as per Section 2(17)(d) of the CGST Act, "*business*" includes supply or acquisition of goods including capital goods and services in connection with commencement or closure of business. Therefore, all the assets in the sale of business would be regarded as '*supply*'. Also Entry No. 4 of Schedule II of the CGST Act mentions this type of transfers as supply of goods. However, it may be noted that services by way of transfer of a going concern as a whole or an independent part of it will not be liable to be taxed in view of the exemption notification issued in this regard. *vide* Sl.No. 2 in *NN 12/2017-CTR/ NN 9/2017-ITR.*

Q22. (A) Whether sale of non-business assets like Jewellery & ornaments, personal motor vehicle, immovable properties etc., by a person is to be considered as supply?

(B) Would the threshold limit for registration under section 22 of the CGST Act, be applicable for such sales?

Ans. (A) ***Sale of jewellery*****:** As per the press release by CBIC dated 13 July 2017, even though the sale of old gold by an individual is for a consideration, it cannot be said to be in the course or furtherance of his business (as selling old gold jewellery is not the business of the said person), and hence does not qualify to be a supply *per se*. Accordingly the sale of old jewellery by a person to a jeweller will not attract GST.

However, it is pertinent to note that clause (a) of the Entry No.4 to Schedule II of the CGST Act, classified the following transaction as supply of goods:

(a) where goods forming part of ***the assets of a business*** *are transferred or disposed of by or under the directions of the*

person carrying on the business so as no longer to form part of those assets, such transfer or disposal is a supply of goods by the person;

The transaction will not be qualified as "supply" only when he satisfies that the jewelry is a personal effect and form part of his individual balance sheet; which can be distinguished from his business financial statement.

Sale of motor vehicle: The above discussion holds good in case of sale of personal motor vehicle also.

Sale of land*:* Besides the above discussion for distinguishing the business and personal assets; one should also consider Entry No. 5 of Schedule III of the CGST Act, where sale of land is treated neither as a supply of goods nor supply of services.

(B) Threshold limit for registration under section 22 of the CGST Act, shall not include the value of sale of non-business assets (like jewellery & ornaments, personal motor vehicles and immovable properties) provided the registered person is able to prove that the sale of assets are non-business in nature. The above said transaction is neither supply of goods nor service, to be considered as "no supply". As per section 2(6) of the CGST Act, aggregate turnover does not include no supply; however taxable supply and exempted supply, including non-taxable supply will be included in determining the threshold for registration under GST.

Q23. A company is registered with the objective of doing business in real estate. The company holds a flat which is under construction. The builder has delayed the completion of building and therefore the company has cancelled the flat. It has received compensation for delay in completion of building on cancellation of flat. Whether compensation received is supply and taxable under GST?

Ans. As per the Section 7(1A) of the CGST Act read with Entry No. 5(e) of Schedule II thereof, agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act, shall be treated as supply of service.

In the instant case, the company has received compensation on cancellation of flat for delay in completion of the building by the builder which can be construed as a consideration for tolerating an act of delay by the builder. Therefore, the same may be construed as supply of service and hence taxable.

We can also refer the decision in *Service Tax Appeal No. 76639 of 2018-[DB] dated 25/10/2019*, ***Amit Metaliks Limited v. Commissioner of Central Goods & Service Tax (CESTAT Kolkata)***.

Q24. Whether a works contract for installing solar plant, where land is purchased by supplier, constitutes supply under GST?

Ans.

- As per Section 2 (119) of the CGST Act,

  "*works contract" means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract.*

- Schedule III to the CGST Act stipulates activities which shall be treated as neither supply of goods nor supply of services – in other words, falling outside the scope of GST.

- Entry No. 5 of Schedule III which provides that, sale of land is not a supply is reproduced below:

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

- In view of the above, if a separate agreement is entered into towards sale of land, then the same shall be outside the purview of GST. Otherwise, the same could be included in the works contract of installation of solar plant.

However, if such supply is treated as composite supply as defined under section 2(30) of the CGST Act, then it will be taxable at the rate applicable to the principal supply.

Q25. Will sale of land by land owner after development of garden and small amenities (not construction activities) be covered under GST? What if, the sale commenced - (i) during development (ii) after completion of development.

Ans. Schedule III of the CGST Act, which enumerates the list of activities or transactions which shall be treated neither as a supply of goods nor a supply of services, provides at Entry No.5: *"Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building*."

Accordingly, sale of land is neither supply of goods nor services. Development of amenities, garden on the land is mere value addition to land and the land continues to be land after the development.

Q26. Whether salary of ₹ 50 lakhs a year and share of profit of ₹ 75 lakhs received by the working partner of a partnership firm constitute a supply and exigible to GST?

Ans. A Partnership firm is governed by the provisions of the Indian Partnership Act, 1932 and the partnership firm has no separate legal entity distinct from its partners. The liability of the partners of the firm is joint and several. Accordingly, the remuneration and profits are distributed among the partners as per the partnership deed.

As per section 7 (1) (a) of the CGST Act, the scope of 'supply' includes *"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*". Hence, it is relevant to understand that the activity will qualify as "supply" only if it is in relation to goods or services.

Entry No. 6 of Schedule III of the CGST Act enumerates '*actionable claims*' as an activity which is neither supply of goods, nor services. Further, sub-section (1) of section 2 of the CGST Act defines the term "*actionable claim*" which refers to section 3 of the Transfer of Property Act, 1882.

Accordingly, as per section 3 of the Transfer of Property Act, 1882, *actionable claims means a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or*

pledge of movable property or to any beneficial interest in movable property not in the possession, either actual or constructive, of the claimant, which, the Civil Courts recognize as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent.

In the instant case, there is an obligation on the part of the partners of the firm to pay such amounts as per the partnership deed signed by them. Therefore, each partner has a claim to the specified amounts in the profits earned by the firm. Each partner's claim is contingent on the happening of such event. Thus, it can be inferred that the profit earned by the partner is an 'actionable claim'. Therefore, the share of profit, being an appropriation of profits will not be liable to GST. Similar view has also been taken in the FAQs published by the CBIC on their website cbic-gst.gov.in as mentioned below:

> "*79. Salary by partnership firm to Partners as per Income-tax Act liable to GST?*
>
> *Answer: Salary will not be liable to GST.*
>
> *92. Salary by partnership firm to partners as per Income-tax Act liable to GST? Partners are not employees of the firm.*
>
> *Answer: Salary will not be leviable of GST."*

Partners' salary and share of profit do not constitute a "supply" as it is an appropriation of profits by a partnership firm, which does not have a separate legal entity.

Besides the above, in *Union of India v. Sarada Mills [(1972) 2 SCC 877, 880]*, the Apex Court has held that, "*an actionable claim would include a right to recover insurance money or a partner's right to sue for an account of a dissolved partnership or the right to claim the benefit of a contract not coupled with any liability".*

Q27. Whether royalty on mining paid by one Government Department to another Government unit shall fall under 'supply' and who is liable to pay GST?

Ans. Generally, royalty on mining is paid in respect of mining lease providing the exclusive right to mining. Royalty is paid to the lessor

as a consideration towards the various benefits granted to the lessee. Royalty is collected by the Government from the business entities for rights given to them to extract mineral and is usually paid based on the quantum of minerals extracted or exploited.

Under mining lease, there is a supply of licensing services for right to use minerals including exploration and evaluation by the Government and the consideration towards such supply is paid in the form of royalty by the business entities.

Since, supply of services by the Government to a business entity located in the taxable territory, are covered under Sl No. 5 of *Notification No.13/2017-Central Tax (Rate), dated 28.06.2017* [***"NN 13/2017-CTR"***], the liability to pay tax is on the recipient of such services on RCM as licensing services for right to use minerals including exploration and evaluation are provided by the Government to a business entity, i.e., the recipient.

Though not binding, the sectoral FAQs published by the CBIC categorically state that royalty payment made towards licensing services for exploration of natural resources is treated as supply of services. The relevant extracts from CBIC FAQs on Government Services are reproduced below:

"Question 1: ***Are all services provided by the Government or local authority exempted from payment of tax?***

Answer: No, all services provided by the Government or a local authority are not exempt from tax. As for instance, services, namely,

(i) services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Government;

(ii) services in relation to an aircraft or a vessel, inside or outside the precincts of an airport or a port;

(iii) transport of goods or passengers; or

(iv) any service, other than services covered under (i) to (iii) above, provided to business entities are not exempt and that these services are liable to tax.

That said, most of the services provided by the Central Government, State Government, Union Territory or local authority are exempt from tax. These include services provided by government or a local authority or governmental authority by way of any activity in relation to any function entrusted to a municipality under Article 243W of the Constitution and services by a governmental authority by way of any activity in relation to any function entrusted to a Panchayat under Article 243G of the Constitution.

Question 30: ***Whether an amount in the form of royalty or any other form paid/payable to the Government for assigning the rights to use of natural resources is taxable****?*

Answer: The Government provides license to various companies including Public Sector Undertakings for exploration of natural resources like oil, hydrocarbons, iron ore, manganese, etc. For having assigned the rights to use the natural resources, the licensee companies are required to pay consideration in the form of annual license fee, lease charges, royalty, etc. to the Government. The activity of assignment of rights to use natural resources is treated as supply of services and the licensee is required to pay tax on the amount of consideration paid in the form of royalty or any other form under reverse charge mechanism."

The relevant extracts from CBIC FAQs on Mining which talks about GST applicability on royalty under mining lease is also reproduced below:

"Question 22: ***Whether GST is payable on royalty (to be paid to Government) for mining lease granted by State Govt.***

Answer: Yes, on royalty GST will apply under reverse charge mechanism. Further, such payment of GST under reverse charge mechanism would be eligible as ITC in the hands of the recipient of supply for payment of GST."

In view of above, GST on royalty paid towards mining shall be paid under RCM by the recipient.

Q28. What is the difference between 'sale' and 'transfer' and if there is no major difference then why both the terms are given separately?

Ans. Section 7 of the CGST Act provides an inclusive definition of the term "*supply"* and discusses various forms of supply. Transfer is much broader term than sale. 'Sale' is limited to transfer of property in goods, whereas, 'transfer' includes transaction in goods & service, where property in goods may/ may not be transferred like branch transfer, goods sent on approval basis, goods sent on job work etc. It may be full or partial and it may even be for intangibles/ rights.

Q29. A charitable trust registered under section 12AA of the Income Tax Act providing free supply of food to needy people. Many people to encourage this noble cause gave donation to this trust specifically mentioning that the donation is towards poor feeding. The total donation amount exceeds 20 lakhs. What is the GST implication?

Ans. Free supply of food to poor is not a supply as -

- ✓ There is no consideration involved in the transaction.
- ✓ Trust and poor people cannot be treated as related party within the scope of the Explanation to section 15 of the CGST Act.
- ✓ Charitable trust giving free food to the poor people free of cost does not satisfy the conditions specified in clauses (a), (b) & (c) of sub-section (1) of Section 7 of the CGST Act. Therefore, the same shall not be construed as supply and hence, such activity is outside GST.

Further, donations received from the individual donors will not amount to supply, assuming they all satisfied the conditions or guidelines specified in *Circular No.116/35/2019-GST dated 11.10.2019, i.e.*

(i) The gifts or donation is made to a charitable organisation

(ii) The payment has the character of gift or donation

(iii) The purpose is philanthropic and not advertisement

(iv) It leads to no commercial gain, no reference or mentioning of any business activity of donor.

Q30. (a) If any goods are supplied by a principal to his job-worker free of cost, which were supposed to be procured and supplied by the job worker himself in terms of the agreement, would such transaction (by the principal to the job worker) be considered as supply?

(b) If not, whether the principal has to reverse the ITC on supplies so made free of cost? [under section 17(5) (h) of the CGST Act]

Ans. (a) Clause (b) of sub-section (2) of section 15 of the CGST Act provides that any amount the supplier is liable to pay in relation to the supply but which has been incurred by the recipient will form part of the valuation for that particular supply, provided it has not been included in the price for such supply. Accordingly, it is inferred that the value of any goods supplied by a principal to his job worker free of cost, which were supposed to be procured and supplied by the job worker himself in terms of the agreement, shall be considered as taxable supply. The valuation of such supply has to be done as per the CGST Valuation Rules.

(b) As the above transaction is considered as taxable supply, there are no restrictions for availing the ITC. It is pertinent to note that, in view of the provisions contained in clause (b) of sub-section (2) of section 16 of the CGST Act, ITC would be available to the principal, irrespective of the fact whether the inputs or capital goods are received by the principal and then sent to the job worker for processing, etc. or whether they are directly received at the job worker's place of business/premises, without being brought to the premises of the principal. Thus, the principal is eligible for the ITC on supplies made to the job worker free of cost.

Q31. A company is manufacturing and supplying face masks and ventilator to Government at subsidized rates. Will it constitute supply under GST?

Ans. Supply of goods to Government constitutes a supply under GST law unless such supply is specifically exempted from the levy of tax by any notification. No exemption notification has been issued in this regard so far in respect of supply of mask and ventilator under GST law.

Hence, the manufacturing and supplying face mask and ventilator to Government at subsidized rate *would constitute a supply under GST law and leviable under GST.*

Q32. Whether sale of plots developed from agricultural land is supply under GST?

Ans. In terms of *Notification No. 3/2019-Central Tax (Rate) dated 29.03.2019,* the term *"real estate project* (***REP***)" shall have the same meaning as assigned to it in clause (zn) of section 2 of the Real Estate (Regulation and Development) Act (**RERA**), 2016 (16 of 2016).

The definition of REP under RERA is reproduced below:

> *(zn) "real estate project" means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartment, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto;*

In view of the above, sale of developed plots is covered under '*taxable project'* and hence shall be construed as a supply. However, the agreement or contract has to be read in full and based on the said reading, a different view is possible. It has to be seen whether land is conveyed or a developed plot with all facilities is conveyed. The manner of charging consideration will also impact the question of taxability.

LEVY (including Exemption)

Q33. Is GST leviable on alcoholic liquor served by a hotel to its customer?

Ans. No. The supply of alcohol by a hotel is outside the ambit of GST as the charging Section 9(1) of the CGST Act/ Section 5(1) of the IGST Act, excludes supply of alcohol for human consumption. The supply of alcohol for human consumption would be subject to taxes levied by the State Government.

Q34. Whether GST is leviable on supply of alcohol for manufacturing of certain chemical products like phenol etc.?

Ans. As per Section 9 of the CGST Act, supply of alcohol for human consumption alone is kept outside the ambit of GST. If alcohol is supplied for manufacturing of certain products, then the same would not be meant for human consumption and accordingly would be leviable under GST.

Q35. Mr. X, an individual is running a petrol pump under proprietorship. The Oil Company is paying the rent for the land on which pump is situated. But the land is his personal asset. Whether he has to charge GST on the land rent?

Ans. Supply of services of renting of immovable property including land is covered under the definition of supply and the said supply is also subject levy under section 9(1) of the CGST Act.

Even where an individual assessee is providing land, an immovable property on lease basis for commercial purpose GST is applicable. Renting of immovable property for residential purpose alone is exempted.

Q36. When both alcoholic liquor for human consumption and petroleum products do not attract the levy of GST, why are they specified in different sub-sections of section 9 of the CGST Act [section 9(1) and (2) respectively]?

Ans. Section 9(1) of the CGST Act/Section 5(1) of the IGST Act, provides for the levy of GST excluding alcohol for human consumption, while Section 9(2) of the CGST Act/Section 5(2) of the IGST Act provides for the levy of GST on petroleum products at a later date.

As per Article 279A (5) of Constitution of India, Goods and Services Tax Council ("**GST Council**") shall recommend the date from which the goods and services tax shall be levied on petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel. A similar provision is not found for levy of GST in respect alcoholic liquor for human consumption.

Further, the power to levy excise duty on alcoholic liquor for human consumption still vests with States i.e., under List II of Seventh Schedule to the Constitution of India. Since alcoholic products are not listed either in the Union List or the Concurrent list, the Central Government does not have the power to levy and collect tax on alcoholic products mentioned in the State list.

Thus, different provisions have been specified for alcoholic liquor for human consumption and certain petroleum products in GST law to explain clearly the taxability or otherwise of these goods.

Q37. Will the value of a car taken on finance lease by the employer for a period of 4 years and ultimately to be purchased by employee at written down value ("WDV") at the end of the 4th year be subject to GST?

Ans. We have to understand first that the vehicle is under finance lease; which means that the company does not have the title to the goods. The title to goods will get transferred only after the completion of the lease period and on accepting the option to purchase the underlying assets. If the lease agreement has specified the value to the paid for *accepting the option of purchase,* then same will be a supply.

After the transfer of the title of underlying assets, the said asset would qualify as "*business asset*" and selling it to their employee will be treated as supply of goods. It is pertinent to note that clause (a) of the Entry No. 4 to Schedule II of the CGST Act, classified the following transaction as supply of goods:

> *"where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, such transfer or disposal is a supply of goods by the person;"*

Hence it is subject to GST.

Q38. State the GST implication/applicability in case of: -

1. **Sale of land**
2. **Sale of building**
3. **Sale of land and building**

Ans. Schedule III of the CGST Act, lists out the *activities or transactions to be treated as supply of goods or supply of services*. Entry No. 5 of this Schedule reads: "*Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building*" meaning that sale of land will not be treated as a supply but a sale of building will not be a supply subject to Entry No. 5(b) of Schedule II.

Entry No. 5(b) of Schedule II reads:

> *"construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier."*

This entry seeks to tax the agreement to sell an immovable property as a supply of service. In other words, where the consideration (whether in part or full) for the construction of a complex or building has been received prior to obtaining its completion certificate, it will be treated as a supply of service and made liable to tax. Any consideration received after obtaining completion certificate or first occupation in such building, will not be liable to tax. Thus, sale of building after completion certificate or first occupation will not be treated as a supply under GST law and therefore not liable to tax.

As far as sale of land and building is concerned, if the building has received completion certificate it will not be a supply and hence no tax will be payable. If the building is under construction, then the consideration received towards the land and building will be treated as a supply.

Q39. Whether sale of inherited gold by one jeweller to another jeweller is liable to GST?

Ans. Section 7 of the CGST Act which defines 'supply' includes all forms of supply of goods and services. The fact of inheritance of gold

would not make any difference with respect to taxability of any goods (gold). Hence, the sale of gold by a jeweller to another jeweller would be liable to GST.

Q40. Mr. X, a Chartered Accountant is holding Registration Certificate under GST. Now, if he sells his personal diamond, will he be liable to tax under GST?

Ans.

- The taxable event under GST is supply of goods or services or both. The term "*supply*" has been inclusively defined under Section 7 of the CGST Act.
- Only those activities or transactions that are in the course or furtherance of business shall qualify as 'supply' under GST and tax thereunder shall be applicable on such supplies.
- Hence supplies made by an individual in his personal capacity do not come under the ambit of GST unless they fall within the definition of 'business' as defined under Section 2(17) of the CGST Act.
- Sale of goods or rendering of service even as a vocation or as a one-time activity shall fall under the definition of business and shall constitute supply under GST.
- Though the definition of 'business' under section 2(17) includes one-time activity as business, it is very important to note if the activity is in the nature of business. Therefore, activities which are not in the nature of business, whether done once or more, would not be considered as a supply. Thus, sale of personal diamonds (which is not in the nature of business), shall not be subject to GST. Also it is equally important to study the facts of each case just to make sure that the activity of selling personal effects is not a business activity.

Q41. Explain whether donations and seva contributions received by temples is leviable under GST?

Ans. Section 7 of the CGST Act provides, that the expression "*supply"* includes 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.

Further, the definition of consideration [Section 2(31) of the CGST Act] also states that the money received should be in response to, or for the inducement of, the supply of goods or services or both.

From the above, it can be seen that the donations and seva contributions received by the temples shall not be construed as consideration being made in relation to any supply of goods or services or both in the course or furtherance of business (i.e.) there is no *quid pro-quo* and hence GST shall not be applicable.

Q42. We are registered as an AOP and are conducting seminars for women employees. Our yearly transaction value is ₹ 22 lakhs and for conducting seminar we are collecting amounts from public sector undertaking (PSUs). Kindly clarify whether PSUs have to pay GST for delegate fee and claim ITC.

Ans. As per Section 22 (1) of the CGST Act, the threshold limit for GST registration in case of supply of service is ₹ 20 Lacs; hence the said AOP should get registered under GST. Every registered person is liable to collect GST on supply of services and therefore the AOP should charge GST on amount received from the PSU. If delegate fee paid by the PSU is in the course or furtherance of business, only then the PSU will be eligible to claim ITC.

Q43. Whether liquidated damages are leviable under GST?

Ans.

- As per Section 7 (1A) of the CGST Act read with Entry 5(e) of Schedule II of the CGST Act, agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act, shall be treated as supply of service.
- Further, under the erstwhile Service Tax regime, Section 66E of the Finance Act, 1994 declared certain transactions which cannot be normally construed as service but are deemed to be service as covered by the provisions on liquidated damages.
- Also, under the erstwhile Central Excise Act, 1944 there have been various cases wherein the issue of including liquidated damages in the transaction value of the basic product being cleared, have been discussed. In this regard, attention is invited

to the decision of Larger Bench of the Customs, Excise and Service Tax Appellate Tribunal ("**CESTAT**") in the case of *Victory Electricals Limited [2013 (298) E.L.T. 534 (Tri-LB)]*. The CESTAT held that, while liquidated damages is in the nature of reasonable estimate of the loss suffered on account of non-fulfilment of the terms of the contract, penalty is in the nature of a stipulation in terrorem. The Larger Bench of Chennai held that, the value payable after factoring in any liquidated damages contractually stipulated for delayed supply would be the transaction value for levy of excise duty. The same was upheld recently in the case of ***M/s. Flexo Foam Pvt. Ltd***. *[2017 (6) TMI 212] - CESTAT Chandigarh* as well.

- Under GST regime, it is relevant to note that Sl. No 62 of *NN 12/2017-CTR/* Sl. No 65 of *NN 9/2017-ITR* provides for exemption as below:

  "Services provided by the Central Government, State Government, Union territory or local authority by way of tolerating non-performance of a contract for which consideration in the form of fines or liquidated damages is payable to the Central Government, State Government, Union territory or local authority under such contract".

- In view of the above, it appears that liquidated damages charged by the Government or the local authorities alone are exempt from levy of GST and GST on liquidated damages is applicable except on the ones received by the Government or the local authority.

- Also, the CBIC *vide* GST sectoral series FAQs on Mining, reiterated that the liquidated damages would be liable to GST. The relevant extract of the FAQ flyer is reproduced below:

  "Question 15: Whether deduction of Liquidity Damage (LD)/ Penalty deduction from contractor's bills and charging Penalty for non-lifting of coal till targeted minimum level to Annual Contractual Quantity (ACQ) will attract GST?

  Answer: Yes, it is a service being "tolerating an act" as per Schedule II of the CGST Act, 2017 thus GST shall apply."

Q44. Whether penal charges collected attracts GST?

Ans. A transaction shall be considered as supply, if it satisfies all the conditions of section 7 of the CGST Act. Further, the same shall be classified as goods or service in relation to Schedule II of the CGST Act.

As per Entry No. 5(e) of Schedule II of the CGST Act, an activity to be treated as supply of services includes "*agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act ".*

Further "to tolerate an act" can be understood as the consideration being charged by one person to allow another person to undertake any particular activity.

"Agreeing to the obligation" can be understood as the obligation to pay a consideration for an act involved in a supply.

Hence, penal charges imposed by the service provider to a service recipient for a breach of contract (i.e., for loss of parking ticket) attracts GST and it is a taxable supply.

Cause for Penal Charges

Delay in payment of consideration	Other than delay in payment of consideration
↓	↓
1. Added to the value of original supply as per section 15(2)(d) of the CGST Act 2. Will attract the same rate as for original supply	Not to be added to the value of original supply 1. To be treated as separate supply 2. Will attract residual rate of 18%

Q45. Is GST leviable on the compensation received on account of the damage caused to a residential flat due to road widening activity? Will the answer be different if the residential flat owner is registered under GST?

Ans. The compensation received on account of the damage caused to a residential flat due to road widening activity is not in the course or furtherance of his business. Hence, GST is not leviable on such compensation irrespective of whether the supplier is registered or unregistered.

It is also worthwhile to note that the Hon'ble Bombay High Court has held in the case of ***Bai Mamubai Trust v. Suchitra*** (Order date: 13 Sep 2019), that liability to pay GST would arise only where the payment received can be linked to a supply. In case of compensatory damages, the payment is for loss suffered and not supply effected. While the process of determining loss suffered may be the value of the consideration receivable if the contract had been performed, such process of computing damages will not alter the character of the payment, namely compensation for loss suffered. This is premised on the principle that the supply doctrine does not encompass a wrongful unilateral act or any act resulting in payment of damages. Hence, insurance claim received by the registered person on loss of insured business asset is not liable to GST.

Q46. Where a laptop is damaged by an employee and the company recovers certain amount from the employee, is it a supply being a tolerance of act? If yes, whether the same is leviable under GST?

Ans. As provided under section 7(1)(a) of the CGST Act, the scope of supply includes 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.

From the above we can infer that the activity will qualify as "*supply*", when it is for a consideration. In other words, supply involves an element of contractual relationship wherein the person doing an activity does so at the desire of the person for whom the activity is done in exchange for a consideration. Accordingly, if the service contract has a clause for recovery of cost connecting to damage of the laptop from the employee then the said transaction will not qualify as '*activity for consideration'*, because of the following reasons:

(a) The services by an employee to the employer in the course of or in relation to his employment are outside the scope of GST (neither supply of goods nor supply of services). It follows therefrom that *supply by the employer to the employee in terms of contractual agreement* entered into between the employer and the employee, will not be subjected to GST. *[C.B.E. & C. Press Release No. 73/2017, dated 10.7.2017]*

(b) The contract of indemnity is an actionable claim provided it is not against public policy or unlawful to be valid. A right of indemnity lies where one party is required to make good certain losses experienced by the other party. The employer had not entered into the contract principally to make or agreed to make the supply, which is to tolerate an act or a situation.

(c) It is more in the nature of penal levy or fine for improper handling or collection of damages and hence it cannot be a supply and conditions of Section 7 are not satisfied.

Besides the above, for the argument that the activity shall fall in Entry 5(e) of the Schedule II of CGST Act, i.e., "*agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act",* it is to be understood that inclusion of a transaction in Schedule II, would not make a transaction "*supply*" unless it qualifies the phrase '*activity for consideration'*. As the activity fails the test of section 7(1) (a) of the CGST Act, falling under Schedule II thereof, shall not make it taxable either.

Q47. Would GST be leviable on sales promotion schemes given by a manufacturer to a distributor in the form of free samples and gifts?

Ans. Sales promotion schemes in the form of free samples and gifts do not fall within the scope of supply under section 7(1) (a) of the CGST Act, due to the absence of consideration. In such case the ITC shall be blocked under section 17(5) (h) thereof. Alternatively, if the said sales promotion schemes fall within the scope of supply under section 7(1) (c) read with Schedule I of the CGST Act, such sales promotion schemes shall be considered as supply even in the absence of consideration. In such case, the ITC shall be eligible under section 16 of the CGST Act. This legal position has been clarified in ***CIR 92***.

Q48. Is GST leviable on liquor licence? Is GST leviable on commission? Is GST leviable on incentives received by a liquor vendor for promotion of liquor sales? Is GST leviable on rental income received by the said liquor vendor?

Ans. Supply of alcoholic liquor for human consumption is outside the ambit of GST. *Notification No. 25/2019, Central Tax (Rate) dated 30.09.2019* provides that the activities or transactions undertaken by the State Government in which they are engaged as public authorities, shall be treated neither as a supply of goods nor supply of service. Relevant portion thereof reads

> *"Service by way of grant of alcoholic liquor licence, against consideration in the form of licence fee or application fee or by whatever name it is called."*

Thus, service by way of grant of liquor licence by the State Government is not a supply under GST and hence no tax can be levied.

The incentive received by the liquor vendor will be liable to GST as it will be covered by the definition of supply.

The rental income received by the liquor vendor will also be treated as a supply in GST and should be considered for the purpose of calculating aggregate turnover. The taxability of such rental income will depend upon whether the let out of the property is for residential or commercial purposes.

Q49. Whether GST is leviable on supply of certain goods, like handmade items from the Central Jail to the Government?

Ans. The term 'person' under section 2(84) of the CGST Act, includes the Central / State Government and any corporation established by or under any Central Act, State Act or Provincial Act. The relevant extract is hereunder:

> "(84) "*person" includes —*
>
> *(a) .....*
>
> *(g) any corporation established by or under any Central Act, State Act or Provincial Act or a Government company as*

defined in clause (45) of section 2 of the Companies Act, 2013 (18 of 2013);

……

(k) Central Government or a State Government;

……;"

Indian Prisons Act of 1894 is established under the State Act

Supplier --> Central Jail --> Covered in the definition of 'person' under section 2 (84)

Recipient --> Government --> Covered in the definition 'person' under section 2 (84)

Nature of Supply --> Supply of goods

Related person as per Explanation to section 15 of the CGST Act, includes both (Central Jail & Government Department.) which are directly or indirectly controlled by a third person (Government). The relevant extract is as under:

"Explanation. — For the purposes of this Act, —

(a) persons shall be deemed to be "related persons" if —

(i) ……

(vi) both of them are directly or indirectly controlled by a third person;

……."

Supply includes activities specified in Schedule I of the CGST Act, to be treated as supply even if made without consideration

The above transaction is a supply as per section 7(1) (c) & Schedule I of the CGST Act

Handmade items are taxable supplies.

GST is leviable on supplies made by Central Jail to Government even if they are without consideration.

Q50. Whether the amount recovered from a contract employee (person on the third-party rolls) on account of Notice period leviable under GST?

Ans. Entry No. 5 (e) of Schedule II of the CGST Act states*:*

"The following shall be treated as supply of services, namely:-

(a) …

(b) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act;.."

Therefore, as per Entry 5(e) of Schedule II, agreeing to do or not to do or to tolerate an act shall be deemed to be a supply of service.

Hence, the act of recovering an amount from the employee by the employer could be treated as tolerating an act by the employer and could get come under the ambit of GST and hence leviable to GST

Any amount recovered by the taxable person from the contract employee, who is on the rolls of such taxable person, on account of notice period could attract the levy of GST.

Q51. Whether advance received for sale of land forfeited leviable under GST?

Ans. Schedule III to the CGST Act stipulates activities which shall neither be treated as supply of goods nor supply of services. In other words, it falls outside the scope of GST.

Entry No. 5 of Schedule III to the CGST Act which provides that sale of land is not a supply reads as :

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

In view of the above, it is clear that sale of land is outside the purview of GST. Therefore, GST is not applicable on any advance receipts forfeited towards the underlying activity of sale of land which is not a supply.

Q52. Whether GST is leviable on grants / donations received by a Trust, if the document giving grant asks for Utilisation Certificate?

Ans. GST is levied on supply of goods or services or both. Grants and donations received by Trust which has no nexus with respect to any supply of goods or services are not to be treated as supply, but purely as a donation to be used for specified purpose / object.

Accordingly, the same would not be liable to GST. If the grants or donations are received by a Trust towards supply of goods or services which are not exempt then the same would be liable to GST.

Q53. Whether insurance claim received by the registered person on loss of insured business asset be liable to GST as if it were the sale consideration of the said asset?

Ans. As the Hon'ble Bombay High Court held in the case of ***Bai Mamubai Trust v. Suchitra*** *(Order dated: 13 Sep 2019)*, that liability to pay GST would arise only where the payment received can be linked to a supply. In case of compensatory damages, the payment is for loss suffered and not supply effected. While the process of determining loss suffered may be the value of the consideration receivable if the contract had been performed, such process of computing damages will not alter the character of the payment, namely a compensation for loss suffered. This is premised on the principle that the supply doctrine does not encompass a wrongful unilateral act or any act resulting in payment of damages. Hence, insurance claim received by the registered person on loss of insured business asset is not liable to GST.

Q54. Is GST leviable on sale of old newspapers?

Ans. The question to be decided is whether old newspapers continue to be called as newspapers or not. Newspapers are sold to the public as a medium containing information regarded as news. They are purchased by the readers to acquaint themselves with the news that is fresh and new. With the lapse of time it ceases to be newspaper. When they are disposed off as waste paper, their sale cannot be regarded as sale of newspapers. It is assumed that the person is not in the business of printing and selling old newspapers. In such a case, the newspaper ceases to be a newspaper and is sold normally by weight as a waste paper. Thus, GST at 5 per cent shall be leviable as "*recovered waste or scrap of paper or paperboard*".

However, the Supreme Court in the case of ***Sait Rikhaji Furtarnal and Another v. State of Andhra Pradesh*** *[1990 (8) TMI 344 (SC)]* - , held that even if the newspapers are not of the same date or of a current period, their contents had news value and thus they continued to be the newspapers and the mere fact that they were

out of date did not take away the news element therefrom. Then sale of old newspapers will be treated as sale of newspaper only and will be exempted from tax *vide Notification No. 12/2017 - CT (Rate)* ["Newspapers*, journals and periodicals, whether or not illustrated or containing advertising material"*].

Q55. Mr. A is dealing in installation services of air conditioning equipment. He needs to use the tools and equipment worth more than ₹ 50,000 at various sites across India.

(a) Is GST leviable on such movement of tools & equipment to various sites across India?

(b) Is there any requirement for e-way bill for such movement?

Ans. (a) *Circular No. 21/21/2017-GST dated 22.11.2017*, *inter alia* stipulates as under:

> "*2. The issue pertaining to inter-**state movement of** rigs, **tools and spares**, and all goods on wheels [like cranes] was discussed in GST Council's meeting held on 10the November, 2017 and the Council recommended that the circular 1/1/2017-IGST shall mutatis mutandis apply to inter-state movement of such goods, and except in cases where movement of such goods is for further supply of the same goods, such inter-State movement **shall be treated 'neither as a supply of goods nor supply of service,' and consequently no IGST would be applicable on such movements**."*

(b) Though the above circular, treats inter-State movement of tools and spares neither as a supply of goods nor as supply of service, the exemption for e-way bill is only available where the supply of goods being transported is treated as no supply under Schedule III of the CGST Act. Hence, as per rule 138(1) of the CGST Rules, e-way bill is mandatory for Mr. A, who causes movement of goods of consignment value exceeding fifty thousand rupees subject to the provisions contained in rule 138 (14) thereof.

Q56. Payment gateways like PayPal, Strap etc. charge service fees for processing of payment. Whether GST is payable on reverse charge basis on such service fees?

Ans. As per Section 7 of the CGST Act, the term "*supply*" includes all

forms of supply of goods and services. There is no specific exemption available for service fees charged by the payment gateways like Pay Pal etc. for processing payment under GST law. Hence, such service fee charged for processing payment is exigible to GST. Also, the services provided by the payment gateways are not specifically covered under RCM pursuant to section 9(3) or 9(4) of the CGST Act, and in that view of the matter RCM is not applicable and tax payment method has to be forward charge only.

However, where the above services are received by a person situated in the taxable territory from any person located outside India then, as importer of services, such receiving person is liable to be tax in respect of the service charges paid by him in view of the provisions of section 7 (1)(b) of the CGST Act.

Moreover, if such services are received from a person located outside India by the Central Government, State Government, Union territory, a Local Authority, a Governmental Authority *or* an individual in relation to any purpose other than commerce, industry or any other business or profession or an entity registered under section 12AA of the Income-tax Act, 1961 for the purposes of providing charitable activities, then the same shall be exempted in terms of *NN 9/2017-ITR*.

Q57. Whether an e-commerce operator not having permanent establishment ("PE") in India will be covered under Section 9 of the CGST Act, on products sold by them in India?

Ans. As per Section 9(5) of the CGST Act, the Central Government may, *specify categories of services the tax on intra-State supplies of which shall be paid by the electronic commerce operator* if such services are supplied through it, and all the provisions of this Act shall apply to such e-commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services.

Since, Section 9(5) covers only services, goods sold by e-commerce without any PE in India may not get covered thereunder.

It may also be noted that where the taxable goods are sold by the e-commerce operator, it is taxable as per section 9(1) of the CGST Act if the transaction takes place amongst persons located within the taxable territory. If the goods are received by a registered person from an e-commerce operator not having a PE in India it may be

normally taxable as reverse charge *vide* proviso to section 5 of the IGST Act.

Q58. Mr. X has a two-wheeler service center and decides to expand his business line by introducing the automatic painting division in his workshop. The cost of the automatic spray robot, which he desires to install in his workshop, ranges from ₹ 8.25 Lakhs to ₹ 8.5 Lakhs. M/s. Spray & Spray, one of the suppliers of automatic spray robot, is ready to give the said machine for ₹ 6.5 Lakhs. However, the condition for such a discounted price was that Mr. X will overhaul, paint and chrome the parts of the vintage bike belonging to the founder of the company.

Mr. X estimated the following cost of repair after observing the said vintage bike:

A. Cost of spares - ₹ 70,000

B. Cost of paint - ₹ 20,000

C. Cost of chrome and nickel – ₹ 45,000

D. Cost of time spent - ₹ 25,000

E. Total ₹ 1.70.000

He feels that the total cost of the robot will be only ₹ 8.2 Lakhs (6.5 + 1.7) and hence it is a viable option. He wants an expert opinion as to whether the activity provided by him for getting the discount will be subject to GST?

Ans. Section 7 (1) (a) of the CGST Act, has explicated the scope of supply; which includes 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. Thus, it is apparent that the exchange is one of the forms of supply and it is taxable under GST when carried out by a person in the course or furtherance of business. In other words, there should be an element of express or implied contractual reciprocity of a consideration. In the given query, both the parties had agreed to undertake the commercial activity, and hence the exchange of service for a discount price will constitute supply.

From the above discussion, it is clear that the activity is a supply and will be subject to tax. However, the absence of monetary consideration to the transaction had paved the way for valuation rules. In this scenario, price is not the sole consideration and thus the transaction would be covered under section 15(4) of the CGST Act. Accordingly, the valuation shall be as per Rule 27 of the CGST Rules reproduced below:

"Rule 27- Value of supply of goods or services where the consideration is not wholly in money

Where the supply of goods or services is for a consideration not wholly in money, the value of the supply shall, -

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

(b) if the open market value is not available under clause (a), be the sum total of consideration in money and any such further amount in money as is equivalent to the consideration not in money, if such amount is known at the time of supply;

(c) if the value of supply is not determinable under clause (a) or clause (b), be the value of supply of goods or services or both of like kind and quality;

(d) if the value is not determinable under clause (a) or clause (b) or clause (c), be the sum total of consideration in money and such further amount in money that is equivalent to consideration not in money as determined by the application of rule 30 or rule 31 in that order.

Illustration:

(1) Where a new phone is supplied for twenty thousand rupees along with the exchange of an old phone and if the price of the new phone without exchange is twenty four thousand rupees, the open market value of the new phone is twenty four thousand rupees.

(2) Where a laptop is supplied for forty thousand rupees along with the barter of a printer that is manufactured by the recipient and the value of the printer known at the time of supply is four thousand rupees but the open market value of the laptop is not

known, the value of the supply of the laptop is forty four thousand rupees".

Accordingly, there are two separate supplies in the given scenario, which is also akin to the illustration provided under Rule 27 of the CGST Rules - (1) the supply of (exchanged) service from Mr. X and (2) supply of new fixed assets. Both these transactions are in furtherance of business for consideration and hence, both are taxable and the valuation of supply would be as per Rule 27.

Q59. Whether exchange of an old car for a new car attracts GST? If yes, what is the value of the supply?

Ans. Section 7 of the CGST Act provides that the expression "supply" includes 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.

Further, the definition of consideration [Section 2(31) of the CGST Act] also covers any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both.

Therefore, it is clear that consideration in kind under barter system shall also be liable to GST. Rule 27 of the CGST Rules, provides for determining the value of supply of goods or services where the consideration is not wholly in money. [Please refer Q 58 for Rule 27 as reproduced there].

In the instant case, if the new car is priced at ₹ 5,00,000 and old car is exchanged for ₹ 1,00,000 the net price payable shall be ₹ 4,00,000. However, under GST law, the value of supply shall be the open market value of the new car which is ₹ 5,00,000 and GST shall be applicable on ₹ 5,00,000.

Q60. Mr. X buys an asset for the purpose of business and in exchange gives an existing asset. Whether such exchange constitutes supply and leviable to tax under GST?

Ans. Section 7(1) (a) states:

"For the purposes of this Act, the expression "supply" includes —

(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"

From the above provision of section 7 of the CGST Act, *barter/ exchange* is one of the forms of supply. Since, the same qualifies as "supply" and no exemption is available, the same is exigible to tax under GST.

Further as per section 15 read with Valuation Rules, the value on which GST is to be charged on such transaction will be the open market value of the new asset as per Rule 27(a) of the CGST Rules. Therefore, GST should be charged on the full value of the transaction.

Q61. Where an employer provides food at subsidised cost to an employee, whether the contribution by the employee exigible to GST?

Ans. ***Example:*** Fresh Foods Canteens enter into an agreement with Sachin India Limited to operate the canteen in the premises of the company and provide food to the employees of the Sachin India Limited. Sachin India Limited recovers a portion of the food cost from the employees and pays the balance portion to the caterer.

The canteen arrangement is such that the supply of food is made by the Fresh Food Canteens to the employees in the premises of Sachin India Limited. Therefore, Sachin India Limited is a facilitator of such food supply and not the supplier of such service *per se.*

Hence, such contribution / recovery from employees for providing foods at the subsidised cost shall not be exigible to GST.

Q62. Whether an Award is exigible to tax under the GST law?

Ans. Section 7 of the CGST Act includes supply of goods or services in the course or furtherance of business. The term "*business*" is defined, in section 2(17) of the CGST Act, to include *any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit*

To determine the taxability of an award, the specific nature and type of the award would be crucial. Where an award or prize for winning a

contest is received such award / prize would not be treated as supply, since no supply of goods or service is involved in it. In case, where the award is in the nature of interest dues or compensation for delayed supply or payment etc., then such type of award can be considered for the levy of GST. Hence, exigibilty to tax will depend on the nature/ type of award.

Q63. Whether Arbitral Awards are exigible to tax under the GST law?

Ans. Section 7 of the CGST Act includes supply of goods or services in the course or furtherance of business. The term "*business*" is defined, in section 2(17) of the CGST Act, to include *any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit*

To determine the taxability of an award, the specific nature and type of award would be crucial. In the present case the award in hand is an award received under arbitration proceedings. The tax liability under an arbitration award would generally depend on the nature of the award being granted. If the award granted is settlement between the parties, then the same could fall under the ambit of Para 5(e) to Schedule II of the CGST Act. However, if the award is punitive in nature, then the same could not fall within the ambit of GST as there is no supply for the same.

Q64. Whether penal interest received on an exempted supply is taxable?

Ans. As per section 15(2) (d) of the CGST Act, 2017, the value of supply shall include interest or late fee or penalty for delayed payment of any consideration for any supply. When the principal supply is exempted, the penal interest arising out of such supply shall also be exempted from GST. *(Circular No. 102/21/2019-GST dated 28.06.2019).*

Q65. Whether the grant received from the Government is taxable?

Ans Section 7 (1) (a) of the CGST Act excogitate the scope of supply; which includes 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

This implies there should be an underlying contractual relationship between the supplier and the recipient for supplying goods or services on monetary or non-monetary terms. Mere receipt of the grant shall not be considered as supply and hence cannot be made taxable under GST.

Hence, it is appropriate to understand the meaning of the term *"consideration"* in GST. As per section 2(31) of the CGST Act consideration includes any payment made or to be made, whether in -

- money or otherwise or
- monetary value of any act or forbearance

in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person.

From the above definition of the term *"consideration"*, we can infer that one has to establish the existence of a connection between the payment and supply. What is relevant is whether the grant has the requisite nexus with a supply. If there is a nexus, the amount received as a grant shall be considered as consideration for a supply, since it is within the scope of supply under section 7(1) (a) of the CGST Act.

For example, a research grant is given with a counter obligation on the researcher to provide IPR rights on the outcome of research or activity undertaken with the help of such grants then the grant is a consideration for the provision of service of research. However, general grants given for research with no obligation would not be consideration for such research.

It is also important to differentiate between a grant and a subsidy. Grants are usually financial support granted by the Government or Institutions for specific purposes subject to the fulfillment of certain conditions. Generally, these are a one-time lump sum payment and are not required to be repaid. Subsidies are benefits given in the form of payments or tax contributions or tax breaks. They are a privileged type of financial aid given by the Government or Institutions to ease the cost burden for the recipients of such subsidy.

It may be noted that subsidies provided by the Central Government and State Governments are specifically excluded from the definition of

'consideration' under section 2(31) of the CGST Act and is also excluded from value of supply under section 15(2) (e) thereof.

Q66. Whether the reimbursement of rent paid is exigible to tax under GST law? Whether electricity charges charged to tenant without grid supply, chargeable to tax under GST law?

Ans. Section 15 of the CGST Act *inter alia* provides for the valuation of supply to include all forms of incidental expenses.

Rent reimbursement

Rule 33 of the CGST Rules prescribes situations where expenditure or cost incurred in the nature of "*pure agent*" shall be excluded from the "*value of supply*". The exclusion shall be subject to the fulfilment of the following conditions prescribed -

(i) the supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorisation by such recipient;

(ii) the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and

(iii) the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.

Hence, in the instant case, if the reimbursement of rent fulfils the conditions prescribed in the above mentioned Rule 33 of the CGST Rules as pure agency services, then such reimbursement of rent will not be includible in the value of supply and consequently, no GST shall be leviable. However, if the said conditions are not fulfilled, then the rent reimbursement is exigible to GST. If the rent is for the residential purposes, then it is not leviable to GST *vide* Sl.No.12 (Chapter Heading 9963 or 9972) in *NN 12/2017-CTR/* Sl.No.13 (Chapter Heading 9963 or 9972) in *NN 9/2017-ITR*.

Electricity charges

As per Section 2(30) of the CGST Act, *"composite supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any*

combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply.

Generally, electricity is supplied along with renting of immovable property and the same is naturally bundled in the ordinary course of business.

The word "taxable supply" means a supply of goods or services or both which is leviable to tax under this Act. Exempt supply means a supply which is subject to nil rate of tax or exempt by way of notification. While the definition of composite supply includes only two or more taxable supplies, an exempt supply also includes a taxable supply but subject to nil rate of tax or exempt by way of notification. Supply of electricity by Transmission and Distributing Utilities is subject to nil rate of tax and hence would fall under the ambit of taxable supply which is exempt by way of nil rate of tax.

Hence, sale of electricity along with renting of premises would get categorized as composite supply and the principal supply being renting of immovable property and accordingly the entire consideration, inclusive of rent and electricity charges, is exigible to GST at the rate applicable to the renting services

It is also to be noted that, when electricity is supplied without Grid supply to a tenant, it is taxable as per *Sl.No 418 Schedule III of Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017 ["**NN 1/2017-CTR**"]| Notification No. 1/2017- Integrated Tax (Rate) dated 28.06.2017 ["**NN 1/2017-ITR**"]* with Chapter Heading 9028 at the rate of 18%.

Q67. Whether trip fees collected from students by Football Academy which in turn is spent on organising the trip for students (for foreign coaching) is taxable under GST?

Ans. Sl.No. 80 of *NN 12/2017-CTR /* Sl.No. 83 of *NN 9/2017-ITR* exempts services relating to sports provided by an entity registered under Section 12AA of the Income-tax Act, 1961. The relevant entry is reproduced below:

> "*Services by way of training or coaching in recreational activities relating to- (b) sports by charitable entities registered under section 12AA of the Income-tax Act."*

Therefore, if the football academy is not a registered entity under Section 12AA of the Income-tax Act, 1961, organising sports coaching trip abroad shall be construed to be a commercial activity and shall fall under the scope of supply and such consideration/fee collected shall be taxable under GST.

However, if it is registered under section 12AA, then not taxable under GST.

Q68. Whether sale of personal car taxable under GST?

Ans.

- Section 7 of the CGST Act provides that the expression "supply" includes 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.
- *Notification No. 10/2017-Central Tax (Rate), dated 28.06.2017* ["***NN10/2017-CTR"***] exempts intra-State supplies of second hand goods received by a registered person, dealing in buying and selling of second hand goods and who pays the central tax on the value of outward supply of such second hand goods as determined under sub-rule (5) of Rule 32 of the CGST Rules, from any unregistered supplier, from the whole of the central tax levied under the CGST Act. Similar exemptions are also there in respective the State Goods and Services Tax Act ("the SGST Act").
- In view of the above, sale of personal car by an unregistered person shall not be construed as a supply in the course or the furtherance of business and hence GST shall not be applicable on the sale of such used personal car if such sale is by way of an intra-State supply.
- For instance, a company say M/s Secondcars India Ltd, which deals in buying and selling of second-hand cars, purchases a second-hand car from an unregistered person and sells the same to its customers. The supply of the car to the company from unregistered person shall be exempt and the supply of the same by the company to its customer shall be exigible to GST.

Q69. Whether servicing of cars attracts tax under GST law?

Ans. Servicing of cars is to be treated as a supply under GST law. *Circular No. 47/21/2018-GST dated 8.06.2018*, clarifies this point as:

Sl. No.	*Issue*	*Clarification*
2.	*How is servicing of cars involving both supply of goods (spare parts) and services (labour), where the value of goods and services are shown separately, to be treated under GST?*	*2.1 The taxability of supply would have to be determined on a case to case basis looking at the facts and circumstances of each case.* *2.2 Where a supply involves supply of both goods and services and the value of such goods and services supplied are shown separately, the goods and services would be liable to tax at the rates as applicable to such goods and services separately.*

Servicing of car, may involve the supply by way of replacement of worn out or damaged parts or oiling etc. and related technical services. In such a situation, the concept of composite supply is applicable. Depending on the nature of the principal supply involved in a transaction, be it goods or services the GST rate applicable for such principal supply of goods or services shall be payable on the entire consideration.

Q70. A doctor is in the business of running a diagnostic centre and film distribution. He wants to sell the diagnostic machinery from his diagnostic centre for which separate books of accounts are maintained. Should he charge GST on the sale of diagnostic machinery?

Ans. The sale of diagnostic machinery shall fall under the scope of supply. Hence, it would be taxable under the provisions of the CGST Act. Though separate books of accounts are maintained for the exempted service (health care service), the exemption as notified under *NN 12/2017-CTR* as amended from time to time is available

for the supply of health care services only. However, it is important to check whether there is any goods-based exemption available under *NN 2/2017-CTR* as amended from time to time for the diagnostic machinery based on a proper classification of the diagnostic machinery. In the absence of any exemption, the sale of diagnostic machinery will be liable to tax as a supply of goods.

Q71. Discuss the taxability and ITC availability in case a subsidiary company receives free samples from the parent company and subsequently transfers the same to the employees.

Ans. Supply includes activities specified in Schedule I of the CGST Act --> to be treated as supply even if made without consideration

Parent company & subsidiary company --> Related person [as per Explanation to Section 15 of the CGST Act]

Free Samples received by Subsidiary Co. from Parent Co. is a supply as per Schedule I of the CGST Act - Supply of goods or services or both between related person

Transaction between Parent Co. & Subsidiary Co. is a taxable supply and attracts GST.

Subsidiary company & employee --> Related person [as per Explanation to Section 15 of the CGST Act]

Free samples transferred to employee by a Subsidiary Co. is a supply as per Schedule I of the CGST Act - Supply of goods or services or both between related person

ITC can be claimed by the Parent Co. & Subsidiary Co as the transaction qualifies the definition of supply as per Schedule I.

Note: Exception to the above is a gift to employee less than ₹ 50,000/- is outside the purview of supply as per Schedule I. Further when the subsidiary company gifts the same to its employee, the following aspects are to be considered:-

Situation	Treatment
1) Subsidiary company has taken ITC on the samples received (being	1) ITC taken to be reversed as the gift to employee upto ₹ 50,000 during the financial year is not a

operational item, i.e. product they are dealing) from parent company & gift value to the employee does not exceed ₹ 50,000 during the financial year	supply and further attracts blocked credit provision under Section 17(5) (h) of the CGST Act.
2) Subsidiary company has taken ITC on the samples received (Being Operational item, i.e. product they are dealing) from parent company & gift value to the employee exceeds ₹ 50,000 during the Financial year	✓ ITC taken to be reversed as the gift is blocked credit provision under Section 17(5) (h) of the CGST Act and even though gift value exceeds ₹ 50,000 during the financial year it is a supply. However, the same has to satisfy the provisions of Schedule I – Entry No. 1 ✓ Since, ITC is reversed (deemed as not taken), gift to employee will not qualify as deemed supply under Schedule I of the CGST Act- Entry No.1 ✓ But ITC to be reversed with Interest under section 50(3) - 24% p.a.
3) Subsidiary company has not taken ITC (Being non-operational item, i.e. product they are not dealing and the purchase is only for the purpose of gifting during any occassion) on the samples received from parent company	1) ITC is not availed 2) Gifted to employees 3) Will not be treated as supply **Crux** - No ITC & No Output Tax Liability

Q72. (i) M/s. X had purchased a motor car on 01.06.2016 for ₹ 10,00,000/- and used it for providing service classifiable under the service head "Rent-a-Cab Service". They decided to sell the said motor vehicle for consideration of ₹ 9 lakh or ₹ 7 lakhs on 25.02.2018.

They want opinion on the following questions:

a. Whether the transaction attracts GST?

b. If 'Yes' then what would be the tax rate and the value?

Ans. Section 7 (1) (a) of the CGST Act has explicated the scope of supply which includes 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. Besides, Entry No. 4 (a) of Schedule II of the CGST Act prescribes that if goods forming part of the assets of a business are transferred under the directions of the person carrying on the business so as no longer to form part of those assets such transfer is also a supply of goods.

Thus, the car is a part of the business assets of the company as the same is capitalized in the books; if it is transferred, then *vide* section 7 (1) (a) read with Schedule II Entry 4 (a) of the CGST Act it shall be termed as a "supply" and *vide* section 9 thereof, it shall be a taxable supply. The Government *vide NN 8/2018-CTR* has prescribed the rate of GST at 12% on the sale of old and used motor vehicles. Further, an exemption has been provided on the cess payable on the sale of an old and used motor vehicle *vide Notification No. 1/2018-Compensation Cess (Rate) dated 25.01.2018*. Besides the above, the notification had stated that the valuation would be based on the margin involved. The following ratio has been provided in the Notification:

Sr.	When the goods was purchased	Formula
01.	→ Before / After GST and ITC taken	Transaction Value
02.	→ Before / After GST and ITC not taken	Profit Margin

Note:

Profit margin: *When depreciation is claimed under section 32 of the Income Tax Act, 1961* - the difference between the consideration received for supply of such goods and the depreciated value of such goods on the date of supply, and where the margin of such supply is negative, it shall be ignored.

Others - the difference between the selling and purchase price and where such margin is negative, it shall be ignored.

If the selling price is greater than the purchase price/depreciated value, then only the differential margin will be taxable. However, where the selling price is lower than the purchase price/depreciated value, then this amount should be ignored for the purpose of GST.

(ii) In the given query, M/s. X, a registered person in GST had purchased a motor car on 1.06.2016 for ₹ 10,00,000. The said car was sold on 25.02.2018 by them for: (a) ₹ 9,00,000 (b) ₹ 7,00,000. Determine the valuation under GST?

Ans. The depreciated value of the car as on 25.02.2018 is ₹ 10,00,000 Less 15% of 10,00,000 = ₹ 8,50,000.

a) If the sale value of the car is ₹ 9,00,000; ₹ 50,000 will be the value for charging GST.

b) If the car is sold at ₹ 7,00,000, the margin will be negative and hence it should be ignored.

However, this notification shall not apply, if the supplier of such goods has availed ITC as defined in section 2(63) of the CGST Act, CENVAT as defined in CENVAT Credit Rules, 2004 ("**CCR 2004**") or the ITC of VAT or any other taxes paid, on such goods.

Note: Since the query is only about sale of car (motor vehicle) which is used for renting purpose, taxability of the supply of service in the nature of rent-a-cab, under both forward charge and reverse charge, has not been deliberated here.

Q73. Whether GST is payable on liquidation damages deducted from payment to suppliers in case of delayed delivery of goods or services?

Ans. Credit note or debit note can only be issued by the supplier under GST Law.

Liquidation damages occur only when there is an act of non-performance / breach of contract which need to be compensated either by the supplier or recipient as the case may be.

As the recipient will not be able to raise the debit or credit note as per GST law, the liquidation damages deducted from the payment to suppliers constitute a supply --->

"*Agreeing to the obligation*" can be understood as the obligation to pay a consideration for an act involved in a supply. Hence, as per Schedule II of the CGST Act the same shall be considered as supply of service for the purpose of classification.

The recipient has to raise an invoice and he is liable to pay GST on liquidation damages deducted from payment to suppliers provided the supplier is not Government.

If Supplier of such service (being tolerating an act of non-performance) is Government (Central Government, State Government, Union territory or local authority) it is exempt as per *Sl.No 62 of NN 12/2017-CTR/ Sl.No 65 of NN 9/2017-ITR*.

Q74. Whether assets received on family settlement or partition of HUF is chargeable to tax under GST law?

Ans. As per Entry No. 4 of Schedule II of the CGST Act, the following are treated as supply-

"4. Transfer of business assets

(a) where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, such transfer or disposal is a supply of goods by the person;

(b) ……

(c) where any person ceases to be a taxable person, any goods forming part of the assets of any business carried on by him shall be deemed to be supplied by him in the course or furtherance of his business immediately before he ceases to be a taxable person, unless-

(i) the business is transferred as a going concern to another person; or

(ii) the business is carried on by a personal representative who is deemed to be a taxable person."

If the HUF is carrying on a business and if the business comes to an end due to partition of HUF or otherwise and the assets are partitioned/distributed to family members, then such distribution could be considered as supply of goods under the above Entry No.4 and *accordingly be chargeable to tax under the GST law*.

Q75. Whether an insurance claim received by hospitals for treatment of Insured patient is taxable under GST?

Ans. As per Section 2(1) of the CGST Act, "*actionable claim*" shall have the same meaning as assigned to it in section 3 of the Transfer of Property Act, 1882

As per Section 3 of Transfer of Property Act, 1882, "*actionable claim*" means a claim to any debt, other than a debt secured by mortgage of immoveable property or by hypothecation or pledge of moveable property, or to any beneficial interest in moveable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognise as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent

As per Schedule III to the CGST Act, actionable claim other than lottery and gambling would be treated neither as supply of goods nor supply of services.

Hence, any sum received under insurance claim, as actionable claim, would not be subjected to GST.

In the present case, insurance claim received by hospitals for treating patients may fall under the ambit of health care services and accordingly not liable to GST *vide* Sl.No.74 with Chapter Heading 9993 in *NN 12/2017-CTR*/ Sl.No.77 with Chapter Heading 9993 in *NN 9/2017-ITR*, extract of which is

Sl. No.	***Chapter, Section, Heading, Group or Service Code (Tariff)***	***Description of Services***	***Rate (per cent.)***	***Condition***
(1)	*(2)*	*(3)*	*(4)*	*(5)*
74	*Heading 9993*	*Services by way of-*	*Nil*	*Nil*

		(a) health care services by a clinical establishment, an authorised medical practitioner or para-medics; *(b) services provided by way of transportation of a patient in an ambulance, other than those specified in (a) above.*		

…….

*(s) "**clinical establishment" means a hospital**, nursing home, clinic, sanatorium or any other institution by, whatever name called, that offers services or facilities requiring diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India, or a place established as an independent entity or a part of an establishment to carry out diagnostic or investigative services of diseases*

…."

Q76. An online portal is charging ₹ 100 for booking doctor's visit. Out of this amount, portal takes facilitation fee ₹ 20 and the balance ₹ 80 is given to the doctor.

(a) Is the service provided by the online portal to the medical doctor is exempted as 'health care service' as per *NN 12/2017-CTR*?

(b) If the service provided by the online portal to the medical doctor is taxable, will the GST liability be on the facilitation fees of ₹ 20 or ₹ 100 being the gross amount collected?

Ans. (a) As per *NN 12/2017-CTR* as amended from time to time, services by way of -

- health care services by a clinical establishment, an authorised medical practitioner or para-medics;
- services provided by way of transportation of a patient in an ambulance, other than those specified in (a) above

are only exempted. Health care services as defined in 2(zg) of *NN 12/2017-CTR* means *any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India and includes services by way of transportation of the patient to and from a clinical establishment, but does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct the anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma.*

The online portal is not providing service of healthcare directly. It is merely facilitating the provision of healthcare service by the doctors to the end patients only. Thus, the service provided by online portal by way of facilitating booking doctor's visit is not exempt.

(b) If the online portal is charging ₹ 20 as facilitation fee on each booking, though they have collected ₹ 100, only the commission of ₹ 20 will be chargeable to GST provided that the online portal fulfills the criteria as a pure agent.

Q77. An unregistered educational institution sells its old school buses after 10 years of their use. Is the sale consideration taxable under GST?

Ans. The GST Act tries to maintain a balance whereby core educational services provided and received by educational institutions are exempt and other services are sought to be taxed at the standard rate of 18%. Thus, services provided by an educational institution to students, faculty and staff and other such core services of an educational institution are exempt *vide* Sl. No. 66 of *NN 12/2017-CTR*. This entry exempts only certain supplies of core educational services and not any supply of goods. Thus all supply of goods or any other service undertaken apart from those mentioned in the entry shall not be covered by this exemption and will be taxable. Sale of old school buses is a supply of goods and therefore will be liable for tax.

The value of supply in case of sale of old buses will be as below -

NN 8/2018-CTR provides as under:

"(a) *in case of a registered person who has claimed depreciation under section 32 of the Income-tax Act, 1961 on any motor vehicle, the value that represents the margin of the supplier shall be the difference between the consideration received for supply of such goods and the depreciated value of such goods on the date of supply, and where the margin of such supply is negative, it shall be ignored; and*

(b) in any other case, the value that represents the margin of supplier shall be, the difference between the selling price and the purchase price and where such margin is negative, it shall be ignored."

The above notification shall not apply, if the supplier of such goods has availed input tax credit as defined in clause (63) of section 2 of the CGST Act, CENVAT as defined in CCR 2004 or the ITC of Value Added Tax or any other taxes paid, on such goods. It is assumed that the educational institution has not availed credit of tax in the pre-GST regime. The value of supply of the old school buses shall be determined in accordance with (b) above.

Q78. Is GST leviable on long term lease (more than 30 years) from Gujarat Industrial Development Corporation (GIDC)?

Ans. As per *Sl. No.41 of NN 12/2017-CTR* as amended from time to time, 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% or more ownership of Central Government, State Government, Union territory to the industrial units or the developers in any industrial or financial business area is exempted under GST subject to the proviso provided therein. As long as GIDC remains as a State Government Industrial Development Corporation, long term lease (more than 30 years) will be an exempted service.

Q79. A Charitable trust running "Gaushala" sells fresh milk in market. Will it be liable to GST?

Ans.

- *NN 12/2017-CTR / NN 9/2017-ITR vide* Sl.No.1 exempts services provided by entities registered under Section 12AA of the Income-tax Act, 1961 by way of charitable activities from GST.
- For an activity to be exempt from GST, it is essential that such activities shall fall under the term "charitable activities' which has been defined in the said notification.
- However, there is no specific exemption for supply of goods by charitable trusts. Thus, any goods supplied by such charitable trusts for consideration, shall be liable to GST.
- In the instant case, excess fresh milk supplied by the Gaushala in the market shall be liable to GST. However, by virtue of *Notification No.2/2017- Central Tax (Rate) dated 28.06.2017 ["**NN2/2017-CTR**"]/ Notification No.2/2017- Integrated Tax (Rate) dated 28.06.2017 ["**NN 2/2017-ITR**"]* – supply of fresh milk is exempt from the levy of GST.

Q80. Mr. X had a factory situated in Delhi which he transferred to Uttar Pradesh, and closed all operations in Delhi. Whether it will constitute slump sale and whether it is liable to tax under GST?

Ans. Section 7 of the CGST Act, provides that the expression "*supply"* includes 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.

Entry No. 4 (c) of Schedule II to the CGST Act refers to *'transfer of business assets'* which reads as under:

> *"4. Transfer of business assets*
>
> *(c) where any person ceases to be a taxable person, any goods forming part of the assets of any business carried on by him shall be deemed to be supplied by him in the course or furtherance of his business immediately before he ceases to be a taxable person, unless —*

(i) the business is transferred as a going concern to another person; or

(ii) the business is carried on by a personal representative who is deemed to be a taxable person."

A plain reading of the above, clarifies that the transfer of business as a going *concern* shall not be treated as *'supply of goods'*.

Further, Sl. No *2 of NN 12/2017-CTR/ NN 9/2017-ITR* provides exemption for "*Services by way of transfer of a going concern, as a whole or an independent part thereof*" as NIL rated. Hence, the transaction of slump sale is not liable to GST.

Q81. A temple trust receives offerings of sarees to the deity. The trust sells such sarees to other devotees for money. Whether GST is leviable?

Ans. As per Section 7 of the CGST Act, supply includes all forms of supply in the course or furtherance of business.

There are few notified exemptions applicable for charitable organisations. However, sale of goods by trust has not been covered in any specific exemption notification.

Thus, sale of sarees by a trust to other devotees is leviable under GST. In this regard, the relevant extract of Chapter 39 "GST on Charitable and Religious Trusts" of Compilation of 51 GST Flyers updated as on 1-1-2018 available on CBIC website at the link https://goo.gl/EgAJtA, is reproduced below:

> ***"GST on supply of goods by Charitable and Religious Trusts****: All goods, other than those specifically exempt, supplied by any charitable or religious trust against any consideration in any form including donation are liable to GST".*

Q82. Is GST applicable on milling of paddy into rice?

Ans. As per *Circular No. 19/19/2017-GST dated 20.11.2017*, milling of paddy is not an intermediate production process in relation to cultivation of plants. It is a process carried out after the process of cultivation is over and paddy has been harvested. Further, processing of paddy into rice is not usually carried out by the

cultivators but by rice millers. Milling of paddy into rice also changes its essential characteristics. Therefore, milling of paddy into rice cannot be considered as an intermediate production process in relation to cultivation of plants for food, fibre or other similar products or agricultural produce.

In view of the above, it is clarified that milling of paddy into rice is not eligible for exemption under Sl.No.55 of *NN 12/2017-CTR*.

Q83. Professional receipts by a Medical Practitioner exceeded ₹ 20 lakhs in a financial year. Will it be leviable under GST? If yes, whether he/she is liable to take registration under GST?

Ans. GST is leviable subject to exemption.

Services provided by medical professional are supply as per Section 7 of the CGST Act. The said supply is also subject to levy under section 9(1) of the CGST Act. However, health care services by a clinical establishment, an authorised medical practitioner or para-medics are exempt as per Sl. No 74 of *NN 12/2017-CTR*.

Further, as per section 23(1) of the CGST Act, any person exclusively engaged in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax is not liable for registration.

Therefore, if the receipts by doctor is exclusively due to "*services by a clinical establishment, an authorised medical practitioner or para-medics*", and it is exceeding ₹ 20 Lakhs in a financial year, then also it will not be liable to get registration under GST.

Q84. A trust registered under section 80G of the Income Tax Act, 1961 is also registered under GST for some activities covered under GST. The trust is conducting training programs for ladies to make bags, purses, jewellery from beads etc. The trust is charging normal application fees of ₹ 1,000 from each trainee. Whether such application fee is chargeable to tax under GST law?

Ans. *NN 12/2017-CTR* / *NN 9/2017-ITR* exempts services provided by an entity registered under Section 12AA of the Income-tax Act, 1961 by way of charitable activities from whole of GST. The relevant entries

i.e. Sl. No. 1 and Sl. No. 80 of *NN 12/2017-CTR* [83 in case of *NN 9/2017-ITR*] of the notification are reproduced below:

"*1. Services by an entity registered under section 12AA of the Income-tax Act, 1961 by way of charitable activities."*

"*80. Services by way of training or coaching in recreational activities relating to-*

(a) arts or culture, or

(b) sports by charitable entities registered under section 12AA of the Income-tax Act."

Thus, as per this notification, exemption is given to the charitable trusts, only if the following conditions are satisfied:

(a) Entities must be registered under Section 12AA of the Income tax Act, 1961

(b) Such services or activities by the entity are by way of charitable activities.

The term 'charitable activities' has been defined in the above Notifications as under :

"(r) "charitable activities" means activities relating to -

(i) public health by way of,-

(A) care or counseling of

(I) terminally ill persons or persons with severe physical or mental disability;

(II) persons afflicted with HIV or AIDS;

(III) persons addicted to a dependence-forming substance such as narcotics drugs or alcohol; or

(B) public awareness of preventive health, family planning or prevention of HIV infection;

(ii) advancement of religion, spirituality or yoga;

(iii) advancement of educational programmes or skill development relating to,-

(A) abandoned, orphaned or homeless children;

(B) physically or mentally abused and traumatized persons;

(C) prisoners; or

(D) persons over the age of 65 years residing in a rural area;

(iv) preservation of environment including watershed, forests and wildlife;"

While only the income from those activities listed above is exempt from GST, income from the activities other than those mentioned above is taxable.

In the instant case, the trust is conducting training programs for ladies to make bags, purses, jewellery from beads. The trust is charging nominal application fee of ₹ 1,000 from each participant towards such training.

If the above, activity of conducting training programs fall under services by way of training or coaching in recreational activities relating to arts or culture, then such application fees are not leviable to GST. Otherwise, the same shall be construed as a commercial activity and GST shall be applicable.

Q85. Mr. A is the owner of a property, which is given on rent for being used as the hostel. The inmates are students and the property is used for residential purposes. Hence, the tenant who is administering the hostel had requested the landlord not to charge GST, since it is exempt *vide Sl.No 12 of NN 12/2017-CTR*

The landlord wants to know whether the stand is correct.

Ans. (a) *Sl.No. 12 of NN 12/2017-CTR* provides an exemption for '*Services by way of renting of residential dwelling for use as residence*.' GST law has not defined the term '*residential dwelling*' and hence it has to be understood in the normal trade parlance, which means any residential accommodation.

In the given case, the property is let out for the purpose of hostel accommodation, which is a commercial activity. Accordingly, the service provided by the landlord to the management of the hostel is to undertake a commercial activity which is taxable at the 18% rate of tax as per Notification No.11/2017 -Central Tax (Rate) dated 28.06.2017 [*"**NN 11/2017-CTR**"*].

(b) On the other hand, with respect to the accommodation services provided by the hostel to the students, the same would be covered under S. No.14 of *NN 12/2017-CTR* which provides exemption for "*Services by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, having declared tariff of a unit of accommodation below one thousand rupees per day or equivalent."*

Further, the CBIC *vide Circular No. 32/06/2018 - GST dated 12.02.2018[**CIR 32**], inter alia clarified as under:*

S.No.	***Issue***	***Clarification***
1.	*Is hostel accommodation provided by Trusts to students covered within the definition of charitable activities and thus, exempt under Sl. No. 1 of notification No. 12/2017-C.T. (Rate)?*	*Hostel accommodation services do not fall within the ambit of charitable activities as defined in para 2(r) of notification No. 12/2017-C.T. (Rate). However, services by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, having declared tariff of a unit of accommodation below one thousand rupees per day or equivalent are exempt. Thus,* ***accommodation service in hostels including by Trusts having declared tariff below one thousand rupees per day is exempt****. [Sl. No. 14 of notification No. 12/2017-C.T.(Rate)]*

Even in a situation where the hostel claims an exemption under S.No.14 as stated in Point (b) above, the landlord cannot claim an exemption for the renting of commercial space and such rental would remain taxable as stated in Point (a) above.

Q86. (a) Would GST be leviable on supplies made by a Residents' Welfare Association (RWA) to its resident members?

(b) If so, would the exemption of ₹ 7500 per month be applicable for each member or each residential apartment?

Ans. (a) Service by a residential welfare association (RWA) to its own members by way of reimbursement of charges or share of contribution up to an amount of ₹ 7500 per month (₹ 5000 per month till 24 January 2018) per member for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex is exempt as per *NN 12/2017-CTR* as amended *vide Notification No. 2/2018-Central Tax (Rate) dated 25.01.2018*.

(b) In general business sense, a person who owns two or more residential apartments in a housing society or a residential complex shall normally be a member of the RWA for each residential apartment owned by him separately. The ceiling of ₹ 7500/- per month per member shall be applied separately for each residential apartment owned by him.

For example, if a person owns two residential apartments in a residential complex and pays ₹ 15000/- per month as maintenance charges towards maintenance of both apartments to the RWA (₹ 7500/- per month in respect of each residential apartment), the exemption from GST shall be available to each such payment.

This has been clarified in *Circular No. 109/28/2019- GST dated 22.07.2019*.

Q87. Please throw some light on GST implications on Electricity Generation and Distribution Companies.

Ans. Apart from electricity charges, there are various other types of incomes earned by Electricity Generation and Distribution Companies and the taxability of such income are briefed below:

(a) It is pertinent to note that '*electricity*' and *'electrical energy'* conveys the same meaning and message as per section 2(23) of Electricity Act, 2003. Electricity is covered as '*Electrical Energy*' under goods category with HSN Code 27160000 of the Customs Tariff Act, 1975 and the supply of such electricity is

exempted *vide* Sl.No. 104 of *NN 2/2017-CTR/ NN 2/2017-ITR*.

(b) Transmission or distribution of electricity by ***an electricity transmission or distribution utility*** is exempt *vide* at Sl.No. **25** (**SAC 9969) of *NN 12/2017-CTR*** as amended/ Sl.No. **26** (**SAC 9969) of *NN 9/2017-ITR*** as amended.

(c) Electricity distribution services, by **other than** electricity transmission or distribution utility which is exempted vide (b) above, is taxable *vide* Sl.No.13 **(SAC 9969)** of *NN 11/2017-CTR / NN 8/2017-ITR* as amended at the rate of 18% GST (CGST 9% & SGST 9%).

(d) Services supplied by electricity distribution utilities by way of construction, erection, commissioning, or installation of infrastructure for extending electricity distribution network up to the tube well of the farmer or agriculturist for agricultural use is also exempted with certain conditions *vide* Sl.No.10A (SAC 9954) *NN 12/2017-CTR* as amended/ Sl.No.11A (SAC 9954) *NN 9/2017-ITR* as amended.

(e) Supply of support services to electricity distribution is taxable @ 18% GST (CGST 9% & SGST 9%) *vide* Sl.No. 24(iii) (SAC 9986) of *NN 11/2017-CTR/ NN 8/2017-ITR* as amended.

(f) In this context, it is also pertinent to draw reference to S.No.4(1) of the *Circular No. 34/8/2018-GST dated 1.03.2018,* wherein the following clarification is provided:

> '*Service by way of transmission or distribution of electricity by an electricity transmission or distribution utility is exempt from GST under Notification No. 12/2017- CT (R), Sl. No. 25. The other services such as, -*
>
> *i. application fee for releasing connection of electricity;*
>
> *ii. rental charges against metering equipment;*
>
> *iii. testing fee for meters/ transformers, capacitors etc.;*
>
> *iv. labour charges from customers for shifting of meters or shifting of service lines;*
>
> *v. charges for the duplicate bill;*
>
> *provided by DISCOMS to consumer are taxable.'*

(g) However, in the case of ***Torrent Power Ltd. v. Union of India , W.P. No. 5343 of 2018, decided on 19-December-2018,*** **the Gujarat High Court has quashed the taxability of the afore mentioned five services** stated in the circular, since it is *ultra vires* the provisions of section 8 of the CGST Act as well as Sl.No. 25 of ***NN 12/2017-CTR*** dated 28.6.17 as amended.

The High Court has given a verdict that the charges such as application fee, meter rent, testing fee, etc. collected by the petitioners are part of the composite supply of which principal supply is the actual supply of electricity. Therefore, the entire composite supply is exempt from tax as per the said Notification entry.

Q88. An agency participates in an event held outside India and on behalf of the participants booked stalls in that event. While the billing is made by the agency to participants, whether GST will be charged on stall booking expenses or it is exempt under GST citing the benefit extended by *NN 12/2017-CTR*?

Ans. To answer the above query, the activity has to pass through the following tests:

(a) **Test of principal-agent relationship*:*** In the case of such a booking agency, the important test to be carried out is to evaluate the existence of the principal-agent relationship. In this context, *Circular No. 57/31/2018-GST dated 4.09.2018* has clarified, the scope of principal-agent relationship in the context of Schedule I of the CGST Act. Though the said circular has been issued to clarify the position in the case of a supply of goods, reference can still be drawn to understand the existence of principal-agent relationship in a larger perspective even in the given case of a supply of service. The crucial factor is how to determine whether the agent is wearing the representative hat. The key ingredient in determining the relationship under GST would be the invoice, the nature of billing and the nature of the booking. If the agent books slots in bulk and sells individual slots to various customers, then the transaction would be on principal to principal basis or otherwise.

(b) **Pure agent supply:** Rule 33 of the CGST Rules, prescribes the value of supply of services in case of the pure agent [Please refer Q184 for Rule 33 as reproduced there].

In the instance case, the agent is billing for the stall booking expenses to the participant and this appears to be a principal activity. Besides the above, the transaction is not in the nature of mere reimbursement and hence the provisions of pure agent would not be applicable.

(c) **Nature of Supply:** The next test would be to evaluate whether the said transaction qualifies as export of service. A transaction to qualifies an export of service 5 conditions stipulated under section 2(6) of the IGST Act should be satisfied.

"export of services" means the supply of any service when, -

(a) the supplier of service is located in India;

(b) the recipient of service is located outside India;

(c) the place of supply of service is outside India;

(d) the payment for such service has been received by the supplier of service in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India; and

(e) *the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8*;

The supply of booking services rendered by the agent to the participants would not qualify as export of service since both the supplier agent as well as the recipient participant are located in India and the consideration is in INR.

(d) Taxability and exemption evaluation:

- Sl.No. 52 of *NN 12/2017-CTR,* provides exemption for '*Services by an organiser to any person in respect of a business exhibition held outside India'*
- In the given scenario, the supplier is not the organizer of the exhibition, but a booking agent and hence, the said exemption is not applicable.

Based on the above analysis, it is clear that the said supply of services of stall booking provided by the agent for the participant is taxable under GST and the rate of tax would be determined accordingly as per *NN 11/2017-CTR*, as amended from time to time.

Rate/Classification

Q89. An assessee is supplying the services of installation of Central Air Conditioner and fire-fighting system as a sub-contractor to the main contractor in a Government contract. As the services are finally provided to the Government, whether the assessee is taxable at 12% GST or at 18%?

Ans. Amended *NN 11/2017-CTR* allows sub-contractor to levy tax @ 12% as applicable to the main contractor *vide* Sl.No 3(ix) of the said notification. Therefore, the rate for sub-contractor is also 12% when services are provided to the main contractor of a Government Contract.

Q90. A goldsmith does labour jobs @ 5%. He gets pure gold from jewellers for labour work to manufacture gold jewellery studded with stones. Gold smith mixes alloy (Taxable @ 3%) and some precious stones from his side.

(a) Whether the value of supply should include alloy and cost of stones?

(b) What is the applicable GST rate on job work services provided by the goldsmith?

Ans (a) The job worker is undertaking two types of supplies –

(I) ***Supply of diamonds and alloys which will be used in the pure gold jewelry*** - The job-worker purchases precious stones and uses it in the manufacture of jewelry for the principal. There is a transfer in title to goods (precious stones) from the job worker to the principal and this shall be taxable at the rate applicable to the precious stones. The job worker shall issue a tax invoice, if registered with place of supply as the location of the job-worker premises itself as the goods have not left the premises of the job-worker.

(II) ***Supply of services of job-work of converting the pure gold into jewelry*** – Next, the precious stones are used to make jewelry along with the pure gold received from the principal. Job-work is any treatment or process undertaken by a person on goods belonging to another registered person. The process undertaken on the pure gold will be treated as a supply of service and liable to tax at the rate of 5% under SAC 9988. The job worker shall raise a tax invoice for the job work services provided, if registered in GST.

(III) ***Delivery of the processed goods –*** The job worker shall issue a delivery challan for the supply of the processed gold (i.e.) jewellery to the principal.

(b) The principal undertakes the following transactions

(I) *Supply of pure gold to the job worker for further processing*– A delivery challan will be issued by the principal as goods are sent for reasons other than supply.

(II) *Purchase of precious stones and alloys from the job worker* – The principal will issue a delivery challan for the precious stones purchased from the job worker and used by the job-worker himself. The job worker shall issue a tax invoice, if registered as explained above.

(III) *Services of job-work on the pure gold*– The job-worker shall raise a tax invoice, if registered.

The supply of alloy and precious stones will not form part of the value of job work services provided by the job-worker as it is an independent supply undertaken by the job-worker. The supply of the precious stones will be treated as supply of goods and the supply of job-work services as a supply of service. The concept of composite supply will also not be attracted as the predominant element of the supply cannot be ascertained as the value of the precious stones may be more than the value of the job-work services itself.

The GST rate applicable for the job-work services will be 5% under SAC 9988 (i)(c) as the job-work is in relation to the gold which is covered under Chapter 71 of the Customs Tariff Act, 1975.

Q91. Can a supplier charge separately, different GST rates in respect of the freight charges relating to a supply of goods and the goods supplied in the same invoice?

Ans. As per Section 2(30) of the CGST Act, *"composite supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply.*

It is to be noted that, when goods (food, in this case) are packed and transported with insurance., if any, the supply of goods(food), packing materials, transport and insurance if any is a composite supply and supply of goods (food) is treated as a principal supply.

Where transportation is provided along with the supply of goods, then transport services are taxable at the same GST rate applicable to the goods involved. In view of this, the supplier cannot charge separately, different GST rates on freight charges and for the supply of goods in same invoice.

Q92. Whether the movers and packers' services will be covered under transportation services or cargo handling services?

Ans. As per the Explanatory Notes to the Scheme of Classification of Services released by Central Board of Indirect Taxes, the following services would fall under the ambit of cargo handling services

"99671 Cargo handling services

996711 Container handling services

996712 Customs House Agent services

996713 Clearing and forwarding services

996719 Other cargo and baggage handling services"

On perusal of the above entries, it appears that the packers and movers services do not fall under the category of cargo handling services.

The "*land transportation service*", mentions the following:

Road transport services of goods including letters, parcels, live animals, household & office furniture, containers etc. by

refrigerator vehicles, trucks, trailers, man or animal drawn vehicles or any other vehicles.

This service code includes, amongst others -

v) ancillary services, such as packing and carrying and in-house moving;

Hence, packers and movers services would fall under the category road transportation service falling under service Tariff Code 996511.

Export / Import

Q93. Whether the revenue rebate received from foreign supplier in the form of lumpsum consideration (via USD) for achieving certain milestones is supply? If yes, then is it export of service?

Ans.

- Section 7 of the CGST Act provides that the expression *"supply"* includes 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.
- In terms of Section 2(31) of the CGST Act, "consideration" in relation to the supply of goods or services or both includes any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government.
- Further, as per Section 15 of the CGST Act, the value of supply includes subsidies directly linked to the price.
- In view of the above, revenue rebate received from foreign supplier in the form of subsidy shall fall under the scope of supply and be treated as export of services if the rebate is received towards services exported to foreign supplier and all other conditions of section 2(6) of the IGST Act are complied with.

Q94. A person, who is resident of India works on a contractual basis with a company having head quarter in USA. Will this constitute a Supply and whether leviable under GST?

Ans. Assuming the service is made for a consideration and in the course or furtherance of business, it amounts to supply.

Further, Section 13(2) of the IGST Act provides that the place of supply of service except for the specified services in sub section (3) to (13) shall be the location of the recipient. Hence, place of supply in this case is USA.

Place of supply being USA, it is an inter-State supply and thereby IGST is applicable. If the said service qualifies the conditions of Section 2(6) of the IGST Act, which defining "*Export of Service*", then it will qualify as Zero-Rated Supply.

Q95. Whether supply made to a foreign going vessel on the Indian Port is to be treated as export of goods / service / composite supply?

Ans.

- Export of goods is defined in section 2(5) of IGST Act "*with its grammatical* variations *and cognate expressions, means taking goods out of India to a place outside India;*
- Section 11(b) of the IGST Act states that *the place of supply of goods, exported from India shall be the location outside India*.
- Section 88(a) of the Customs Act 1962 ("**the Customs Act**") provides that, any warehoused goods may be taken on board any foreign going vessel as stores without payment of import duty if a shipping bill or a bill of export has been presented in respect of such goods in the prescribed form and the export duty has been paid and the proper officer has passed an order for clearance of such goods for exportation. Section 89 of the Customs Act, provides that the goods manufactured in India and required as stores on any foreign going vessel may be exported free of duty.
- From the above provisions it is clear that supply of goods to a foreign going vessel is treated as export as per Customs Act. However, as per the IGST Act, for export of goods, a relevant criterion is that the goods must be taken to a place outside India. Supply of goods to the vessel may not be considered as goods taken to a place outside India. Hence, this does not satisfy the definition of exports as per the IGST Act and hence, cannot be treated as exports.

- In case imported goods are warehoused and from where they are supplied to foreign going vessel, then the benefit of Entry 8(a) of Schedule III of the CGST Act may be availed. As per Entry 8(a) of the Schedule III, S*upply of warehoused goods to any person before clearance for home consumption* shall be treated neither as a supply of goods nor a supply of services. Hence, no tax is required to be paid. However this shall not be considered as export of goods for the reason stated above.
- In case services are supplied to foreign going vessel, the status of export shall be decided based on the definition given for export of services under section 2(6) of the IGST Act, which is reproduced hereunder:

  "export of services" means the supply of any service when,-

  (i) the supplier of service is located in India;

  (ii) the recipient of service is located outside India;

  (iii) the place of supply of service is outside India;

  (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India; and

  (v) *the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8*;

- From the above definition, the key condition for services to foreign going vessel is that the location of the recipient shall be outside India. Location of recipient of services is defined in section 2(14) of the IGST Act as follows:

  (14) "location of the recipient of services" means, -

  (a) where a supply is received at a place of business for which the registration has been obtained, the location of such place of business;

  (b) where a supply is received at a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;

(c) where a supply is received at more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the receipt of the supply; and

(d) in absence of such places, the location of the usual place of residence of the recipient;

- From the above definition it is clear that if foreign going vessel has registered place of business in India or fixed establishment in India or its usual place of residence in India then, it cannot be considered as export of service.
- Place of supply shall be decided based on the criteria given in section 13 of the IGST Act.
- To decide the status of export in case of composite supply, one must identify whether the principal supply is good or service and accordingly status of export shall be decided based on the above discussed points.

Q96. Mr. Z is a software engineer and had obtained GST registration by declaring his domicile as a principal place of business. He prefers to work as a freelancer. He gets an assignment from his clients who are located in the non-taxable territory. Further, he used to visit the client's place to execute his professional venture. He is remunerated in foreign currency on completion of his job.

Whether he should charge GST for his professional work?

Ans. The above query can be answered only after examining the definition of "*export of services"* and "*location of the supplier of services*"; under the IGST Act.

- Section 2(6) of the IGST Act defines the term "*export of services"* [Please refer Q 95 for definition of "export of services"]

  Section 2 (15) of the IGST Act defines the term "*location of the supplier of services*" as under :

  "(15) "location of the supplier of services" means, -

  (a) where a supply is made from a place of business for which the registration has been obtained, the location of such place of business;

(b) where a supply is made from a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;

(c) where a supply is made from more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the provision of the supply; and

(d) *in absence of such places, the location of the usual place of residence of the supplier"*

Thus, a combined reading of the above two provisions makes it amply clear that the supply of professional services provided by Mr. Z to his clients located outside India by visiting the foreign countries would qualify to be an export of service.

Besides the above, the transaction qualifies as a zero-rated supply as defined under Section 16(1) of the IGST Act and following benefits accrue to him:

(a) As per section 16 (2) of the IGST Act, credit of input tax may be availed for making zero-rated supplies, notwithstanding .that such supply is an exempt supply. Provided such credit should not form part of Negative List prescribed under section 17 (5) of the CGST Act.

(b) As per section 16 (3) of the IGST Act, a registered person making zero rated supply shall be eligible to claim a refund when he either makes a supply of goods or services or both under bond or letter of undertaking **("LUT")** or makes such a supply on payment of IGST.

Q97. Mr. A makes a design for a dress (ready to wear) and sent it to a potential customer in United Kingdom for its approval (UK). Design is approved by the said potential customer and ready to wear dresses as per the approved design are made by UK customer himself. Whether the services rendered in making the design for dress will constitute a zero-rated supply of services as per the GST Act?

Ans. As per Section 7(5) (a) of the IGST Act, supply of goods or services, where the supplier is located in India and the place of supply is

outside India shall be treated as a supply of goods or services or both in the course of inter-State trade or commerce.

As per Section 2(6) of the IGST Act, for an activity to qualify as export of service, all the following conditions should be met. [Please refer Q 95 for definition of "export of services"]

Section 13 of the IGST Act, prescribes the place of supply for various types of services, where the location of the supplier of services or the location of the recipient of services is situated outside India. Section 13(2) of the IGST Act provides that the place of supply of service except for the specified services in sub-sections (3) to (13) shall be the location of the recipient.

The services in respect of design for a dress do not fall under any of the specific categories prescribed under Section 13 of the IGST Act. Thus, the place of supply of services in respect of design for a dress shall be outside India.

As per Section 16(1) of the IGST Act, export of goods or services or both shall be treated as zero rated supply.

When other stipulated conditions mentioned in Section 2(6) of the IGST Act, are met, the supply of services relating to design for a dress by Mr. A to a potential customer in UK can qualify as export of services and hence, constitute a zero rated supply,

Q98. Whether consideration received by an artist, registered under GST law, for performing his artistic event outside India is taxable?

Ans. As per Section 7(5) (a) of the IGST Act, supply of goods or services, where the supplier is located in India and the place of supply is outside India, shall be treated as a supply of goods or services or both in the course of inter-State trade or commerce.

As per Section 2(6) of IGST Act, for an activity to qualify as export of service, all the following conditions should be met. [Please refer Q 95 for definition of "export of services"]

Section 13 of the IGST Act, prescribes the place of supply for various types of services, where the location of the supplier of services or the location of the recipient of services is situated

outside India. The general rule is that the place of supply shall be the location of the recipient of service unless otherwise specifically prescribed in any one of the sub sections of section 13.

Section 13(2) of the IGST Act provides that the place of supply of service, except for the specified services in sub-sections (3) to (13), shall be the location of the recipient

Section 13(5) of IGST Act prescribes the place of supply of services in respect of events conducted. It states that *the place of supply of services supplied by way of admission to, or organisation of a cultural, artistic, sporting, scientific, educational or entertainment event, or a celebration, conference, fair, exhibition or similar events, and of services ancillary to such admission or organisation, shall be the place where the event is actually held.*

Thus, place of supply for performance of artist which is a pre-requisite for conducting an event can be said to be the place where the event is actually conducted.

Where the other conditions stipulated in Section 2(6) of the IGST Act, are met, the performance by an artist outside India can qualify as export of services and hence would constitute a zero-rated supply.

Q99. Whether export of consultancy services to World Bank taxable under GST?

Ans.

- In term of Section 2(6) of the IGST Act, *"export of services" means the supply of any service when, -*
  - *(i) the supplier of service is located in India;*
  - *(ii) the recipient of service is located outside India;*
  - *(iii) the place of supply of service is outside India;*
  - *(iv) the payment for such service has been received by the supplier of service in convertible foreign exchange [or in Indian rupees wherever permitted by the Reserve Bank of India]; and*
  - *(v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8;"*

- In terms of Section 16(1) of the IGST Act, export of goods or services or both are considered as zero-rated supplies.
- In terms of Section 13(2) of IGST Act, the place of supply of services, where the location of the supplier of services or the location of the recipient of services is outside India, shall be the location of recipient of services.
- Services provided to World Bank outside India are not covered under the Exemption Notification.
- In the instant case, consultancy services provided to World Bank shall be treated as zero rated supplies, if the export conditions are satisfied and the place of such supply shall be the location of World Bank.

Q100. An exporter in order to hedge his sales is entering into opposite transaction in international commodities exchange. This service is received from foreign agents registered with foreign commodities exchange. The account is settled at periodic intervals, which includes the agent's charges. What are the GST implications?

Ans.

- In term of Section 2(52) of the CGST Act, *"goods" means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply.*
- It is pertinent to analyse the charges given to agents of international commodity exchange. This is relevant because of the question whether GST is to be paid on reverse charge basis if it amounts to import of services. The same is analysed as follows:
    - Agency services are covered in the definition of "*intermediary" which means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account;*

- As per section 2(11) of the IGST Act

  "import of services" means the supply of any service, where-

  (i) the supplier of service is located outside India;

  (ii) the recipient of service is located in India; and

  (iii) the place of supply of service is in India;

- Since the agent is also engaged in supply of service in the form of arranging or facilitating the supply of securities, such agent can be construed as "*Intermediary* "and thereby in terms of section 13(8) of the IGST Act, place of supply in the case of intermediary service is "*Location of supplier*". In this case, since agent is located outside India, the place of supply shall be outside India.

- In the given example, though two parameters as given in the definition of import of services are satisfied viz., location of supplier is outside India and location of recipient of service is in India, the third condition is not satisfied. i.e., place of supply should be in India. In the given case since place of supply is outside India, this does not amount to import of service and hence no GST is payable on the charges paid to foreign agents.

- In the FAQs published by CBIC on 27.12.2018, following FAQ (No 34) is relevant to the given case:

S.No.	Question	Answer
34.	***Whether a 'derivative' is included within the meaning of 'securities' in Section 2(101) of CGST Act, 2017 and whether derivatives are liable to GST?***	Section 2(101) of the CGST Act, 2017 provides that 'securities' shall have the same meaning as assigned to it in clause (h) of Section 2 of the Securities Contracts (Regulation) Act, 1956 (SCRA). 'Derivatives' are included in the definition of 'securities' under Section 2(h)(ia) of the SCRA. In terms of Section 2(ac) of SCRA, "derivatives" includes — (A) a security derived from a debt

		instrument, share, loan, whether secured or unsecured, risk instrument or contract for differences or any other form of security; (B) a contract which derives its value from the prices, or index of prices, of under-lying securities. The definition of 'derivatives' in SCRA is an inclusive definition. As 'derivatives' fall in the definition of securities, they are not liable to GST. However, if some service charges or service fees or documentation fees or broking charges or such like fees or charges are charged, the same would be a consideration for provision of service and chargeable to GST.

From the above FAQ it is clear that transaction in derivative fall in the definition of 'securities'. Securities are neither covered in the definition of goods nor in the definition of services. Hence, they are not liable to GST.

Q101. An actor, who is non-resident and not registered in India but an Indian citizen, comes to India for 90 days and provides services in India for an entertainment programme. Whether the same should be considered as "import of services"?

Ans. As per section 2(77) *"non-resident taxable person"* means any person who occasionally undertakes transactions involving supply of goods or services or both, whether as principal or agent or in any other capacity, but who has no fixed place of business or residence in India.

As such the actor will be treated as non-resident taxable person and shall be liable for compulsory registration in terms of section 24(v) of the CGST Act.

Further as defined in section 2(11) of the IGST Act: "*import of services*" means the supply of any service; and not; where–––

(i) the supplier of service is located outside India;

(ii) the recipient of service is located in India; and

(iii) the place of supply of service is in India;

In the instance case, the actor being required to take compulsory registration in India, the location of supplier shall be in India and hence the supply of service by the actor will not fulfil the condition of section 2(11)(i) of the IGST Act to be an import of service.

Thus, the **supply will not be treated as import of service**.

Q102. XYZ Ltd. provides accounting services online from Chennai to a client in USA. Whether such services are liable to tax under GST?

Ans. The accounting services provided online from Chennai to a client in USA for a consideration and in the course or furtherance of business, amounts to supply and hence is liable to GST.

With respect to place of supply of services, section 13(2) of the IGST Act is the section that needs to be referred.

Section 13(2) of the IGST Act provides that the place of supply of service, except for the specified services in sub-sections (3) to (13), shall be the location of the recipient.

Place of supply being USA, it is an inter-State supply and export of services. It will be a zero-rated supply provided it satisfies the following prescribed conditions.

(a) The payment for such service has been received by the supplier of service in convertible foreign exchange or in Indian Rupees wherever permitted by the RBI - within a period of 1 year and 15 days from the date of export invoice (Including Nepal or Bhutan).

(b) The supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8.

Q103. M/s. X Ltd is in the business of providing support services (say management, accounting and processing of transactions, operational or administrative assistance services, etc.) from taxable territory to its clients located in non-taxable territory. They issue invoice for the services provided in foreign convertible currency and the payment is received accordingly. Whether the transaction illustrated above is subject to GST?

Ans: As per sub-section (5) of section 7 of the IGST Act, the activity would be "inter-State supply" when the following conditions are satisfied:

- the supplier is located in India.
- the place of such supply as per section 13 is outside taxable territory.

In the given query, the supplier M/s. X Ltd is incorporated in India and hence, the location of the supplier is in India and qualifies the first rudiment in the clause. However, with respect to the second, support service (when performed on principal to principal basis) the place of supply as per section 13 of the IGST Act is the location of the receiver (i.e. non-taxable territory). Hence, the transaction is subject to IGST.

It is pertinent to note that, if the transaction satisfies the 5 conditions stipulated under section 2(6) of the IGST Act, it will qualify to be an export of service and accordingly will be get classified as "*zero-rated supply* "as per section 16(1) of the IGST Act. [Please refer Q 95 for Section 2(6) of IGST Act].

As per section 16(2) of the IGST Act, credit of input tax may be availed for making zero-rated supplies, notwithstanding that such supply is an exempt supply provided such credit should not form the part of negative list prescribed under section 17 (5) of the CGST Act. Further, as per section 16 (3) of the IGST Act, a registered person making zero rated supply shall be eligible to claim a refund when he either makes a supply of goods or services or both under bond or LUT or makes such a supply on payment of IGST.

Q104. Whether the services of an intermediary located in India provided to a person in India as well as outside India will be exigible to tax? If, yes what is the nature of supply?

Ans.

- As per Section 2 (13) of the IGST Act, "*intermediary" means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account.*

  Thus, an intermediary is a person who merely arranges or facilitates supply of goods or services or both, belonging to the other person. A person can arrange or facilitate supply of goods or services belonging to some other person ('**principal**'), only when he has been authorized by the principal. An intermediary cannot alter the nature or value of supply, which he facilitates on behalf of his principal. The intermediary service providers generally receive consideration in the form of commission or brokerage in respect of the services rendered by them. However, the person who supplies goods or services or both on his own account (on principal-to-principal basis) is not an intermediary. Thus, services of an intermediary will be covered by the definition of supply and will be liable to tax depending upon the place of supply of such services.

- To understand whether the services of an intermediary located in India is liable to tax, the following situations as given in the table below may arise:

Sr. No.	Principal (Service recipient)	Intermediary (Service Provider)	Client of Principal
1	In India	In India	In India
2	In India	In India	Outside India
3	Outside India	In India	In India
4	Outside India	In India	Outside India

- **Place of Supply** - To determine the nature of supply of intermediary service, the place of supply needs to be determined first. In this query, the intermediary is located in India and is rendering service to a principal located in India as well as outside India as covered by situation no. 1 - 4 in the above table. As far as situation no. 1 and 2 is concerned, the supplier and the recipient are in India and therefore place of supply will be determined as per Section 12 of the IGST Act. As per Section 12, the place of supply will be the location of the registered recipient and in case of recipient, other than the registered person it shall be the location of the recipient where the address on record exists. Thus, the place of supply shall be the location of the recipient (i.e.) Location of Principal, India.

  The place of supply for situation no. 3-4 will be determined as per the provisions of Section 13 of the IGST Act. Section 13 deals with place of supply of services where location of the supplier or location of the recipient is outside India. In terms of Section 13(8)(b) of the IGST Act, the place of supply of *'intermediary services'* shall be the location of the supplier of services (i.e., location of intermediary). Consequently, if the supplier meets the definition of an intermediary, then such services would not qualify as an export of services in terms of Section 13(8)(b) of the IGST Act.

- **Nature of Supply** - To understand the nature of supply, Section 8(2) of the IGST Act needs to be referred to. Section 8 deals with the provisions in respect of supply of goods or services or both in the course of intra-State trade or commerce, i.e., trade or commerce within the State. The relevant portion of the section reads as below –

  > *"(2) Subject to the provisions of section 12, supply of services where the location of the supplier and the place of supply of services are in the same State or same Union territory shall be treated as intra-State supply:"*

- The provision of Section 8(2) is subject to the provisions of Section 12. The provisions of Section 8 have to be read alongside provisions of Section 12 and whenever a conflict

arises, Section 12 shall prevail over the provisions of Section 8. In the instant case as discussed above, the location of supplier is in India and the place of supply is also in India only and therefore, the nature of supply shall be intra-state supply and liable for CGST + SGST for all situations.

- There has been an ambiguity in determining the nature of supply in case the location of supplier of service is in India and the location of recipient of service is outside India. The CBIC *vide* its FAQ has clarified that in case of location of supplier and place of supply falling within the same State/UT, then it will be treated as an intra-state supply only. FAQ 64 through Tweets.

  "***Question*** *- If address of buyer is Punjab and place of supply is same state of supplier (Rajasthan), then IGST will apply or CGST/SGST?*

  Reply *- If the place of supply and the location of the supplier are in the same State then it will be intra-State supply and CGST / SGST will be applicable."*

- Sr. No 25 of the Frequently Asked Questions on Banking, Insurance and Stock Brokers Sector dated 27.12.2018

  "Question - Would intermediary services provided to an offshore client and services provided by banking company to its offshore account holders be treated as an intra-State supply or an inter-State supply for payment of GST?

  Answer - Under clause (b) of section 13(8) of the IGST Act, 2017 the place of supply of such services is the location of the provider of services. As the location of supplier and place of supply are in same State, such supplies will be treated as intra-State supply and Central tax and State tax or Union territory tax, as the case may be, will be payable."

Q105. Whether an importer of services is liable to pay tax on reverse charge basis under GST law?

Ans. As per Section 7(1) (b) of the CGST Act, supply includes import of services for a consideration whether or not in the course or furtherance of business.

Entry No. 4 of Schedule I of the CGST Act, stipulates that "*Import of services by a person from a related person or from any of his other establishments outside India, in the course or furtherance of business"* Hence, supply of services imported into the territory of India shall be treated to be a supply of services in the course of inter-State trade or commerce.

Further, as per Section 13 of the IGST Act, unless otherwise specifically prescribed, the place of supply of services where location of supplier or location of recipient is outside India, shall be the location of recipient of the service.

Section 7(4) of IGST Act, states that *supply of services imported into the territory of India shall be treated to be a supply of services in the course of inter-State trade or commerce*.

Also as per *NN 10/2017-ITR,* any services supplied by any person located in non-taxable territory to a person located in taxable territory shall be liable to reverse charge.

On the basis of the above aspects of GST law, in the instant case the import of service is leviable to GST under reverse charge.

Q106. If an Indian Company has representative office abroad as per RBI approval and the overseas office provides certain services to the Indian Company, whether such supply is chargeable to GST?

Ans. In terms of Sl.No.1 of *Notification No. 10/2017- Integrated (Rate)* dated *28.06.2017 ["**NN 10/2017-ITR"**]*, GST shall be payable under reverse charge mechanism ("**RCM**") towards any service supplied by any person who is located in a non-taxable territory to any person located in the taxable territory other than non-taxable online recipient.

Further, as per Entry No.4 of Schedule I to the CGST Act, import of services by a person from a related person or from any of his other establishments outside India, in the course or furtherance of business shall be treated as supply even if made without consideration.

In view of the above, GST shall be payable by the Indian company under RCM towards services provided by its representative office located abroad (related person).

Q107. An importer, who imported goods from non-taxable territory, receives credit note for discounts from the supplier. Whether the importer is liable to any tax on receipt of discounts in credit note issued by the supplier?

Ans:

- The act of bringing goods into India is covered by the definition of "import of goods" as prescribed in sub-section (11) of section 2 of the IGST Act. Further, as per sub-section (2) of section 7 of the IGST Act it is classified as a supply of goods in the course of inter-State trade/commerce and would be liable to integrated tax under GST Act. Besides the above, proviso to section 5 (1) of the IGST Act supplements that, the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 on the value as determined under the said Act at the point when duties of customs are levied on the said goods under section 12 of the Customs Act.

  From the above discussion, we can infer that on such importation of goods, IGST will be payable in addition to the basic customs duty (BCD). Accordingly, the point to determine the rate of duty and conversion rate (i.e. value of goods) of Imported goods are governed by section 15 of Customs Act [which is latest of either dates i.e. date of presentation of bill of entry; or date of entry inwards of the vessel or date of arrival of aircraft or vehicle]. Hence, the point at which the customs duties are levied on the import of goods would also be the point when integrated tax is levied.

- Post import price changes are not relevant for the purpose of valuation. Hence, if there is any reduction in the value of imported goods due to discounts and incentives by way of a credit note issued subsequently by the overseas supplier, such reduction would not have any impact on the tax payable under the Customs Act and thus the value of IGST payable/paid remains unchanged.

- The importer, subject to restrictions under section 17(5) of the CGST Act, is also eligible to avail ITC on such IGST charged on import of goods by virtue of it being covered by the definition of 'input tax' under section 2(62) thereof. Such ITC once availed

based on the IGST discharged under the Customs Act would remain unchanged, even in the case of subsequent reduction in the import value.

- However, with respect to such credit notes, it is pertinent to evaluate whether it is in the nature of discount towards the original supply (i.e. supplementary transaction) or whether such discount is like incentive for a separate supply of services provided by the importer to the exporter (i.e. principal transaction).

  If the discount is given by the overseas supplier of goods to the importer for performing an act not connected to goods imported [Schedule II of the CGST Act], then such activity would be considered as a principal transaction for consideration and hence it is a supply. Eventually, the importer of goods would be the supplier of services.

  In such a scenario, it is pertinent to test, if such a supply of service would qualify to be an export of service under section 2(6) of the IGST Act [Please refer Q 95 for definition of "export of services"]

  Accordingly, even in a situation where such discount / incentive / credit note is in the form of an independent supply of services and not merely discount related to the original importation of goods, the condition stipulated above needs to be checked.

  If the transaction satisfies the afore mentioned 5 conditions of section 2(6) of the IGST Act, it qualifies to be an export of service and in turn would be classified as a zero-rated supply as defined under section 16 of the IGST Act. Further, the benefit of zero-rated supply accrues to the importer, who is to supply either with payment of tax and apply for a refund of the said payment or execute the LUT for supply without payment of tax and claim the refund of accumulated ITC.

  However, if the transaction fails to satisfy the afore-mentioned 5 conditions of section 2(6) of the IGST Act, the same shall be taxable under GST as a supply of service at the applicable rate.

Q108. Why has import of goods not been specified in section 7 of the CGST Act?

Ans. Explanation to Article 269A (1) to the Constitution inserted by Constitution (101st Amendment) Act 2016, *inter alia* stated: *"For the purposes of this clause, supply of goods, or of services, or both in the course of import into the territory of India shall be deemed to be supply of goods, or of services, or both in the course of inter-State trade or commerce".* Hence provisions related to import of goods are contained in the IGST Act.

Chapter 2
Composite or Mixed Supply

Q109. A person supplies flour in a bag along with one additional plastic container. Does this constitute composite supply?

Ans. The definition of composite supply as provided in section 2(30) of the CGST Act, itself gives a statutory illustration as follows:

> *"composite supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;*
>
> Illustration**:** *Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply*."

From the above illustration it is clear that packing materials constitute ancillary supply of composite supply. One important point to note here is that the statutory illustration does not restrict its applicability to secondary packing materials. The purpose of giving plastic container along with flour bag is to store the flour in the container. Hence, the same shall be considered as ancillary supply and the rate applicable for the flour shall be applied for the entire price charged.

Q110. A developer while rendering construction services also collects charges towards preferential location (in terms of pool facing, park facing, corner, first floor, top floor, vastu compliant flat etc.), right to use car parking space, legal charges, common area charges, club house charges etc., Can the entire consideration be treated as composite supply and can construction services be regarded as principal supply? Or this is to be treated as mixed supply and that supply which attracts higher rate is to be considered?

Ans. I. It is a common practice in construction industry to provide services like preferential locations, right to use car parking space, common area maintenance, legal charges etc., along with construction services for a flat. For the entire bundle of services single consolidated price is charged from the recipient. Generally one agreement is entered which covers the entire services.

II. It is also to be noted that while offering entire bunch of services, option is given to the receivers not to pay for some or all of the services given and reduction from consolidated single price is given. For example a buyer may opt not to pay for right to use car parking space, preferential locations etc.

III. In the above context following questions are raised:

a. Whether entire bundle can be taken as construction service treating the same as principal supply in the composite supply? or

b. Whether entire bundle is treated as mixed supply and rate applicable for other services being 18% shall be applicable for the entire services including for construction?

IV The definitions of 'composite supply' and 'principal supply' are reproduced hereunder:

"*composite supply means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply" – [Section 2(30)]*

"principal supply means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary" - [Section 2(90)]

"mixed supply means two or more individual supplies of goods or services, or any combination thereof, made in

conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply." *- [Section 2(74)]*

V To identify a particular supply to be of composite supply, the important ingredient is, it must be naturally bundled. The concept of natural bundling is not defined in GST Act. However, CBIC in its GST flyer on "composite supply and mixed supply" issued following guidelines on how to identify whether natural bundling exists in a supply or not:

"Whether services are bundled in the ordinary course of business would depend upon the normal or frequent practices followed in the area of business to which services relate. Such normal and frequent practices adopted in a business can be ascertained from several indicators some of which are listed below:

- *The perception of the consumer or the service receiver. If large number of service receivers of such bundle of services reasonably expects such services to be provided as a package, then such a package could be treated as naturally bundled in the ordinary course of business.*
- *Majority of service providers in a particular area of business provide similar bundle of services. For example, bundle of catering on board and transport by air is a bundle offered by a majority of airlines.*
- *The nature of the various services in a bundle of services will also help in determining whether the services are bundled in the ordinary course of business. If the nature of services is such that one of the services is the main service and the other services combined with such service are in the nature of incidental or ancillary services which help in better enjoyment of a main service. For example, service of stay in a hotel is often combined with a service or laundering of 3-4 items of clothing free of cost per day. Such service is an ancillary service to the provision of hotel accommodation and the resultant package would be*

treated as services naturally bundled in the ordinary course of business.

- *Other illustrative indicators, not determinative but indicative of bundling of services in ordinary course of business are –*

  — *There is a single price or the customer pays the same amount, no matter how much of the package they actually receive or use.*

  — *The elements are normally advertised as a package.*

  — *The different elements are not available separately.*

  — *The different elements are integral to one overall supply – if one or more is removed, the nature of the supply would be affected.*

"No straight jacket formula can be laid down to determine whether a service is naturally bundled in the ordinary course of business. Each case has to be individually examined in the backdrop of several factors some of which are outlined above."

The above principles explained in the light of what constitutes a naturally bundled service can be gainfully adopted to determine whether a particular supply constitutes a composite supply under GST and if so, what constitutes the principal supply so as to determine the right classification and rate of tax of such composite supply."

- When guidance from above flyer is used, following points emerge in the context of queries raised above:

  - The intention of receivers is relevant – The dominant intention of receiver is to receive construction service and not the other ancillary services provided. Even though the receiver is given an option to choose the services, it can be argued that other services viz., PLC, legal services, right to use car parking space cannot be availed by him independently.

- It is a common practice in construction industry to offer the above (PLC, legal service services etc.,) along with construction services and it can be said that all these services are naturally bundled with construction services and supplied in conjunction with one another in the ordinary course of business.
- One may argue that since other services are optional it is not naturally bundled. It is important to consider a point here; the recipient agreeing to receive these services as a bundle, cannot enjoy the other services unless he agrees to buy the services of constructing the allotted dwelling unit. That is to say one cannot buy other services such as right to use car parking space or society maintenance charge or any other service in the bundle separately. The recipient must buy these services only as a package, where the construction service remains the predominant element.

- Similar to the concept of composite supply, in erstwhile service tax regime the concept of bundling service was envisaged in section 66F of Chapter V of Finance Act, 1994. Many rulings under the service tax have upheld the above view.

- In ***M/s. SJP Infracon Limited v. The Commissioner of Central Excise & Service Tax****, Noida, CESTAT Allahabad [2018 (12) TMI 253 - Appeal No. ST/70343/2018-CU(DB)]* has made the following observations:

  "it is undisputed fact that the sale deed does not separately mention above stated charges and the sale deeds are for the amount of entire consideration including above stated charges. We, further, note that provisions under sub section (3) of section 66F has provided that whenever in ordinary course of business some service is naturally associated with a single service which gives essential character to the entire package of service then such naturally associated service is treated as bundled service and the said bundled service is to be treated as single service which gives the entire package its essential character. In the present case construction of residential complex service is the service

which gives essential character to the package of the service and, therefore, the charges as stated above are essentially required to be bundled with the single service namely construction of residential complex service. We, therefore, do not find any merit in the stand taken by Revenue."

- Same view was expressed in the following cases too:
  - *Logix Infrastructure Pvt. Ltd., Shree Chetan Sharma Vice President, Shri Sawan Kumar Manager (Taxation), Shri Sameer Satija, DGM (Accounts) v. Commissioner of Central Excise & S.T., NOIDA [2018 (11) TMI 462]*
  - *M/s Radhey Krishna Technobuild (P) Ltd. v. Commissioner, Central Excise, Lucknow [2020 (2) TMI 37]*
  - *M/S KLJ Developers Pvt. Limited v. CE, C & CGST, DELHI-III [2018 (7) TMI 1444]- CESTAT NEW DELHI*

Based on the above discussions, it can reasonably be concluded that entire bundle is to be taxed at the rate applicable to construction service which is the principal supply and other services are nothing but the ancillary supplies.

Q111. Would the answer to Q No.110 be different, in case the builder sells furnished apartments and also collects charges as mentioned above?

Ans. It is possible that a builder may sell a completed building along with other services. The flat is also fully furnished. In this case, following are supplied as a bundle

- *Sale of furnished flat*
- Services such as right to use car parking space, preferential location etc.,

In the above context, the pre-dominant intent in the minds of the receiver would be to buy the furnished building. It is general practice in the industry to offer entire service as a bundle. As discussed in the case of construction service in the answer to Q No.120 it is not possible for the receiver to enjoy the allied services separately. Hence, the principal supply is to be taken as sale of furnished building.

Q112. A supplier is involved in the business of flex printing. Content to be printed is supplied by the recipient. The supplier uses his own materials based on the specification of the recipient and supplies the service of printing and finally issues flex board as advertising material. Whether this is treated as composite supply or mixed supply?

Ans.

- The Board has clarified on the issue of classification in printing industry *vide Circular No 11/11/2017-GST dated 20.10.2017*. Important excerpts of the circular are reproduced hereunder:

  "Para 4. In the case of printing of books, pamphlets, brochures, annual reports, and the like, where only content is supplied by the publisher or the person who owns the usage rights to the intangible inputs while the physical inputs including paper used for printing belong to the printer, supply of printing [of the content supplied by the recipient of supply] is the principal supply and therefore such supplies would constitute supply of service falling under Heading 9989 of the scheme of classification of services.

  Para 5. In case of supply of printed envelopes, letter cards, printed boxes, tissues, napkins, wall paper etc. falling under Chapter 48 or 49, printed with design, logo etc. supplied by the recipient of goods but made using physical inputs including paper belonging to the printer, predominant supply is that of goods and the supply of printing of the content [supplied by the recipient of supply] is ancillary to the principal supply of goods and therefore such supplies would constitute supply of goods falling under respective headings of under Chapter 48 or 49 of the Customs Tariff."

- Supply of material and activity of printing both together constitute supply of trade advertisements in this case. There is no doubt that the contract is of composite supply due to the following reasons:
  - It is naturally bundled because it is the general practice in printing industry to provide both PVC flex material and service of printing as a bundle. These elements are

normally given as a package. Large number of customers in the industry expects these to be given as a package.

- It is essential to identify the principal supply. Analysis of Board's circular reveals an important point that in case of books, annual reports, pamphlets, brochures and the like where content is supplied the principal supply is considered as supply of printing service. Whereas in case of supply of printed envelopes, letter cards, printed boxes, tissues, napkins wall paper etc., the pre-dominant element is considered to be supply of goods. It appears that wherever weight age is given for the contents the same is treated as supply of service. In books, annual reports value is more for the content rather than the goods. But in case of envelopes, printed boxes etc., weight age is given for the material rather than the content.

- Above principles when applied to flex printing, it is obvious that it is the finishing of material which attracts the readers to read the content in the flex. Hence, it can be reasonably concluded that in the case of flex printing, the principal supply is taken as supply of material viz., trade advertisement material. This view is supported by the clarification provided in *F.No.332/2/2017-TRU, Dt: December, 2017*, with the consolidated FAQs under Sl.no 59 which reiterates the same as under:

Sl.No	***Queries***	***Replies***
59	*What is the classification and GST for posters with photographs/ images etc. printed on digital printers on coated cotton/ mix canvas media or other synthetic media?*	*These items fall under HS code 4911 and attract 12% GST*

Q113. Authorized service station of two wheeler and four wheeler supplies both repair service as well as spare parts at the time of servicing of vehicles. Materials are taxed at 28% and service is taxed at 18%. Can a supplier treat the same as composite supply and consider service as the principal supply and charge 18% for the entire charges received?

Ans.

- The Board in its *Circular No 47/21/2018-GST dated 8.06.2018* clarified the above issue. An excerpt from the Circular is reproduced hereunder:

2	*How is servicing of cars involving both supply of goods (spare parts) and services (labour), where the value of goods and services are shown separately, to be treated under GST?*	*2.1 The taxability of supply would have to be determined on a case to case basis looking at the facts and circumstances of each case.* *2.2 Where a supply involves supply of both goods and services and the value of such goods and services supplied are shown separately, the goods and services would be liable to tax at the rates as applicable to such goods and services separately.*

- The definition of 'composite supply' reads: *"composite supply means a supply made by a taxable person……."*. Hence, wherever two or more taxable supplies are involved in a contract of supply then applicability of composite supply may be resorted. However, it may not be possible to club two or more contract of supplies into one composite supply.
- In the case of servicing of vehicles, one can see the following features:
  - The supply of spare parts and repair services are distinct
  - Different purchase orders / work orders are given for material and service contracts.
  - Rates quoted are different.
- Considering the above points and clarifications given in the Circular, it may be concluded that spare parts and services shall be taxed at the rates applicable to each of them and not treated as composite supplies.

- However one may take an alternate view in case single work order is issued by the supplier covering material and labour components which are inseparable from each other, then the same may be viewed as composite supply with servicing treated as principal supply. This normally applies wherever comprehensive AMC contract which involves supply of both parts and services.

Q114. A school / Boarding school as part of its education services collects the following charges from the students :

(a) Term fee

(b) Book fee

(c) Hostel fee

(d) Mess fee

(e) Uniform fee

(f) Stationary fee

(g) Fee for extra-curricular activities like yoga, music etc.,

In addition to the above, it conducts National level seminars and quiz competitions for which registration fee are collected from their students and also from other school students. Whether the above services will be composite supply or a mixed supply?

Ans.

- As per Sl. No 66 of exemption *NN 12/2017-CTR* as amended from time to time, following services by educational institutions are exempt from GST. (Heading No 9992 / 9993)

"Services provided -

(a) by an educational institution to its students, faculty and staff;

(aa) by an educational institution by way of conduct of entrance examination against consideration in the form of entrance fee

(b) an educational institution, by way of,-

(i) transportation of students, faculty and staff;

(ii) catering, including any mid-day meals scheme sponsored by the Central Government, State Government or Union territory;

(iii) security or cleaning or house-keeping services performed in such educational institution;

(iv) services relating to admission to, or conduct of examination by, such institution;

(v) supply of online educational journals or periodicals;

Provided that nothing contained in sub-items (i), (ii) and (iii) of item (b) shall apply to an educational institution other than an institution providing services by way of pre-school education and education up to higher secondary school or equivalent.

Provided further that nothing contained in sub-item (v) of item (b) shall apply to an institution providing services by way of,-

(i) pre-school education and education up to higher secondary school or equivalent; or

(ii) education as a part of an approved vocational education course.

- Services such as education i.e. term fee, book fee, stationary fee, uniform fee are invariably collected from all the students at the time of admission or beginning of the academic year. Hostel fee and mess fee are collected periodically. Generally option is given to students for taking up extra-curricular activities.
- In the above charges supply of uniform and stationary are subject to GST. However, for other charges i.e. education, hostel, mess, books exemption is available. A question arises whether entire supplies can be viewed as composite supply and if it is so what is the principal supply?
- Generally students are mandated to purchase books, uniforms and stationary along with education services from the school. Hostel, mess and extra-curricular activities are based on option. Hence, it can very well be argued that these services viz., books, uniforms, stationary, hostel, mess and school education service constitute composite supply on account of following reasons:

- Perception of the receivers i.e. students is to receive all these services as a package.
- Majority of service providers (educational institutions) provide similar bundle of services.
- The different elements in the above bundle are not available separately. i.e., a non-student is not allowed to buy books, uniforms, and stationary or avail the service of hostel or mess or extra-curricular activities.
- All the above services are integral to one overall supply i.e. education service.

- Hence, it can reasonably be concluded that all the above elements are naturally bundled in the ordinary course of business and education service constitutes the principal supply. Since education service is exempt from GST entire charges are exempt from tax.
- Seminars and quiz competitions conducted by the schools, if mandated by the appropriate authority like Directorate of School Education etc., will then form part of the curriculum. In this scenario, the fee collected by the school for organising seminars and quiz competitions will be eligible for exemption.

Q115. A supplier is engaged in manufacture and supply of Trucks along with refrigerator unit mounted on it; whether this would amount to supply of truck or supply of refrigerator unit?

Ans.

- As per section 2(30) of the CGST Act, *"composite supply" means a supply made by* a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply.
- A supply would be regarded as composite supply, if the principal supply is identifiable from two or more supplies given together.
- In the given example one may argue that these supplies are naturally bundled in the ordinary course of business. However, it is difficult to identify the principal supply.

- Section 2(90) of the CGST Act states that, "principal supply" means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply, is ancillary;
- A refrigerator truck or chiller lorry is a van or truck designed to carry perishable goods at specific temperatures. Buyers choose truck with refrigerator for dual purpose. Both, transport of goods as well as to increase the life of perishable goods being transported. So, it is difficult to identify the predominant element in the bundle of two supplies. Hence, this would be treated as mixed supply as per section 2(74) of the CGST Act.
- *"Mixed supply"* means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply.
- The moment a supply is not classified as composite supply the same would be classified under mixed supply, if single price is charged for the entire supplies.
- In terms of section 8 of the CGST Act, in case of a mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax.
- Hence, that supply which attracts highest rate shall be applied for the entire supply in the instant case.

Q116. M/s. XYZ ltd is awarded a contract of supply and laying of paver blocks from the Corporation of Chennai in various areas. The company would like to know whether it would be classified as works contract or be treated as individual supplies or mixed supplies.

Ans.

- In the supply and laying of paver block, two elements of supply are involved:

  (i) Supply of paver blocks,

  (ii) Laying of the same on the roads / floors.

  It is to be decided whether the above two are classified as individual supplies or together as works contract service.

- It is mentioned in the question that the contract is both for supply of and laying of paver blocks. Hence, it is understood that title to pavers are transferred only at the time of laying activity and not at the time of dispatch of the same. Hence, it is to be seen first whether this amounts to works contract service within the definition given in the Act.
- Works contract is defined in section 2(119) of CGST Act as *"works contract" means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract*;"
- Dictionary meaning of various terms used in the definition:
    - *Building - the action or trade of constructing something*
    - *Construction - the action of building something, typically a large structure*
    - *Fabrication - To construct by combining or assembling diverse, typically standardized parts - the action or process of manufacturing or inventing something.*
    - *Completion - the action or process of completing or finishing something*
    - *Erection - the action of erecting a structure or object*
    - *Installation - an occasion when equipment, furniture, or a computer program is put into position or made ready to use*
    - *Fitting out - to put equipment into a room or building so that it can be used for a particular purpose*
    - I*mprovement - an occasion when something gets better or when you make it better*
    - *Modification - a change to something, usually to improve it*
    - *Repair – Restoring something damaged, faulty, or worn to a good condition*
    - *Maintenance - the work needed to keep a road, building, machine, etc. in good condition*

- *Renovation - the act or process of repairing and improving something, especially a building*
- *Alteration - a change, usually a slight change, in the appearance, character, or structure of something*
- *Commissioning - bring (something newly produced) into working condition.*

The above operations are with reference to any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract

- Supply and laying of paver blocks will be works contract, if following conditions are satisfied –
  - Activity of laying must fall within any of the activities mentioned in the definition
  - Once the activity is done, it must result in immovable property
  - Property in goods must be transferred while execution of the contract

Let's analyze each of the above conditions as follows:

- <u>*Activity of laying must fall in any of the activities mentioned in definition:*</u>

Laying of paver on the concrete floors or roads can be regarded as construction activity. The dictionary meaning of construction is "*the action of building something, typically a large structure*". Several judicial precedents are available which are discussed below:

- ***M/s. Abideep Interlock Pavers Pvt. Ltd. v. the Commissioner of Central Excise*** *[2018 (9) TMI 91 - ST/262/2008-DB & ST/640/2009-DB]* – It was observed that the activity of laying of internal roads and approach roads to the compound of the building was undertaken by the appellant as a separate and exclusive activity and not as part of the contract for construction of a factory / building. Therefore, they are specifically covered under the exclusive

clause of definition of 'commercial or industrial construction service.

- *M/s. Conwood Pre Fab Ltd. v. Commissioner of Central Excise, Raigad [2015 (1) TMI 1191 - 2014 (36) S.T.R. 1064 (Tri. - Mumbai)].* It was held that the activity undertaken by the appellant, i.e. laying of paver blocks, more appropriately comes under the scope of 'commercial or industrial construction service'.

From the above decisions, it is evident that the activity of laying paver block can very well be considered as construction activity.

- *Once the activity is done, it must result in immovable property*

We need to find whether laid paver blocks can be considered as immovable property. Several judicial pronouncements are available under the erstwhile indirect tax regime.

- The tests laid down by the Supreme Court as found in the celebrated case of ***Municipal Corporation of Greater Bombay v. Indian Oil Co. Ltd*** *1991 [Suppl (2) SCC 18]* ` be summarized as under:

  > "The test was one of permanency; *if the chattel was movable to another place of use in the same position or liable to be dismantled and re-erected at the later place; if the answer to the former is positive it must be movable property but if the answer to the latter part is in the positive, then it would be treated as permanently attached to the earth.*"

- In case of ***Tower Vision India Pvt. Ltd. v. Commissioner of C. Ex. (ADJ.), Delhi*** *[2016 (42) S.T.R. 249 (Tri. - LB)],* it was held that Towers were immovable structures and *ipso facto* non-marketable and non-excisable -*Fact that towers could be dismantled, moved and re-erected at another location by itself could not make them movable goods*. - On their dismantling into angles and channels, nuts and bolts, only "angles and channels" could be transported. Towers when embedded are considered as immovable property.

In view of the above rulings, it can be concluded that any object which is permanently fastened to earth is described as immovable property. Also, the fact that an object can be dismantled and re-erected ipso facto does not make it a movable property. In case of paver blocks, they are erected on a concrete base and permanently fastened to it. It is nothing but replacement of concrete roads. One unique feature of paver block is that fifty to sixty percentage of the erected blocks can be removed and reused. However no customer would lay the paver block with the intention of removing it. As per the above judgments just because an object is reusable that will not ipso facto make them movable. Also the intention of the receiver is to use the laid paver block as roads. Hence, this can be treated as immovable property.

- *Property in goods must be transferred while executing the contract*

This condition is satisfied since title to pavers is transferred at the time of laying the paver blocks.

In view of above discussion, it can be concluded that supply and laying of paver blocks can be considered as works contract and rate applicable for supply of works contract services would apply to it.

Q117. In case of composite supply, if the principal supply is exempt, whether all supplies in the bundle will be exempt?

Ans. The definition of composite supply reads thus: "*composite supply means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both…….*"

- From the above definition one may have a doubt that since no tax is payable in exempted supplies it would be a non-taxable supply. Hence, if exempt supply is included in a bunch of supplies naturally bundled, and then the same may not be a composite supply. This may not be the intention of the statute.
- Whether a product is leviable to tax or not has been clarified in several decisions under the erstwhile regime. In ***Wallace Flour Mills company ltd v. Collector of Central Excise*** *[1989 (9)*

TMI 106 - 1989 (44) E.L.T. 598 (SC), (1989) 4 SCC 592], the Hon'ble Supreme Court has observed that "*Excisable goods, do not become non-excisable goods merely by the reason of the exemption given under a notification".* This view was also taken by the *Madras High Court in Tamil Nadu (Madras State)* ***Handloom Weavers Co-operative Society Ltd. v. Assistant Collector of Central Excise*** *[1978 (2) E.L.T. (J 57)].*

- Doubts as to whether exempted goods are liable to duty or not have effectively been put to rest by the Supreme Court in the above case. It clarified that fully exempted goods were also excisable goods and hence were chargeable to duty if the exemption was removed prior to removal but subsequent to manufacture. Also, the Supreme Court in the case of ***UOI v. Nandi Printers P Ltd*** *[2001 (127) ELT 645],* has held that even full exemption from duty under a notification does not make goods as non-excisable.
- From the above judicial pronouncements one can conclude that exempted goods are not non-leviable goods. The same would apply in GST law too.
- Taxable supply is defined in section 2(108) of the Act thus: "*taxable supply means a supply of goods or services or both which is leviable to tax under this Act;"*
- In view of the above discussed judicial precedents, one can reasonably conclude that exempted supplies are also taxable supplies. The moment it is concluded that exempted supplies are taxable supplies, the same can very well be a part of composite supply and if the principal supply happens to be exempted supply, then the entire bundle cannot be subjected to tax.
- One can refer section 8 of the CGST Act, which reads thus:

  "The tax liability on a composite or a mixed supply shall be determined in the following manner, namely:—

  (a) a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply; and

(b) a mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax"

- There appears to be a dichotomy between section 2(31) and section 8. The definition of composite supply uses the word "two or more taxable supplies", whereas section 8 uses the phrase "comprising two or more supplies". Hence, the intent of the law appears not to exclude exempt supplies from the ambit of composite supply. Also, Board Circular *CIR 32,* point no 5 *inter alia, with reference to* health care services, has clarified that food supplied to in-patients as advised by doctors / nutritionists is a part of composite supply of health care and not separately taxable. Hence, the intent of law is made clear by this Circular implying that taxable supplies include exempted supplies also.

Q118. Where a supplier supplies bottle of shampoo, conditioners and soap in a single container for a single price, whether the same would amount to composite supply or mixed supply? Is it possible to consider it as composite supply since all these products are used for bathing purpose?

Ans.

- To be a composite supply, two or more supplies must be naturally bundled in the ordinary course of business. Meaning of "naturally bundled" and "ordinary course of business" has been categorically explained in GST flyer.
- Supply of shampoo with soap is not said to be naturally bundled in the ordinary course of business due to the following reasons:
  - I. Generally these kinds of bundle is offered to customers as a measure of sales promotion only and not as a natural bundle.
  - II. Even if offered for single price, customers are free to buy them separately.
  - III. These kinds of offers do not come from majority of the suppliers and not given throughout the year – may be during festival season to boost the sales.
  - IV. It is difficult to identify the principal supply in this bundle; hence it goes out of the ambit of the definition of "composite supply".

- From the above parameters, it can be concluded that this is artificially bundled and hence would be classified as mixed supplies and it shall be treated a supply which attracts the highest tax rate.
- Also, Board *vide* its *CIR 92* in para B (i) has clarified the above point. Excerpts of the same is reproduced hereunder:

  (i) Sometimes, companies announce offers like 'Buy one, get one free" For example, "buy one soap and get one soap free" or "Get one tooth brush free along with the purchase of tooth paste". As per sub-clause (a) of sub-section (1) of section 7 of the said Act, the goods or services which are supplied free of cost (without any consideration) shall not be treated as "supply" under GST (except in case of activities mentioned in Schedule I of the said Act). It may appear at first glance that in case of offers like "Buy one, get one free", one item is being supplied free of cost without any consideration. In fact, it is not an individual supply of free goods but a case of two or more individual supplies where a single price is being charged for the entire supply. It can at best be treated as supplying two goods for the price of one.

  (ii) Taxability of such supply will be dependent upon as to whether the supply is a composite supply or a mixed supply and the rate of tax shall be determined as per the provisions of section 8 of the said Act."

Q119. Tyres are taxed at 28% under HSN 4011 whereas tyre tubes are taxed at 18% under HSN 4013. Where a supplier sells tyre along with tyre-tubes whether is it a composite supply or a mixed supply?

Ans. A tyre manufacturer or a supplier supplies tyres as well as tyre tubes to original manufacturers for the purpose of fitting into the motor vehicles. Hence, both are not separately supplied. The primary purpose of supplying both these items together is to form part of motor vehicles at the time of manufacture. Role of tyre and tyre tube are vital in the functioning of motor vehicles. However, a tyre cannot

function without a tube and a tyre tube cannot function without a tyre. Both are dependent on each other.

To fit into the definition of composite supply it is imperative to identify the principal supply. According to section 2(90) *"principal supply means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary"*

When one analyses whether tyre is principal supply or tyre tube is principal supply, obviously the pre-dominant element, main intent of the car manufacturer would be to buy the tyre rather than tyre tube. One may argue that since both are dependent to each other none constitutes principal supply. However, as per the definition the main parameter is "Pre-dominant element or main intent" of the receiver is to buy the tyre. One of the ancillary parts is tube and the same cannot be stated to be a principal supply.

Hence, the rate of tax shall be 28% for the entire bundle being the rate applicable for tyre.

Q120. Whether jewellery made on an order received from customer who also provides old gold ornaments, is a mixed supply or composite supply?

Ans. It is neither a composite supply nor a mixed supply, because in both the cases, two or more supplies must be involved. As far as supplier is concerned, only one supply is involved i.e. supply of jewellery. In case of exchange of old gold by the customer, it is not a supply by the supplier. However, taxable value must be calculated according to the provisions of Rule 27 of the CGST Rules, since section 15 is not applicable in this case. Tax must be discharged at open market value (OMV) of jewelleries being supplied.

Q121. Hospitals collect various charges from in-patients and out-patients. This would generally include charges for treatment, nursing care, medical consultancy, supply of medicines, infrastructure like room rent, food etc. Whether entire bundle would be regarded as composite supply and no tax is payable health care being the principal supply?

Ans.

- Point No. 5 of *CIR 32* in the case of health care services has clarified that food supplied to in-patients as advised by doctors / nutritionists is a part of composite supply of health care and not separately taxable. Excerpt of the same is reproduced hereunder:

5.	*Is GST leviable in following cases:* *(1) Hospitals hire senior doctors/ consultants/ technicians independently, without any contract of such persons with the patient; and pay them consultancy charges, without there being any employer employee relationship. Will such consultancy charges be exempt from GST? Will revenue take a stand that they are providing services to hospitals and not to patients and hence must pay GST?* *(2) Retention money: Hospitals charge the patients, say, ₹ 10000/- and pay to the consultants/ technicians only ₹ 7500/- and keep the balance for providing ancillary services which include nursing care, infrastructure facilities, paramedic care, emergency services, checking of temperature, weight, blood pressure etc. Will GST be applicable on such money retained by the hospitals?*	*Health care services provided by a clinical establishment, an authorised medical practitioner or paramedics are exempt. [Sl. No. 74 of notification No. 12/2017-C.T. (Rate) dated 28.06.2017 as amended refers].* *(1) Services provided by senior doctors/ consultants/ technicians hired by the hospitals, whether employees or not, are healthcare services which are exempt.* *(2) Healthcare services have been defined to mean any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India [para 2(zg) of Notification No. 12/2017-CT(Rate)].* *Therefore, hospitals also provide healthcare services. The entire amount charged by them from the patients including the retention money and the fee/payments made*

	(3) Food supplied to the patients: Health care services provided by the clinical establishments will include food supplied to the patients; but such food may be prepared by the canteens run by the hospitals or may be outsourced by the Hospitals from outdoor caterers. When outsourced, there should be no ambiguity that the suppliers shall charge tax as applicable and hospital will get no ITC. If hospitals have their own canteens and prepare their own food; then no ITC will be available on inputs including capital goods and in turn if they supply food to the doctors and their staff; such supplies, even when not charged, may be subjected to GST.	*to the doctors etc., is towards the healthcare services provided by the hospitals to the patients and is exempt.* *(3) Food supplied to the in-patients as advised by the doctor/nutritionists is a part of composite supply of healthcare and not separately taxable. Other supplies of food by a hospital to patients (not admitted) or their attendants or visitors are taxable.*

- The above Circular has settled the issue relating to supply of food to in-patients and out-patients. Whereas the hospital collects other charges like room rent, medicines supplied to patients. In-patient services generally will include services provided by hospitals to in-patients under the direction of medical professionals aimed at curing, restoring, maintaining the health of a patient and the services comprise of medical, pharmaceutical and paramedical services, rehabilitation services, nursing services, laboratory and technical services.
- The principles set out in the Circular in relation to food, would apply for other ancillary supplies such as providing medicines to in-patients, room rent, stent and implants provided to patients as

a part of health care services and all these are integral part of the health care services. The in-patient is under continuous monitoring of the doctors and nursing staff and administration and dosage of medication is all under the control of the doctor and the nursing staff. The entire treatment protocol is documented and recorded. Thus, it is clear that in case of an inpatient, the hospital provides a bundle of supplies which is classifiable under health care services eligible for exemption under *Sl.No. 74 of NN12/2017-CTR*. Entire gamut of these services to in-patients shall be classified under health care services being principal supply and no GST would be applicable to drugs supplied, stents and implants provided and room rent/ charges.

- Similarly the medicines supplied by hospitals or pharmacies run by hospitals to out-patients shall be treated as individual supply and cannot be equated with treatment given for in-patients and hence the same becomes taxable. The extent of treatments given to in-patients and out-patients are entirely different. The in-patient is under continuous monitoring of the doctors and nursing staff and administration and dosage of medication is all under the control of the doctor and the nursing staff right from the admission stage to discharge stage. Same is not the case in case of out-patient. Hence, medicines and food supplied to out-patients is taxable.

Q122. What is the principal supply- ice cream or restaurant service in case supply of ice creams is made (a) where no seating arrangement is there and (b) where air conditioned seating arrangement is there?

Ans. Restaurant service is defined in Explanation (xxxii) of *NN 11/2017-CTR* as amended by *Notification No. 20/2019- Central Tax (Rate) dated 30.09.2019* which is as follows:

"Restaurant service' means supply, by way of or as part of any service, of goods, being food or any other article for human consumption or any drink, provided by a restaurant, eating joint including mess, canteen, whether for consumption on or away from the premises where such food or any other article for human consumption or drink is supplied"

From the above definition it is clear that wherever eating joints exist, it shall be regarded as restaurant service. Hence wherever seating arrangement is there whether air-conditioned or otherwise it shall be regarded as restaurant service and the rate applicable for restaurant shall be applied for supply of ice creams.

Wherever seating arrangements do not exist, it shall be classified as supply of ice creams and not as restaurant service.

Q123. A supplier is engaged in water proofing service with material. Whether this is composite supply or mixed supply?

Ans. Waterproofing is the process of making an object or structure waterproof or water-resistant so that it remains relatively unaffected by water or resisting the ingress of water under specified conditions. Such items may be used in wet environments or underwater to specified depths. Many types of water proofing exist in the industry like box type water proofing, brick bat proofing, bituminous proofing etc., Where this is done on a building or a structure, materials such as cement, river sand, bricks, water proof chemicals are used. Water proofing work is classified under Heading 995453 – "Roofing and waterproofing services" falling under the heading "Special trade construction services" and chargeable to 18% tax.

'Works contract' is defined in section 2(119) of CGST Act, to mean *"a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract;*

Where the material and labour is combined in a contract of water proofing work, it falls under the meaning of 'works contract' since following tests are satisfied:

- it is a contract of improvement – repair – maintenance
- of immovable property
- transfer of property in goods (materials used) is involved in the execution of such contract.

Q124. A hotel providing accommodation service runs a restaurant and a separate bar.

1. **Food is serviced to outsiders as well as in-room service is made. Whether such in-room service can be considered as composite supply?**
2. **Whether complementary break-fast provided to the guests, constitute a composite supply?**
3. **Whether collection of car parking charges along with room bill constitutes a composite supply?**

Ans. Case 1

The definition of "Restaurant service" reads: *"Restaurant service' means supply, by way of or as part of any service, of goods, being food or any other article for human consumption or any drink, provided by a restaurant, eating joint including mess, canteen, whether for consumption on or away from the premises where such food or any other article for human consumption or drink is supplied"*

Hence, it is clear that where food is consumed in the restaurant or away from the place, it is covered within the definition. Also, one may raise a question when food is supplied to guests staying in the hotel, will that be taken as composite supply and the principal supply is accommodation service. It cannot be so, since both supplies are not naturally bundled in the ordinary course of business due to the following reasons:

- Guests are free to go out and consume food wherever they want
- Food is not provided to all guests and is offered only to those guests who prefer the same.

Hence, accommodation service and restaurant service are to be treated as individual supplies and rate of GST shall be applied accordingly.

Case 2

When complementary break-fast is provided to guests, it shall be treated as composite supply and principal supply is accommodation service. This is so because both are naturally bundled in the

ordinary course of business. Following points can be attributed to the above conclusion

- Complementary break-fast is provided to all the guests.
- Guests visit the hotel primarily to avail accommodation service and not to take complementary break-fast.

Due to the above points, accommodation service shall be taken as principal supply.

Case 3

Service of car parking is naturally bundled with accommodation service. Guests avail parking facility because accommodation service is the pre-dominant intention. Hence, accommodation service is the principal supply. This would be so even if parking charges are separately billed from the guests.

Chapter 3
Reverse Charge Mechanism

Q125. Whether services of Members of the Managing Committee (MC) to the Co-op Society being a registered person, would fall within the scope of Section 9(3) of the CGST Act. Who has to calculate GST liability as MC members were not paid any sitting fees, meeting allowance etc. by whatever name called.

Ans. As per Section 9(3) of the CGST Act and Section 5(3) of the IGST Act, the Government may, on the recommendations of the Council, by notification, specify the categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

The CBIC *vide NN 13/2017-CTR* and NN *10/2017-ITR* has specified the categories of supply of services, wherein the GST will be charged on RCM. The services of Member(s) of Managing Committee (MC) to Co-op society are not covered by any of the above Notification(s) and therefore such services are not liable for payment of tax on reverse charge basis.

Q126. Whether downloading of any film, song etc. *via* Internet by a non-taxable person (Household person) in India from any person located in any non-taxable territory will attract GST under RCM?

Ans: As per Section 2(17) of the IGST Act*, "online information and database access or retrieval services (OIDAR)" means services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention and impossible to ensure in the absence of information technology and includes electronic services such as, -*

(i) advertising on the internet;

(ii) providing cloud services;

(iii) provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;

(iv) providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;

(v) online supplies of digital content (movies, television shows, music and the like);

(vi) digital data storage; and

(vii) *online gaming;"*

In the instant case, download of films, songs etc. *via* the medium of Internet from a database by a non-taxable online recipient (household) falls under the aforesaid definition of OIDAR Service.

As per Section 14(1) of the IGST Act, read with *NN 10/2017-ITR*, in case of supply of OIDAR services, by any person located in a non-taxable territory and received by a non-taxable online recipient, the person located in the non-taxable territory (OIDAR service provider) shall be the person liable to pay GST

Q127. Whether a tax payer availing security services is bound to pay tax on RCM basis even if the security service provider is a registered person?

Ans. Security services (services provided by way of supply of security personnel) provided by a person other than a body corporate to a registered person are covered under *NN 13/2017-CTR / NN 10/2017-ITR.*

Therefore, such security services will be liable under RCM so long as the service provider is a person other than a body corporate, irrespective of the fact whether or not he has otherwise registered under GST Act, but the receiver of these services is a registered person, located in the *"taxable territory*"

Q128. Whether a registered trader who procures GST exempted cattle feed is liable for RCM on inward transport charges paid for the procurement of GST exempted cattle feed?

Ans. The GST taxability of transport charges depends on the mode of transport and the bundling of supply. If the said transport is by way of Road (other than GTA) or offered as a bundled supply qualifying as a composite supply then there may not be any liability to tax this transport charges and hence RCM may not apply since the principal supply is tax exempted goods *viz*., cattle feed

Further, even in the case of transport by road by a GTA / rail / vessel, the said service may be exempt if the goods involved in transport falls under the definition of "*Agricultural Produce*" *vide* exemption *NN 12/2017-CTR*.

Q129. Whether commission paid to a person or entity located in a foreign country falls under the ambit of section 9(3) of the CGST Act?

Ans. If the service rendered is an *"intermediary service"* falling under section 2(13) of the IGST Act, for which the commission is paid to an agent or a service provider located in the non-taxable territory, then such a service may not be considered as import of service under section 2(11) of the CGST Act and consequently may not attract RCM under section 5(3) of the IGST Act read with *NN 10/2017-ITR*, as the place of supply under section 13(8)(b) of the IGST Act, is outside India.

Q130. What is the difference in GST levy between sponsorship and contribution to charitable institutions?

Ans. A "*trust*" is treated as a person under section 2(84) of the CGST Act. The amount of consideration involved for sponsorship services provided by a charitable organisation may be liable to GST, if the said activity can be termed as "*business*" within the meaning of the CGST Act and unless the sponsorship activities are specifically exempted by any notification. Further, sponsorship services provided to a body corporate / firm may be liable to RCM in the hands of such recipient body corporate / firm.

However, voluntary contribution received by a charitable institution may not be liable for GST, if it is in the nature of an unconditional donation. *Circular No. 116/35/2019-GST dated 11.10.2019* also mentions that, if all the three conditions are satisfied namely, the gift or donation is made to a charitable organization, the payment has

the character of gift or donation and the purpose is philanthropic (i.e. it leads to no commercial gain) and not advertisement, GST is not leviable.

Q131. A Charitable trust constructs a temple for worship of people and paid the freight charges on inward purchase of goods and materials for construction of the temple. Whether RCM is applicable on freight charges paid?

Ans. Supplies of services by a GTA in respect of transportation of goods by road to only notified recipients or to a registered person are liable to RCM. As temples are generally not covered under the above notified category, RCM liability may not arise to temple in this regard.

If the freight charges are paid to any person transporting goods by road who is not a GTA or not issued any consignment note etc. in respect of goods transport by road, then no GST is payable and hence no RCM, *vide* Serial No 18, Chapter Heading 9965, of *NN 12/2017-CTR.*

Q132. Whether rent a cab services are covered under RCM?

Ans. The services provided by way of renting of a motor vehicle provided to a body corporate by a person other than a body corporate, where the cost of fuel is also included in the consideration charged (and GST is charged at 5%), is required to comply with the RCM requirements of section 9(3) of the CGST Act *vide Notification 22/2019-Central Tax (Rate) dated 30.09.2019 ["**NN 22/2019-CTR**"]* with effect from 1-10-2019.

But, by *Notification No 29/2019-Central Tax (Rate) dated 31.12.2019 ["**NN 29/2019-CTR**"]*, the above has been amended to provide that any person, *other than* a body corporate who supplies the service to a body corporate, and does not issue an invoice charging central tax at the rate of 6 %, to the service recipient such body corporate located in the taxable territory would get covered by RCM provisions.

However, one need to know about the difference between renting of motor vehicle and transport of passenger's service and rent a cab services before determining the applicability of RCM.

Q133. Does reverse charge provisions apply to supplies received by SEZ unit?

Ans. The provisions relating to reverse charge for SEZ units are contained in the IGST Act. As provided under *Notification No 18/2017-Integrated Tax (Rate) dated 05.07.2017*, the services imported by an SEZ unit or SEZ Developer for authorized operations are exempted from GST. Therefore, for inward supplies other than import of services for authorized operations, RCM shall apply on the SEZ unit as well.

Q134. We are registered as AOP and not registered under GST law. We are conducting seminar for PSUs women employees every year and we are collecting funds from PSUs. Our transaction values are below 20 lakhs. The question is whether PSUs have to pay GST under RCM

Ans. With effect from 1.2.2019, RCM under section 9(4) of the CGST Act is applicable only in respect of specified class of registered persons in respect of supply of specified categories of goods or services or both received from an unregistered supplier and not in respect of other cases. Service by way of “Conducting Seminars” is not a notified / specified supply of Service under section 9(4) (or u/s 9(3)) and hence may not attract RCM in the hands of the PSU.

Q135. Whether tax under RCM is payable in respect of any Membership fees paid to an overseas professional body/ organisation?

Ans. If the payment towards Membership fees to an overseas body or organisation is considered as a "*supply*" and "*taxable supply*", then such payment may be liable to RCM as import of services, if paid by a recipient situated inside the taxable territory.

Q136. Whether the fees paid outside India for certification services by Indian Company is leviable under GST on reverse charge basis?

Ans. If such certification involves, services supplied -

a) in respect of goods which are required to be made physically available by the recipient of services to the supplier of services, or to a person acting on behalf of the supplier of services in order to provide the services, or

b) to an individual, represented either as the recipient of service or a person acting on behalf of the recipient, which require the physical presence of the receiver or the person acting on his behalf, with the supplier

then both these instances may generally be considered as import of services liable to pay RCM if such services are performed in India under section 13(3) of the IGST Act.

However, when the services are provided from a remote location by way of electronic means, the place of supply shall be the location where the goods are situated at the time of supply of services and on that basis, GST taxability is to be decided and if the recipient and the goods are located inside the taxable territory then GST liability arises and it has to be paid under RCM.

Also, in respect of goods which are temporarily imported into India for repairs or for any other treatment or process and are exported after such repairs or treatment or process without being put to any use in India, other than that which is required for such repairs or treatment or process, then there is no GST liability or RCM payment.

Where any of the above services are supplied at more than one location, including a location in the taxable territory, its place of supply shall be the location in the taxable territory.

Where the repair , treatment or process are carried on in more than one State or Union territory, the place of supply of such services shall be taken as being in each of the respective States or Union territories and the value of such supplies specific to each State or Union territory shall be in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on any other prescribed basis. No specific basis has been prescribed so far, in this regard.

Q137. In case of stone crushing units, freight is paid to individual truck owners for bringing stone from mines to stone crusher unit. Is there any liability to pay tax on reverse charge on freight as this is not payment of freight to GTA?

Ans. Under *NN 12/2017-CTR*, transport of goods by road other than by a GTA is exempt.

The term GTA has been defined in Clause 2(ze) of *NN 12/2017-CTR* as follows:

> *"Goods transport agency means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called;"*

An individual truck owner who does not issue a consignment note is not a GTA. Therefore, the services rendered by him are exempt and hence there is no necessity to pay tax under RCM.

Further in erstwhile Service Tax Law in the following cases, it has been held that when services of transport of goods rendered by individual truck operators (and not a GTA issuing a consignment note) are not liable to service tax –

(a) *CCE v. Kanaka Durga Agro Oil Products Pvt. LTD2009 (15) S.T.R. 399 (Tri. -Bang.)*

(b) *CCE v. Shanti Fortune (I) Pvt. Ltd. 2010 (19) S.T.R. 883 (Tri. - Chennai)*

(c) *Laxminarayana Mining Co. v. CST 2010 24 STT 6*

The above decisions may hold good under the GST Law as well, since the scheme of rate / exemption entries for transport of goods by road are similar to that in erstwhile service tax.

Q138. What are the additional documents to be maintained by the recipient in case of reverse charge transactions?

Ans. In case of reverse charge transactions, the following additional documents are required to be maintained:

a. Self-invoice as required under section 31(3) (f) of the CGST Act, only if the supplier is unregistered.

b. Payment voucher as required under section 31(3)(g) of the CGST Act.

Q139. Section 16(4) of the CGST Act, specifies that a registered person shall not be entitled to take ITC in respect of any invoice or debit note for supply of goods or services or both after the

due date of furnishing of return under section 39 of the CGST Act for the month of September of the subsequent financial year. Is Section 16 (4) of the CGST Act applicable to credit taken for taxes paid under RCM provision?

Ans. Under Section 31(3) (f) of the CGST Act, a registered person who is liable to pay tax as per section 9(3)/ 9(4) of the CGST Act, shall issue an invoice in respect of goods or services or both received by him from the supplier who is not registered on the date of receipt of goods or services

Further, as per rule 36 of the CGST Rules, which specifies the documentary requirements for claiming ITC, provides that *"an invoice"* issued in accordance rule 31(3) (f) of the CGST Rules shall be one such document based on which ITC can be claimed. Hence, a view may be taken that section 16(4) of the CGST Act, may be applicable for RCM paid under section 9 (3)/ (4) of the CGST Act.

Q140. Can one invoice be issued for all RCM inward supplies during a period?

Ans. The second proviso to rule 46 of the CGST Rules, provides that a registered person may issue a consolidated invoice at the end of a month for supplies covered under section 9(4) of the CGST Act , where the aggregate value of such supplies exceeds ₹ 5,000/- in a day from any or all the suppliers. Hence consolidated invoice for a month can be issued only in respect of supplies covered under section 9 (4) of the CGST Act.

In respect of supplies covered under section 9 (3) of the CGST Act and received from unregistered person, separate invoice is to be raised by the recipient for each supply.

Q141. How to claim to credit on RCM payments which is not visible in FORM GST-2A?

Ans. Taxes paid under RCM, shall not be appearing in **FORM GSTR-2A**. The recipient is to claim ITC on the basis of self-generated invoice as per section 31(3) (f) of the CGST Act, subject to payment of tax.

Under rule 36(4) of the CGST Rules, w.e.f. 9.10.2019 (and as amended w.e.f. 1.1.2020) ITC to be availed by a registered person in respect of invoices or debit notes, the details of which have not

been uploaded by the suppliers under section 37(1) of the CGST Act, shall not exceed 10% of the eligible ITC available in respect of invoices or debit notes the details of which have been uploaded by the suppliers under section 37 (1) of the CGST Act.

Circular No. 123/42/2019-GST, dated 11-11-2019 clarifies as follows: *"The restriction of availment of ITC is imposed only in respect of those invoices/debit notes, details of which are required to be uploaded by the suppliers under sub-section (1) of section 37 and which have not been uploaded. Therefore, taxpayers may avail full ITC in respect of IGST paid on import, documents issued under RCM, credit received from ISD etc. which are outside the ambit of sub-section (1) of section 37, provided that eligibility conditions for availment of ITC are met in respect of the same….. "*

Hence, one may conclude that the impugned restriction under rule 36(4) of the CGST Rules, will not be applicable to ITC availed for RCM inward supplies.

Q142. Where goods are received on 30th day of the month and freight charges relating to such goods are paid on 3rd day of the following month then RCM will be paid in which month?

Ans. As per section 13 of the CGST Act, in case of supplies where tax is to be paid on RCM basis, the time of supply shall be the earlier of —

a) the date of payment or

b) the date immediately following 60 days from the date of issue of invoice by the supplier.

Hence in the given situation the time of supply will depend on the date of invoice. However, assuming the date of payment to be earlier, the supply will have to be reported in the returns filed for the relevant month in which the payment is made.

Q143. Director 'A' of a company is being paid technical fee subject to TDS under section 194J of the Income Tax, 1961 and Director 'B' is being paid commission subject to TDS under section 194H of the Income Tax Act. Also, both the directors are being paid salary on a monthly basis subject to TDS under section 192 of the Income Tax Act, 1961. Are reverse charge provisions applicable to Mr. A & Mr. B?

Ans. In the instant case, remuneration paid to directors can be examined under the following two categories:

(a) Leviablity of GST on remuneration paid by companies to the directors as employees which is subject to section 192, by the company.

(b) Leviablity of GST on remuneration paid by companies to the directors as professional/ commission subject to TDS under section 194J/ 194H by the company.

The CBIC *vide Circular 140/10/2020-GST dated 10.06.2020*, specified that, the activities performed by the director can either be in the course of employer-employee relation (i.e. a "contract of service") or there could be an element of "contract for service". Further, the issue has been deliberated by various courts in the pre-GST regime and it has been held that a director who has also taken an employment in the company may be functioning in dual capacities, namely, one as a director of the company and the other on the basis of the contractual relationship of master and servant with the company, i.e., under a contract of service (employment) entered into with the company. The CBIC clarified that the part of director's remuneration which are declared as '*Salaries'* in the books of a company and subjected to TDS under section 192 of the Income Tax Act, are not taxable being consideration for services by an employee to the employer in the course of or in relation to his employment in terms of Sl. No. 01 of Schedule III of the CGST Act. The CBIC further clarified that director's remuneration which are being subjected to TDS under section 194J/194H of the Income Tax Act as *fees for professional* or *technical services* shall be treated as consideration for providing services which are outside the scope of Schedule III of the CGST Act, and is therefore, taxable. Further, in terms of *NN 13/2017-CTR*, the recipient of the said services i.e. the company is liable to discharge the applicable GST on it on reverse charge basis.

Hence, technical fee paid to Mr. A and commission paid to Mr. B shall be subjected to reverse charge and the company shall pay the same as a recipient of the service.

Q144. Whether rent paid by a Corporate to an individual who is also its Director is liable to GST under forward charge or reverse charge?

Ans. Services provided by a Director in the capacity as a Director alone, are liable to tax under a reverse charge. In the given case, the rent is paid to the individual who owns the immovable property. Incidentally the individual is also the Director. However, the rental services are provided by the person concerned, in his individual capacity and not in the capacity as a Director. Accordingly, GST is leviable by the individual subject to the fulfilment of aggregate turnover criteria.

Q145. If a service is mentioned in the exemption list and the same is imported from outside India then whether tax under RCM needs to be paid or not?

Ans. As per section 5(3) of the IGST Act, *"The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both."*

Further under section 6(1) of the IGST Act, where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by notification, exempt generally, either absolutely or subject to such conditions as may be specified therein, goods or services or both of any specified description from the whole or any part of the tax leviable thereon with effect from such date as may be specified in such notification.

The CBIC *vide NN 10/2017-ITR*, has specified the goods under IGST covered under RCM.

If the said import of services is exempted by virtue of section 6 of the IGST Act, and the service which is imported is covered under an exemption Notification, than no GST has to be paid under RCM as well.

Q146. A Football Academy registered in India avails the service of a Foreign Coach. The Foreign coach comes to India and trains

students of the football academy. Whether tax under RCM needs to be paid?

Ans. Section 2 (77) of the CGST Act, defines a non-resident taxable person as under -

> *"(77) non-resident taxable person" means any person who occasionally undertakes transactions involving supply of goods or services or both, whether as principal or agent or in any other capacity, but who has no fixed place of business or residence in India;"*

The foreign coach, who does not have a fixed place of business or residence in India, occasionally undertakes transactions involving supply of service. Hence, he will be treated as a non-resident taxable person.

Section 24(v) of the CGST Act, *inter alia* states as under:

> *"Notwithstanding anything contained in sub-section (1) of section 22, the following categories of persons shall be required to be registered under this Act––*
>
> *……..*
>
> *(v) non-resident taxable persons making taxable supply;*
>
> ……."

The foreign coach has to necessarily take registration and discharge his tax liability under forward charge. Football academy need not pay any tax under RCM.

Q147. How to determine whether CGST/SGST needs to be paid or IGST needs to be paid on RCM?

Ans. To determine whether a supply is liable to CGST / SGST or IGST is dependent on the question as to whether the same qualifies as *"intra-State supply"* or *"Inter-State supply"* under section 7/ 8 of the IGST Act. However, generally, the following principles may be applied -

In respect of supply of services:

First determine the location of the supplier of service as defined in section 2(15) of the IGST Act. This is identical to section 2(71) of the

CGST Act. Then determine the place of supply of services as defined in section 12 of the IGST Act

As per section 7(3) of IGST Act, *supply of services*, where the location of the supplier and the place of supply is in:-

(a) two different States;

(b) two different Union territories; or

(c) a State and a Union territory,

shall be treated as a supply of services in the course of inter-State trade or commerce.

Otherwise, it will be treated as intra-State transaction and CGST/SGST shall be paid under RCM

In respect of supply of Goods:

Determine the place of supply of goods as per section 10 of IGST Act; Location of the supplier of goods is not defined. However, it shall be the registered office of the supplier from where the supply of Goods takes place and from where the billing is to be done.

As per section 7(1) of IGST Act, supply of goods, where the location of the supplier and the place of supply are in-

(a) two different States;

(b) two different Union territories; or

(c) a State and a Union territory,

shall be treated as a supply of goods in the course of Inter-State trade or commerce.

Otherwise it will be treated as intra-State transaction and CGST/SGST shall be paid under RCM.

In respect of both goods and services section 7(5) of the IGST Act may also be referred among others, for transactions, which are generally considered as inter-State, irrespective of the location of the supplier and place of supply as above.

Q148. Whether adaptation rights in respect of a book or re-make rights in respect of film qualify as original work for reverse charge?

Ans. The question comprises of two issues:

(a) Adaptation rights in respect of a book

(b) Remaking right in respect of film

Before proceeding to discuss the same, we reproduce below section 13(1) of the Copyright Act, 1957

"13. Works in which copyright subsists.—

(1) Subject to the provisions of this section and the other provisions of this Act, copyright shall subsist throughout India in the following classes of works, that is to say,—

(a) original literary, dramatic, musical and artistic works;

(b) cinematograph films; and

(c) sound recording."

(a) Adaptation rights in respect of a book:

As per Serial No 9A of *NN 13/2017-CTR* amended *vide NN 22/2019-CTR* following categories of services are covered under RCM:

Sl. No.	***Category of Supply of Services***	***Supplier of service***	***Recipient of Service***
(1)	***(2)***	***(3)***	***(4)***
9A	*Supply of services by an author by way of transfer or permitting the use or enjoyment of a copyright covered under clause (a) of sub-section (1) of section 13 of the Copyright Act, 1957 relating to original literary works to a publisher.*	*Author*	*Publisher located in the taxable territory : Provided that nothing contained in this entry shall apply where, -* *(i) the author has taken registration under the Central Goods and Services Tax Act, 2017 (12 of 2017), and filed a declaration, in the form at Annexure I, within the time limit prescribed therein, with*

Sl. No.	*Category of Supply of Services*	*Supplier of service*	*Recipient of Service*
(1)	*(2)*	*(3)*	*(4)*
			the jurisdictional CGST or SGST Commissioner, as the case may be, that he exercises the option to pay central tax on the service specified in column (2), under forward charge in accordance with section 9(1) of the CGST Act, under forward charge, and to comply with all the provisions of CGST Act, as they apply to a person liable for paying the tax in relation to the supply of any goods or services or both and that he shall not withdraw the said option within a period of 1 year from the date of exercising such option; *(ii) the author makes a declaration, as prescribed in Annexure II on the invoice issued by him in* ***Form GST Inv-I*** *to the publisher.";*

The question has not specified whether adoption right is in respect of a book which is an original literary work or not.

— If it is an original literary work, then RCM is applicable and the tax has to be paid by the recipient of service (i.e. publisher). However, the author can opt to pay under forward charge after completing certain procedures as specified in column (4) against Sl No. 9A of the above notification.

— If it is not an original literary work then RCM is not applicable and the author has to pay tax under forward charge mechanism.

(b) Remaking right in respect of film:

As per Sl.No 9 of the *NN 13/2017-CTR* following categories of services are covered under RCM:

Sl. No.	***Category of Supply of Services***	***Supplier of service***	***Recipient of Service***
(1)	***(2)***	***(3)***	***(4)***
9.	*Supply of services by a music composer, photographer, artist or the like by way of transfer or permitting the use or enjoyment of a copyright covered under clause (a) of sub-section (1) of section 13 of the Copyright Act, 1957 relating to original dramatic, musical or artistic works to a music company, producer or the like.*	*Music composer, photographer, artist, or the like*	*Music company, producer or the like, located in the taxable territory. ";*

The film producer is the author of the cinematographic films and transfer or permitting the use or enjoyment of the said copyright is not specifically covered under the above referred clause. Hence, a remake right for film is not covered under RCM.

Q149. A charitable society constructs a temple for public worship. For the purpose of the said construction, the trust received construction material and paid freight on transportation of construction material. Whether RCM is applicable on freight element?

Ans. Section 9(3) of the CGST Act, which deals with levy of GST on reverse charge, empowers Government to *specify categories of supply* of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both by way of notification.

Accordingly, the Central Government has issued *NN 13/2017-CTR* notifying various categories of services supplied by person to the recipient of services on which tax is leviable under section 9(3) of the CGST Act which shall be paid on reverse charge basis by the recipient of such services.

In the said Notification at Sl. No. 1 Goods Transport Agency service is specified. The relevant portion of the notification is as under:

Sl. No.	***Category of Supply of Services***	***Supplier of service***	***Recipient of Service***
(1)	***(2)***	***(3)***	***(4)***
1	*Supply of Services by a goods transport agency (GTA), [who has not paid central tax at the rate of 6%,][1] in respect of transportation of goods by road to-* *(a) any factory registered under or governed by the Factories Act, 1948(63 of 1948);or* *(b) any society registered under the Societies*	*Goods Transport Agency*	*(a) Any factory registered under or governed by the Factories Act, 1948 (63 of 1948); or* *(b)* ***any society registered under the Societies Registration Act, 1860*** *(21 of 1860) or under any other law for the time being in force in any*

[1] *Inserted vide Notification No. 22/2017 – Central Tax (Rate) dated 22.08.2017*

	Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India; or *(c) any co-operative society established by or under any law; or* *(d) any person registered under the Central Goods and Services Tax Act or the Integrated Goods and Services Tax Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act; or* *(e) any body corporate established, by or under any law; or* *(f) any partnership firm whether registered or not under any law including association of persons; or* *(g) any casual taxable person.* *Provided that nothing contained in this entry shall apply to services provided by a goods transport agency, by way of transport of goods in a goods carriage by road, to, -*		*part of India; or* *(c) any co-operative society established by or under any law; or* *(d) any person registered under the Central Goods and Services Tax Act or the Integrated Goods and Services Tax Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act; or* *(e) any body corporate established, by or under any law; or* *(f) any partnership firm whether registered or not under any law including association of persons; or* (g) *any casual taxable person located in the taxable territory.*

	(a) a Department or Establishment of the Central Government or State Government or Union territory; or *(b) local authority; or* *(c) Governmental agencies,* *which has taken registration under the Central Goods and Services Tax Act, 2017 (12 of 2017) only for the purpose of deducting tax under section 51 and not for making a taxable supply of goods or services.]*[2]		

Accordingly, a charitable society being recipient of GTA is liable to tax under Section 9(3) of the CGST Act under RCM.

Irrespective of the fact whether the trust is making any outward supplies or not, RCM will be applicable.

Q150. In respect of services supplied by an advocate to a business entity located in a taxable territory, tax is payable under reverse charge by the business entity. To pay the tax the business entity must get registered and is bound to collect tax from every sale made and also file the returns. Is this the right interpretation?

Ans. As per Sl. No. 2 of *NN 13/2017-CTR* read with Corrigendum to *NN 13/2017-CTR* dated 25.09.2017, for legal services supplied by an individual advocate, a senior advocate or firm of advocates to a business entity located in taxable territory, the tax under reverse charge shall be paid by the recipient of services i.e., the business

[2] *Inserted vide Notification No. 29/2018 – Central Tax (Rate) dated 31.12.2018 – w.e.f.1.01.2019*

entity. Further, on a combined reading of entries under Sl.No.45(b)(ii) and 45(c) (iii) of *NN 12/2017-CTR* as amended, it can be understood that the legal services supplied by an individual advocate, a senior advocate or firm of advocates to a business entity with aggregate turnover in the preceding financial year up to which the exemption from registration is available, are exempt from GST.

Therefore, where the business entity having aggregate turnover in the preceding financial year below the exemption limit for registration is availing legal services from an advocate, then it need not register under GST for the purpose of discharging liability under reverse charge.

Q151. A private limited company with family members as the only promoter directors is taking director remuneration to the tune of around 90% of its net profit after deducting TDS under section 192 of the Income Tax Act, 1961. Whether reverse charge applies on such remunerations being withdrawal of profits? Can the company claim ITC of the same?

Ans. The CBIC *vide Circular 140/10/2020-GST dated 10.06.2020*, specified that, the activities performed by the director can either be in the course of employer-employee relation (i.e. a *"contract of service"*) or there could be an element of *"contract for service".* The issue has been deliberated by various courts in the pre-GST regime as well and it has been held that a director who has also taken an employment in the company may be functioning in dual capacities, namely, one as a director of the company and the other on the basis of the contractual relationship of master and servant with the company, i.e., under a contract of service (employment) entered into with the company.

The CBIC clarified that the part of Director's remuneration which are declared as '*Salaries'* in the books of a company and subjected to TDS under section 192 of the Income Tax Act, are not taxable being consideration for services by an employee to the employer in the course of or in relation to his employment in terms of Sl. No. 01 of Schedule III of the CGST Act.

In the instant case, TDS under section 192 of the Income Tax Act, 1961 has been deducted from the remuneration being paid to the

directors. Therefore, no reverse charge applies on the said transaction. Consequently, the question of claiming ITC does not arise.

Q152. When independent directors receive sitting fee from the company, is it covered under reverse charge?

Ans. Yes. Sitting fee to independent directors is covered under reverse charge as per Sl No. 6 of the *NN 13/2017-CTR*, as amended, as the said services are outside the purview of employer-employee relationship. Therefore, the company paying such amount shall discharge the liability under RCM.

Q153. Whether renting of motor vehicle purchased after 1.02.2019 exigible to GST under reverse charge basis? Also state whether ITC is allowed on the same?

Ans. Sl.No. 15 to *NN 13/2017-CTR* has been inserted *vide NN 22/2019-CTR,* which reads thus:

Sl. No.	***Category of Supply of Services***	***Supplier of service***	***Recipient of Service***
(1)	***(2)***	***(3)***	***(4)***
15	*Services provided by way of renting of a motor vehicle provided to a body corporate.*	*Any person other than a body corporate, paying central tax at the rate of 2.5% on renting of motor vehicles with input tax credit only of input service in the same line of business*	*Any body corporate located in the taxable territory.*

Further, the aforesaid Serial No was revised *vide NN 29/2019-CTR,* which is reproduced as under:

Sl. No.	*Category of Supply of Services*	*Supplier of service*	*Recipient of Service*
(1)	*(2)*	*(3)*	*(4)*
15	*Services provided by way of renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient, provided to a body corporate.*	*Any person, other than a body corporate who supplies the service to a body corporate and does not issue an invoice charging central tax at the rate of 6 per cent. to the service recipient*	*Any body corporate located in the taxable territory*

Hence, services provided by way of renting of a motor vehicle to a body corporate by a person other than a body corporate and does not issue an invoice charging central tax at the rate of 6% to the service recipient for this services and the cost of fuel is also included in the consideration charged would fall under RCM

However, ITC claim is blocked under section 17(5) of the CGST Act, in respect of any motor vehicle rented for transportation of persons having approved seating capacity of not more than 13 persons (including the driver), except when used for specified purposes such as a supplier of vehicles or for imparting training or transportation of passengers etc.

ITC is available to the owner of the motor vehicle in respect of vehicle etc., if full GST at the rate of 12% is charged relating to his rendering of the service of transportation passengers

Q154. We are into the business of city gas distribution. Several times we are required to pay way-leave charges, permission charges etc., for laying of pipelines to the Nagar Nigam i.e., Local Authority. Will the same be covered under reverse charge?

Ans. 'Local Authority' is defined under section 2(69) of the CGST Act thus:

"(69) local authority means —

(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 (41 of 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;

The instant case falls under Serial No 5 of *NN 13/2017-CTR*, and is liable to RCM under section 9(3) of the CGST Act:

Sl. No.	***Category of Supply of Services***	***Supplier of service***	***Recipient of Service***
(1)	***(2)***	***(3)***	***(4)***
5	*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.*

Sl. No.	*Category of Supply of Services*	*Supplier of service*	*Recipient of Service*
(1)	*(2)*	*(3)*	*(4)*
	(1) renting of immovable property, and *(2) services specified below-* (i) *services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Central Government, State Government or* Union territory or local authority; *(ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;* *(iii) transport of goods or passengers.*		

Therefore, the said transactions of services supplied by the local authorities to the business entity shall be covered under reverse charge.

Q155. When there are exempted, nil rated or zero-rated supplies in our total turnover, why is RCM applicable, even though we are paying GST on the total turnover?

Ans. The applicability of reverse charge is based on the provisions of section 9(3) and section 9(4) of the CGST Act, / section 5(3) and section 5(4) of the IGST Act, respectively, which mandate the recipient to pay tax under reverse charge on inwards supplies of goods or services or both, received by the registered person (i.e., recipient) on the specific supplies of goods, services or both as notified. Hence, the provisions of reverse charge are not linked to the nature and components of the total turnover.

Q156. A registered scrap dealer having turnover exceeding ₹ 3 crores is buying goods from various junk / scrap dealers and rag pickers like nylon, polyester waste etc., who are not registered under GST. What GST liability will arise under reverse charge?

Ans. Section 9(4) of the CGST Act, covers provisions on RCM in case of inward supplies being made by unregistered persons. Further, effective from 01.02.2019, reverse charge will be applicable only for specified categories of goods or services or both received from unregistered supplier for a specified class of registered persons as notified. In this regard, *Notification no. 07/2019-Central Tax(Rate) dated 29.03.2019* has been issued covering specific supplies received from unregistered persons by specific recipients, effective from 01.04.2019.

The procurement from unregistered scrap dealers by a registered scrap dealer shall not be covered under reverse charge under section 9(4) of the CGST Act, 2017, as it is not covered under *Notification 07/2019-Central Tax(Rate) dated 29.03.2019.*

Q157. A registered person has received services of goods transportation on 15.10.2020, whereas, the invoice of the transporter is dated 10.11.2020 and the payment to him is made on 25.11.2020. However, the company has made provision of transportation expenses in October 2020 itself. When GST liability arises under reverse charge under section 9(3) of the CGST Act?

Ans. Section 13(3) of the CGST Act, identifies the time of supply of services in case of reverse charge (i.e., in the hands of recipient) as the earliest of the following:

a. Date on which payment is debited from the bank account

b. Date of payment entry in the books of accounts

c. Within 60 days from the date of invoice

Further, in case the above-mentioned dates are not available, then the date of entry in the books of accounts of the recipient shall be considered as the time of supply. Therefore, in the said case, the time of supply shall be on 25.11.2020, being earliest of the following dates:

a. Date on which payment is debited from the bank account – 25.11.2020

b. Date of payment entry in the books of accounts – 25.11.2020

c. Within 60 days from the date of invoice – 09.01.2021

Q158. EPC Company hires a GTA for supply of raw material from two mines in the State. The project to which the raw material was to be supplied was in the same State. The EPC Company is also registered in the same State. However, the GTA is registered in another State. The GTA hires individual truckers and gets the supplies done. GST is being paid by EPC Company under reverse charge on the invoices raised by the GTA. Would the GTA also be liable under reverse charge on supplies received from the individual truckers?

Ans. The transaction between EPC Company and GTA falls under Sl. No. 22 of *NN 12/2017-CTR*, (extracted below) and is considered to be exempted intra-State supply:

Sl. No.	*Chapter, Section, Heading, Group or Service Code (Tariff)*	*Description of Services*	*Rate (per cent.)*	*Condition*
(1)	*(2)*	*(3)*	*(4)*	
22	*Heading 9966 or Heading 9973*	*Services by way of giving on hire -* *(a) to a State Transport Undertaking, a motor vehicle meant to carry more than twelve passengers; or* ***(b) to a goods transport agency, a means of transportation of goods.***	*Nil*	*Nil*

The individual truck owner who does not issue a consignment note is not a GTA. Therefore, the services rendered by him are exempt and hence there is no necessity to pay tax under RCM.

Further under the erstwhile service tax law in the following cases, it has been held that when services of transport of goods are done by individual truck operators (and not a GTA issuing a consignment note) the services are not liable to service tax:

(a) *CCE v. Kanaka Durga Agro Oil Products Pvt. Ltd* 2009 (15) S.T.R. 399 (Tri. -Bang.)

(b) *CCE v. Shanti Fortune (I) Pvt. Ltd.* 2010 (19) S.T.R. 883 (Tri. - Chennai)

(c) Laxminarayana Mining Co. v. CST 2010 24 STT 6

The above decisions may hold good under the GST law as well, since the scheme of rate / exemption entries for transport of goods by road are similar to that under the erstwhile service tax law Therefore, in the said case, the GTA shall not be required to pay GST on inward supplies being received from individual truckers.

Q159. A copyrighted song composed by a registered music composer has been supplied to a registered music company. The music composer has paid tax under forward charge. Is it proper compliance?

Ans. No. Section 2(98) of the CGST Act defining 'reverse charge' casts the liability of payment of tax on the recipient of the supply. Therefore, in the instant case, even though the supplier i.e., music composer has paid the taxes under forward charge, it does not absolve the recipient i.e., the music company from discharging liability under reverse charge.

Q160. Whether an individual providing bus service to a school run under a Trust for carrying out transportation services of students is covered under reverse charge or forward charge?

Ans. As per Sl. No. 15 of *NN 13/2017-CTR* as amended by *NN 29/2019-CTR*, following categories of service are covered under RCM:

Sl. No.	***Category of Supply of Services***	***Supplier of service***	***Recipient of Service***
(1)	***(2)***	***(3)***	***(4)***
15	*Services provided by way of renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient, provided to a body corporate.*	*Any person, other than a body corporate who supplies the service to a body corporate and does not issue an invoice charging central tax at the rate of 6*	*Any body corporate located in the taxable territory*

Sl. No.	*Category of Supply of Services*	*Supplier of service*	*Recipient of Service*
(1)	*(2)*	*(3)*	*(4)*
		per cent. to the service recipient	

In the instant case, the school not being a body corporate recipient is not covered under reverse charge.

Further, as per Sl. No. 66 of *NN 12/2017-CTR*, (extracted below) it is considered to be exempted intra-State supply:

Sl. No.	*Chapter, Section, Heading, Group or Service Code (Tariff)*	*Description of Services*	*Rate (per cent.)*	*Condition*
(1)	*(2)*	*(3)*	*(4)*	
66	*Heading 9992*	*Services provided -* *(a) by an educational institution to its students, faculty and staff;* ***(b) to an educational institution, by way of,-*** ***(i) transportation of students, faculty and staff;*** *(ii) catering, including any mid-day meals scheme sponsored by the Central Government,*	*Nil*	*Nil*

Sl. No.	*Chapter, Section, Heading, Group or Service Code (Tariff)*	*Description of Services*	*Rate (per cent.)*	*Condition*
(1)	*(2)*	*(3)*	*(4)*	
		State Government or Union territory; *(iii) security or cleaning or housekeeping services performed in such educational institution;* *(iv) services relating to admission to, or conduct of examination by, such institution; up to higher secondary:* ***Provided that nothing contained in entry (b) shall apply to an educational institution other than an institution providing services by way of pre-school education and education up to higher secondary school or equivalent.***		

Hence, the service of transportation of students, faculty and staff provided to an educational institution providing pre-school education and education up to higher secondary school or equivalent is not chargeable to tax. Therefore, in the instant case, the transporter will not be liable under forward charge as well.

Q161. If I am a registered person in Mumbai and have given a vessel on hire at Sri Lanka, whether it will qualify as export of service? If yes, state whether RCM provisions are applicable?

Ans. The said transaction would amount to export of services, if all the following conditions stipulated in section 2(6) of the IGST Act are complied with:

"export of services" means the supply of any service when, -

(i) the supplier of service is located in India;

(ii) the recipient of service is located outside India;

(iii) the place of supply of service is outside India;

(iv) the payment for such service has been received by the supplier of service in convertible foreign exchange [or in Indian rupees wherever permitted by the Reserve Bank of India]; and

(v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8;"

Once, the said supplies fall under the category of export of services, then such supplies will fall under the zero-rated supplies.

However, RCM is not applicable in respect of "*export of services*".

Q162. Where an Institution has availed the services of man power recruitment agency like data entry operators etc., (other than security services), whether GST is leviable? If yes, state whether RCM provisions are applicable?

Ans. When the services like manpower recruitment and man power supply services, other than security services (services provided by way of supply of security personnel) are happening inside the taxable territory, such manpower supply other than security services (services provided by way of supply of security personnel) are not to be considered as liable to reverse charge under GST

Q163. Freight is paid to GTA without any GST component on the invoice by a registered person in Delhi. The registered person charges the same in his tax invoice to his customers. Is GST to be paid by the supplier or his customers?

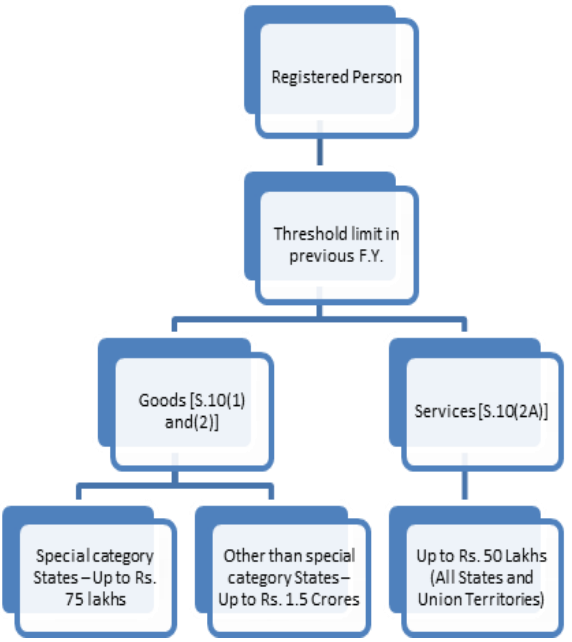
Ans. As per Sl. No. 1 of *NN 13/2017-CTR*, as amended, the liability under section 9(3) of the CGST Act towards reverse charge lies on the recipient of the services from the GTA. Further, as per explanation (a) to the said notification, the person who pays or is liable to pay freight for the transportation of goods by road in goods carriage, located in the taxable territory shall be treated as the recipient of the service. Therefore, in the instant case, as the freight has been paid by the supplier himself, he shall be liable to pay tax under reverse charge.

Chapter 4
Composition Scheme

Q164. What is the threshold limit for opting Composition Scheme? State the conditions to be fulfilled for opting Composition Scheme? Whether a composition taxpayer can make an inter-State supply?

Ans. Section 10 of the CGST Act, provides for a registered person (other than casual taxable person & non-resident taxable person) to opt for payment of taxes under a scheme of composition, the conditions attached thereto and the persons who are entitled, but not mandated, to make payment of tax under the composition Scheme.

Tax payment under this scheme is an option available to certain registered person depending upon whether the registered person is a supplier of goods or a supplier of service. **The threshold limit for a registered person (other than casual taxable person and non-resident taxable person) to opt for composition scheme is as under:**



- For the purpose of composition scheme under section 10 of the CGST Act, the special category States are *(Notification No. 14/2019 – Central Tax, dated 7.03.2019)*:
  - Arunachal Pradesh
  - Manipur
  - Meghalaya
  - Mizoram
  - Nagaland
  - Sikkim
  - Tripura
  - Uttarakhand

Composition Scheme in case of Supply of goods along with specified supply of service

- A person, who is getting registered under GST, can opt for composition scheme at the time of filing the registration application under GST. The turnover limit for this purpose will be assumed to be not exceeding the threshold limit in the current financial year. Aggregate turnover includes all types of supplies but not inward supplies liable to reverse charge calculated on an all-India basis.
- Composition scheme is not available to manufacturers of such goods [or services in case of Section 10(2A) as may be notified by the Government on the recommendations of the Council. In this regard, following goods have been notified *vide Notification No. 8/2017-Central Tax dated 27.06.2017* as amended:
  - Ice cream and other edible ice, whether or not containing cocoa,
  - Pan masala,
  - Tobacco and manufactured tobacco substitutes.
  - Aerated Water

(Notification No. 14/2019-Central Tax, dated 7.03.2019 read with Notification No. 43/2019- Central Tax, dated 30-9-2019).

- An Assessee applying for Composition Scheme under Section 10(1) of the CGST Act, cannot be a supplier of services except when he satisfies certain conditions specified in the second proviso to section 10(1) of the CGST Act.
- As per second proviso to section 10(1) of the CGST Act, registered person who is a supplier of goods but makes some supply of services is also eligible for composition scheme provided his supply of services [other than those referred to in clause (b) of paragraph 6 of Schedule II], are up to 10% of turnover in a State or Union Territory in the preceding financial year or ₹ 5 Lakhs, whichever is higher. For this purpose, the value of exempt supply of services by way of interest on deposits, loans shall not be considered.

  Example: Mr. A runs a medical shop. He also receives rental income on commercial property. The income statement of Mr. A for F.Y. 2019-20 is as under:

  Turnover of medical shop – ₹ 1.4Crores

  Rental Income from commercial property – ₹ 8 Lakhs

  Interest received on deposits – ₹ 3 Lakhs

  Can Mr. A opt for composition scheme for F.Y. 2020-21?

  Mr. A is supplier of goods and supplier of services. For eligibility of composition scheme, the supply of service shall not exceed 10% of turnover in a State or Union Territory or ₹ 5 Lakhs whichever is higher.

  Also, for the purpose of computing turnover in a State or Union Territory, the value of exempt supply of services by way of interest on deposits, loans shall not be considered. Thus, for the purpose of calculation of turnover in a State or Union Territory, interest received on deposits amounting to ₹ 3 lakhs will not be considered.

  The limit for supply of service is 14.80 lakhs [1.48 crores*10%] or ₹ 5 lakhs whichever is higher. The rental income is ₹ 8 lakhs

only which is within the threshold limit for supply of service. The turnover calculated above does not include the interest received from deposits of ₹ 3 lakhs as per the Explanation to the proviso.

Thus, Mr. A is eligible for opting for the Composition Scheme.

- The rate of tax prescribed for composition dealers is as below –
  - 2% of turnover in a State in case of manufacturer
  - 5% of turnover in a State in case of persons engaged in supply, by way or as part of a service, of goods being food for human consumption and works contract services
  - 1% of turnover in a State for other suppliers
  - The registered person is not engaged in making any supply of goods or services which are not leviable to tax under this Act (Alcohol for human consumption, petroleum products).
  - The registered person is **not engaged in making any inter-State** outward supplies of goods or services.

Composition Scheme in case of supplier of service

- A registered person can opt for composition scheme under section 10(2A) of the CGST Act only if he is not eligible to opt to pay tax under sub-section (1) and sub-section (2) of Section 10 thereof.
- This Scheme has been notified w.e.f. 01-01-2020
- The rate of tax prescribed is 6% of the turnover in a State or UT.

Common Conditions

- Where the registered person has multiple registrations (Within the State / across the country) under the same PAN, then composition scheme will be applicable to all registrations under same the PAN.
- The registered person shall not collect tax from the recipient on supplies made by him.
- The registered person shall not be entitled to any credit of input tax.

- Reverse charge under Section 9(3) is payable by the registered person.
- The registered person should neither be a casual taxable person nor a non-resident taxable person
- The registered person is not engaged in making any supply of goods or services through an electronic commerce operator who is required to collect tax at source under section 52.
- The option availed shall lapse with effect from the day on which the aggregate turnover crosses the limit prescribed.
- Aggregate turnover of last F.Y. to be counted for the threshold limit.

If the composition dealer engages in making any inter-state outward supply of goods or service, then he shall not be eligible for opting this Scheme.

Hence, a composition taxpayer is not allowed to engage himself in making inter-State supplies of goods or services of any amount.

Q165. I am a software engineer registered under GST as composition taxpayer having turnover of ₹ 68 lakhs. I have invested my savings in bank and interest earned is about ₹ 10 lakhs. Will I be liable to pay tax at normal rate of 18% for the portion exceeding ₹ 75 lakhs?

Ans. As per explanation 1 to section 10 of CGST Act(inserted *vide* the Finance (No. 2) Act, 2019, for the purpose of aggregate turnover the value of exempt supply of services by way of interest on deposits, loans shall not be considered.

Further, as per explanation 2 of section 10 of CGST Act (inserted *vide* the Finance (No. 2) Act, 2019, for the purpose of determining tax payable by a person, the expression "turnover in a State or Union territory" shall not include the value of exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.'.

Thus, as per explanations 1 and 2, the interest earned on savings bank account will neither be part of turnover for opting Composition

Scheme nor be taxable under the Composition Scheme. Hence, no tax needs to be paid on interest of ₹ 10 Lakhs under GST Composition Scheme.

Q166. ABC is a business organization registered under the same PAN in Uttar Pradesh and a special category State. What will be the threshold limit for opting the Composition Scheme under section 10?

Ans. The threshold limit for opting Composition Scheme for registered person in other than special category State is ₹ 1.5 Crores.

The proviso to section 10(2) of CGST Act says that where more than one registered person are having the same Permanent Account Number (issued under the Income-tax Act, 1961), the registered person shall not be eligible to opt for the Scheme under section 10(1) unless all such registered persons opt to pay tax under that sub-section.

Now, if we assume the turnover of ABC to be ₹ 80 Lakhs, ABC will not be eligible to opt for Composition Scheme in the special Category State as the threshold limit in special Category State is ₹ 75 Lakhs. Though, the threshold limit for other than special category State is ₹ 1.5 Crores, the proviso to section 10(2) restricts ABC from opting the Composition Scheme in only one State.

Thus, the limit for opting of Composition Scheme for ABC (having business in special Category State as well as other than special category States) shall be considered as ₹ 75 Lakhs taking a prudent approach.

Q167. Tax rate under Composition Scheme in respect of suppliers other than manufacturers is 1% of taxable supplies of goods. "Taxable supply" means supplies leviable to tax. "Leviable supply" under section 9 exempts only Alcohol and petroleum products. If so what is the difference in tax rate of 0.5% CGST and 0.5% SGST applicable between the "manufacturer" and "other suppliers" in section 10? Whether composition levy under section 10 is applicable to exempt supply? Can a person who has opted for Composition Scheme supply both exempt and taxable supplies? Whether he has to pay tax on total supply or only taxable supply?

Ans. The composition rates for different categories of registered persons are as under:

Sr. no.	Category of registered persons	Rate of tax (CGST+ SGST/UTGST)
1.	Manufacturers, other than manufacturers of ice cream, tobacco, pan masala, goods notified by Government	1% of the *turnover in State or Union territory*
2.	Suppliers making supplies referred to in clause (b) of paragraph 6 of Schedule II (Restaurant service)	5% of the *turnover in the State or Union territory*
3.	Supplier of services (Other than above)	6% of the *turnover in the State or Union territory*
4.	Any other supplier eligible for composition levy under section 10 and the provisions of this Chapter (Traders, wholesalers, etc.)	1% of the *turnover of taxable supplies of (goods and services) in the State or Union territory*

GST was payable on exempted goods as envisaged in the Composition Scheme effective from 1st July 2017. Since, tax was payable on exempted goods, large number of registered persons (grocery shops selling tax free food grains, milk, etc.) were not opting for the Composition Scheme and in turn large part of targeted registered persons remained outside the purview of the Composition Scheme.

To overcome this situation, the GST Council in its 23rd meeting held on 10th November 2017 at Guwahati, decided that the tax should not be levied on exempted goods as far as Sr. No. 4 above (Any other supplier eligible for composition levy under section 10) was concerned.

To give effect to the decision of the Council, from 1st January 2018 the original wording of rule 7 of the CGST Rules which specified half percent of the *"turnover in the State or Union Territory"* was replaced with *"turnover of taxable supplies in the State or Union Territory*".

However, some anomalies in the wordings leading to the interpretation which were not intended by the Council have been rectified later.

As per the definition under section 2(108), *taxable supply means a supply of goods or services or both which is leviable to tax under this Act.* Goods not leviable under the Act are alcohol for human consumption and petroleum products. Thus, going by the meaning as defined above, even after amendment, exempt supplies are taxable under the Composition Scheme.

However, if we go through the definition contained in section 2(112), *"turnover in State" or "turnover in Union territory" means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis) and exempt supplies made within a State or Union territory by a taxable person, exports of goods or services or both and inter-State supplies of goods or services or both made from the State or Union territory by the said taxable person but excludes central tax, State tax, Union territory tax, integrated tax and cess.*

Here taxable supplies and exempt supplies are separately mentioned and underlying meaning for taxable supplies can be drawn as supplies other than exempt supplies.

To that extent, there is possibility of two interpretations for the term 'taxable supplies' under sections 2(108) and 2(112) of the CGST Act.

In rule 7 as well as section 10, original wording used was "turnover in a State or Union Territory" and while making amendment to rules, wordings used were "turnover of taxable supplies in the State or Union Territory".

Thus, as per the definition of 'taxable supplies', exempt supplies are included in the definition, but in the definition of turnover in State the term taxable supplies is intended to exclude exempted supply as the same is separately mentioned.

On a congenial reading of law and considering the intention of the Council, the registered person other than manufacturers, service providers and restaurant service providers, should pay tax on turnover excluding exempt supplies for the purpose of composition levy.

Chapter 5
Time of Supply

Q168. Whether advance received for supply of goods or services is liable to GST?

Ans. The Government has come out with *Notification No. 66/2017 dated 15.11.2017* [*"**NN 66/2017-CTR"**],* whereby all **suppliers of goods** who have not opted for Composition Scheme, have been **exempted** from the burden of paying GST on advances received. For such categories of taxpayers, **time of supply would arise only at the time of issue of invoice** and they need to discharge GST liability accordingly.

The above Notification, is applicable only in cases of advances received with respect to goods, *But t***he supplier of services are required to pay GST at the time of receipt of advances itself, and not when the invoice is issued.**

Q169. Whether GST will be charged on advance received for annual maintenance contract?

Ans Annual maintenance contract is supply of service.

In case of advance received *for supply of service,* the time of supply is fixed at the point when the advance is received to the extent of advance so received, irrespective of the fact whether the supply is made or not.

NN 66/2017-CTR, which gives exemption in respect of advance received against supply of goods from the burden of paying GST does not exempt advance received in respect of services. **AMC being supply of services, GST is required to be paid at the time of receipt of advances itself, and not when the invoice / Monthly statement is issued.**

Q170. What will be time of supply with respect to land owner's unit at the time of completion?

Ans. Schedule II of the CGST Act sets out the activities which are treated to be supply of goods or supply of service. It covers the following entry related to construction done by developers:

In terms of Entry No. 5(b) the following shall be treated as supply of services:

> "*construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier."*

Further *vide* Entry 6 (a) works contract, being contract for building, construction of any immovable property, which involves transfer of property in goods [as goods or in any other form] in the course of execution of contract, shall be treated as a supply of service.

It may be noted that Schedule III to GST law sets out activities which are treated neither as supply of goods nor as supply of service. Therein Entry No. 5-covers sale of land and sale of completed building/constructed unit, which is consequently excluded from the levy of tax.

In this backdrop, it is seen that in terms of the JDA, the developer would engage in providing *construction service* to the landlord, in exchange for which the landowner may provide the land/development rights to develop the scheduled property to the developer. It appears that there is barter done by way of construction services supplied by developer against the non-monetary consideration of the land/development rights given by land owner. The developer is engaged in the construction activity done for landlord, in exchange for the consideration of development rights, received prior to completion of construction, which may be *treated as supply of service covered by Schedule II Entry 5.*

Similarly, the arrangement between the developer and landlord whereby the building/unit's construction work is done by the developer, using material and labour, after entering into JDA with land owner, may be said to be a works contract service under GST.

Time of Supply*: –*

Notification No.06/2019- Central Tax (Rate) dated 29.03.2019 inter alia stated that "*a promoter who receives development rights or Floor Space Index(FSI) (including additional FSI)on or after 1st April, 2019 for construction of a project against consideration payable or paid by him, wholly or partly, in the form of construction service of commercial or residential apartments in the project or in any other form including in cash",* **the liability to pay GST shall arise on the date of issuance of completion certificate or on its first occupation, whichever is earlier.**

GST liability arises at the time when the JDA agreement is entered into and consideration of the development rights was received, in line with section 13(2), which provides that the GST liability arises on supply of services at the time of receipt of payment. The receipt of development rights could be treated as receipt of payment of non-monetary consideration. .

However, in accordance with *Notification No.04/2018*- Central Tax (Rate) *dated 25.01.2018* the tax on consideration received in the form of construction service provided by the developer to land owner would be liable to be paid, when the developer transfers possession or the right in the constructed building or apartments to the land owner by entering into a conveyance deed or similar instrument like for example the allotment letter. Further it is pertinent to note that such time of supply provision is not applicable with respect to the development rights supplied on or after 1st April, 2019 as stipulated *vide Notification No. 23/2019-Central Tax (Rate), dated 30.09.2019* w.e.f.1-10-2019.

Q171. What will be time of supply in the case of works contract where, as per work order it is specifically mentioned and agreed by contractor that the invoice will be raised only after completion of work contract to the satisfaction of architect of the contractee and only thereafter payment will be done?

Ans. As per Section 2(33) of the CGST Act "*Continuous supply of services*" means a supply of services which is provided, or agreed to be provided, continuously or on recurrent basis, under a contract, for

a period exceeding three months *with periodic payment obligations* and includes supply of such services as the Government may, subject to such conditions, as it may, by notification, specify.

Issue of Invoice as per Section 31(5) of the CGST Act

There is no periodic payment obligation. Works contract referred here is not a continuous supply of service.

Time of supply as per section 13(2) of the CGST Act

The time of supply of services shall be the earliest of the following dates, namely:-

(a) the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under section 31 or the date of receipt of payment, whichever is earlier; or

(b) the date of provision of service, if the invoice is not issued within the period prescribed under section 31 or the date of receipt of payment, whichever is earlier; or

(c) ....."

As per rule 47 of the CGST Rules, the invoice, in the case of taxable supply of services, shall be issued within a period of 30 days from the date of the supply of service.

As per the information given, supply of service is complete only when the architect of the contractee is satisfied with the completion of the work. Hence, as per rule 47 thereof, invoice is to be raised within 30 days from the time when the architect of the contractee is satisfied with the completion of the work. If it is so raised within 30 days, time of supply will be the date of issue of invoice and if the invoice is not raised within 30 days as mentioned above the time of supply will be the time when the architect of the contractee is satisfied with the completion of work. Further, as per the information given the payment is to be released only after the architect is satisfied with the completion of the work, Hence, no payment will be received till such time the architect is satisfied with the completion of the work.

Q172. What will be time of supply, if a Chartered Accountant is providing project finance services where payments are to be received in stages, which are specified in the appointment letter?

Ans. As per 2(33) of the CGST Act, "*Continuous supply of services*" means a supply of services which is provided, or agreed to be provided, continuously or on recurrent basis, under a contract, for a period exceeding three months with periodic payment obligations and includes supply of such services as the Government may, subject to such conditions, as it may, by notification, specify.

Project financing service provided by a Chartered Accountant will be considered as continuous supply of service, if it satisfies all the conditions specified in the definition, Provisions applicable to "Continuous supply of service" will therefore apply to project financing services provided by a Chartered Accountant.

Issue of Invoice as per section 31(5)

As per section 31(5) of the CGST Act, in case of continuous supply of service: -

- *Where the due date of payment is ascertainable or predetermined from the "Contract" then the invoice shall be issued on or before the due date of payment.*
- Where the due date of payment is not ascertainable or not predetermined from the Contract then the invoice shall be issued before or at the time when the supplier of service receives payment.
- Where the payment is linked to the "Completion of an event" the invoice shall be issued on or before the date of completion of that event.

Conclusion: From the above provisions it can be concluded that in the given scenario, where payments are to be received in stages by a Chartered Accountant, which is specified in the appointment letter, as per section 31(5) the invoice has to be issued on or before the due date of payment, since the due date is ascertainable or predetermined from the contract.

Time of Supply

As per section 13(2) of CGST Act read with section 31(5) thereof, the time of supply of service for continuous supply of service shall be the earliest of the following dates: -

- If the invoice is issued **within the prescribed period** under section 31(5), the date of **issue of invoice** by the supplier or the date of **receipt of payment** whichever is **earlier ; or**
- If the invoice is **not issued within the prescribed period** under section 31(5), then the date of **provision of service** or the date of **receipt of payment**, whichever is **earlier.**

Q173. What will be the time of supply in a case of construction of road for Municipal Corporation of Delhi (MCD)?

Ans. Under GST laws, construction of roads, bridges, dams, canals etc. fall under the definition of works contract.

As per section 2(119) of the CGST Act *"works contract means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract"*

Further, as per Entry No.6 (a) of Schedule II to the CGST Act, works contracts as defined in section 2(119) of the CGST Act shall be treated as a supply of services. *Thus, there is a clear demarcation of a works contract as a supply of service under GST.*

It is important to determine the time of supply to ascertain the point in time where the liability to pay GST arises. *Construction contracts have a long gestation period, and as a result, construction of roads, bridges and canals may be regarded as continuous supply of service.*

As per section 2(33) of the CGST Act "*Continuous supply of service*" means a supply of services which is provided, or agreed to be provided, continuously or on recurrent basis, under a contract, for a period exceeding three months with periodic payment obligations

and includes supply of such services as the Government may, subject to such conditions, as it may, by notification, specify.

Issue of invoice for such continuous supply of service needs to be done as per the provisions of section 31(5) of the CGST Act.

As per section 31(5) of CGST Act, in the case of continuous supply of service: -

- Where the due date of payment is ascertainable or predetermined from the "Contract" then the invoice shall be issued on or before the due date of payment
- Where the due date of payment is not ascertainable or not predetermined from the contract then the invoice shall be issued before or at the time when the supplier of service receives payment.
- Where the payment is linked to the **"**Completion of an event" the invoice shall be issued on or before the date of completion of that event.

Time of supply as per section 13(2) of the CGST Act

Depending on which category the works contract allotted by MCD falls out of the three mentioned above, the time of supply will be determined as per section 13(2) of CGST Act according to which the time of supply of service for continuous supply of service shall be the earliest of the following dates: -

- If the invoice is issued within the prescribed period under section 31(5), the date of iss*ue of invoice* by the supplier or the date of *receipt of payment* whichever is *earlier; or*
- If the invoice is *not issued within the prescribed period* under section 31(5), then the date of *provision of service* or the date of receipt of payment whichever is earlier.

Q174. How to determine time of supply, if the purchaser is liable to pay tax under RCM?

Ans. In terms of section 12 (3) of the CGST Act**,** in case of supply of goods, the time of supply will be the earliest of the following–

(a) the date of the receipt of goods; or

(b) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or

(c) the date immediately following thirty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier :

Provided that where it is not possible to determine the time of supply under clause (a) or clause (b) or clause (c), the time of supply shall be the date of entry in the books of account of the recipient of supply.

*NOTE-.*This point is no more applicable based on NN 66/2017-CTR*

In terms of section 13 (3) of the CGST Act, in case of supply of services, the time of supply is the earliest of the following –

(a) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or

(b) the date immediately following sixty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier.

Provided that where it is not possible to determine the time of supply under clause (a) or clause (b), the time of supply shall be the date of entry in the books of account of the recipient of supply.

Provided further that in case of supply by associated enterprises, where the supplier of service is located outside India, the time of supply shall be the date of entry in the books of account of the recipient of supply or the date of payment, whichever is earlier.

Q175. What will be the time of supply in case works contract service where partial work is completed and invoice is not issued against the same within the stipulated time as provided in section 31 of the CGST Act?

Ans. As per section 13(2) of the CGST Act, the time of supply of services shall be the earliest of the following dates, namely: —

(a) the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under section 31 or the date of receipt of payment, whichever is earlier; or

(b) the date of provision of service, if the invoice is not issued within the period prescribed under section 31 or the date of receipt of payment, whichever is earlier; or

(c) the date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause (b) do not apply:

Explanation.-For the purposes of clauses (a) and (b)––

(i) the supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment;

(ii) "t*he date of receipt of payment*" shall be the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier.

For example: A works contractor provided taxable services on 01.12.2020. An invoice towards value of ₹ 2 lakhs was issued on 01.12.2020. The payment is received against the same and entered in the books on 10.11.2020. It is realized by bank by 13.11.2020

In this case

Date of provision of service: 01.12.2020

Date of invoice: 01.12.2020

Last date of Invoice: 30.12.2020 (Not beyond 30 days from the date of provision of service)

Date of receipt of payment-

- Book entry: 10.11.2020
- Credit in bank: 13.11.2020
- Date of receipt of payment – 10.11.2020

Therefore, in case of works contract service where partial work is completed, if no invoice is issued against the same within time as

per section 31, the time of supply would be as per section 13(2)(b) i.e. earliest of date of provision/completion of service or date when the payment is received.

Date of time of supply in the instant case will be 10.11.2020 being the earlier of date of invoice or date of receipt of payment.

Q176. How to determine the date of supply in respect of long term contract, where payment is received on the basis of completion of certain work and work completed 1 month before receipt of payment as per Government internal process? Bills are not prepared in these cases.

Ans. As per section 2(33) of CGST Act, "*Continuous supply of service*s" " means a supply of services which is provided, or agreed to be provided, continuously or on recurrent basis, under a contract, for a period exceeding three months with periodic payment obligations and includes supply of such services as the Government may, subject to such conditions, as it may, by notification, specify.

Issue of Invoice as per section 31(5)

As per section 31(5) of the CGST Act in case of continuous supply of service: -

- Where the due date of payment is ascertainable or predetermined from the "Contract" then the invoice shall be issued on or before the due date of payment.
- Where the due date of payment is not ascertainable or not predetermined from the contract then the invoice shall be issued before or at the time when the supplier of service receives payment.
- Where the payment is linked to the **"**Completion of an event" the invoice shall be issued on or before the date of completion of that event.

Conclusion: From the above provisions it can be concluded that in the given scenario, where payment is to be received only after completion of certain works contract and as per section 31(5) where the payment is linked to the **"**Completion of an event", the invoice shall be issued on or before the date of completion of that event.

Time of supply as per section 13(2)

As per section 13(2) of the CGST Act the time of supply of service for continuous supply of service shall be the earliest of the following dates: -

- If the *invoice is issued within the prescribed period* under section 31(5), *the date of issue of invoice* by the supplier *or the date of receipt of payment* whichever is *earlier*. or
- If the invoice *is not issued within the prescribed period* under section 31(5), then the *date of provision of service or the date of receipt of payment* whichever is *earlier.*

Therefore, in the given scenario where bills/ Invoices are not raised as per section 31(5), the time of supply would be the date of provision of service or the date of receipt of payment, whichever is earlier.

Q177. What will be the time of supply, if the recipient of goods has received certain discounts for early payment to the supplier? And who shall be liable to pay GST? Discount mentioned above is equivalent to the saving of interest by the supplier on his non-fund based limits from banks

Ans. Section .15 of the CGST Act, deals with the provision of discount:

According to this section the value of the supply shall not include any discount which is given –

a) Before or at the time of the supply

if such discount has been duly recorded in the invoice issued in respect of such supply; and will be allowed as deduction, from the value of the supply.

Example:

Suppose a company offered discount @10% on sales of ₹ 10,000/-.

Discount amount would be ₹ 1,000/-.

If such discount amount is reflected in the tax invoice then such discount would be allowed as deduction. Value of supply ₹ 10,000 (-) Discount ₹ 1,000.

Hence, net value of supply on which GST is payable is ₹ 9,000. Thus, when discount is mentioned in the invoice and payment is not collected, GST on discount amount would not be applicable.

b) **After the supply has been affected, if** –

(i) Such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices,

For example, an agreement that if the customer paid the amount due within 30 days, a discount of 10% would be applicable.

(ii) Discount is linked to the invoice

(iii) Input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.

Thus, if the discount given for the early payment to the recipient satisfies the conditions specified, no GST on such discounts received by the recipient will be applicable. Recipient will have to reverse the ITC if taken corresponding to discount amount.

From the perspective of the supplier credit note for the discount might have been issued in the same month in which supply is made or in any subsequent month. If the credit note is issued in the same month, the supplier shall pay GST on the net sale value after adjusting the discount, provided the discount allowed satisfies various conditions mentioned in section 15 of the CGST Act. If the credit note is issued in the subsequent months, the supplier should report the original value of, the invoice in the monthly return in which the invoice is raised. The value of the credit note should be reported in the relevant table in **Form GSTR-1** and can be reduced from the gross value of supply in Table 3 of **Form GSTR-3B**. The supplier should also ensure that the recipient also reverses the ITC attributable to the discount.

The time of supply of goods shall be governed by section 12(2) as under:

(a) the date of issue of invoice (or the last day by which invoice should have been issued) or

(b) the date of receipt of payment

Whichever is earlier.

In respect of discount allowed there is no supply from the perspective of supplier.

Q178. In case of cash back received on credit card transactions, what shall be the time of supply - the time of utilization of the limit or when cash back is credited cumulatively periodically by bank?

Ans. A cash back credit card transaction is a transaction for which a cardholder receives a cash back credit. Some card companies have categories for which they reward their cardholders when they make purchases. For example, a cardholder may receive cash back whenever he or she shops for groceries or fuel.

GST is not applicable to the entire outstanding on credit cards. It is applicable only to fees and charges levied on credit cards.

Time of supply with respect to cash back received on credit card transactions will be as per provisions of section 13 (2)(c) of the CGST Act namely the date on which the recipient shows the receipt of services in his books of account. Hence, time of supply in the instant case will be when cash back is credited cumulatively by the bank in the account of the customer.

Q179. What is the time of supply in respect of interest on delayed payment?

Ans. Section 13 (6) of the CGST Act which deals with time of supply for Value Addition, Interest etc., read as:

"The time of supply to the extent it relates to an addition in the value of supply by way of interest, late fee or penalty for delayed payment of any consideration shall be the date on which the supplier receives such addition in value."

For example, a supplier receives consideration in the month of September instead of due date of July and for such delay he is eligible to receive an interest amount of ₹ 1000/- and the said amount is received on 15.8.2020. The time of supply of such amount (₹ 1000/-) will be the 15.08.2020 i.e. the date on which it is received by the supplier and tax liability on this is to be discharged by 20.09.2020.

Chapter 6
Value of Supply

Q180. Mr. A, a customer and an unregistered person under GST who does not have any business related to jewellery purchased jewellery worth ₹ 2,00,000 from a jeweller and also gave him jewellery worth ₹ 80,000/-. State whether GST is payable on ₹ 2,00,000 or₹ 80,000/-?

Ans.

- Value of taxable supply has been defined in section 15(1) of the CGST Act thus:

  "The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply."

- Where **price is not the sole consideration**, one may refer to rule 27 of the CGST Rules, under which **the value of supply of goods or services where the consideration is not wholly in money** shall, -

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

  (b) if the open market value is not available under clause (a), be the sum total of consideration in money and any such further amount in money as is equivalent to the consideration not in money, if such amount is known at the time of supply;

  (c) if the value of supply is not determinable under clause (a) or clause (b), be the value of supply of goods or services or both of like kind and quality;

  (d) if the value is not determinable under clause (a) or clause (b) or clause (c), be the sum total of consideration in money and such further amount in money that is equivalent to consideration not in money as determined by the application of rule 30 or rule 31 in that order.

- There are two separate transactions taking place in the instant case the first being the jewellery purchased by the customer worth ₹ 2,00,000 and the second being jewellery worth ₹ 80,000 given by customer to the jeweller. In this case, on the first transaction for purchase of jewellery, GST shall be payable on the entire amount of ₹ 2,00,000/- (i.e. combination of the monetary and non-monetary consideration) and in the second transaction, if the supply by the customer is not in the course or furtherance of the business of the customer then no GST will be payable on ₹ 80,000.

Q181. Who are related persons under GST?

Ans. ***"****Related person"* has been defined in the explanation to section 15 of the CGST Act thus:

(a) persons shall be deemed to be "related persons" if —

(i) such persons are officers or directors of one another's businesses;

(ii) such persons are legally recognised partners in business;

(iii) such persons are employer and employee;

(iv) any person directly or indirectly owns, controls or holds twenty-five per cent. or more of the outstanding voting stock or shares of both of them;

(v) one of them directly or indirectly controls the other;

(vi) both of them are directly or indirectly controlled by a third person;

(vii) together they directly or indirectly control a third person; or;

(viii) they are members of the same family;

Further, it has been stated that the word '*person'* will also be including legal persons as per the comprehensive definition given under section 2(84) of the CGST Act. Also, it has been stated that the persons who are associated with business of one another as sole agent or sole distributor or sole concessionaire will also be deemed to be related persons.

"Family" as per section 2 (49) of the CGST Act means, –

(i) the spouse and children of the person, and

(ii) the parents, grandparents, brothers and sisters of the person if they are wholly or mainly dependent on the said person;

Q182. If an asset is fully depreciated and does not have economical use, and such scrapped asset is given to the clearing agent, whether GST is leviable? If yes, what will be the value of supply when there is no value on such asset in the books of accounts?

Ans.

- In the instant case the value of supply of the asset given to clearing agent shall be as per Rule 29 of the CGST Rules which reads thus:-

"29. Value of supply of goods made or received through an agent.-

The value of supply of goods between the principal and his agent shall-

(a) be the open market value of the goods being supplied, or at the option of the supplier, be ninety per cent. 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, where the goods are intended for further supply by the said recipient

(b) where the value of a supply is not determinable under clause (a), the same shall be determined by the application of rule 30 or rule 31 in that order."

"31. Residual method for determination of value of supply of goods or services or both.

Where the value of supply of goods or services or both cannot be determined under rules 27 to 30, the same shall be determined using reasonable means consistent with the principles and the general provisions of section 15 and the provisions of this Chapter :

Provided that in the case of supply of services, the supplier may opt for this rule, ignoring rule 30."

- Ideally the value of supply in such a case is the transaction value as per section 15(1) of the CGST Act which reads:

  "The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply."

- In the instant case, the value of supply for the registered person who scrapped the assets and gave it to the agent will be the transaction value at which such agent sells the asset to an unrelated person and price is the sole consideration. The value of supply of the asset given to the clearing agent (pure agent) shall be as per Rule 33 of the CGST Rules.

Q183. What will be the valuation in case of supply of second hand goods ?

Ans. The value for the purpose of GST levy shall be transaction value. However, as per Rule 32(5) of the CGST Rules, the value of supply in case of person dealing in second-hand goods i.e. used goods as such or after such minor processing which does not change the nature of the goods, shall be the difference between the selling price and the purchase price and where the value of such supply is negative, it shall be ignored. Further, *Notification No.8/2018-Central Tax (Rate) dated 25.01.2018 ["**NN 8/2018-CTR**"]* provides for discharge of tax on margin for sale of used cars.

The GST law provides for the levy of tax on the value of supply to be determined on the basis of profit margin involved in certain types of transactions only as stated above.

Q184. Elaborate the concept of pure agent's services under GST apart from the scenario of export of pure agent services?

Ans. Rule 33 of the CGST Rules reads as under:-

"33. Value of supply of services in case of pure agent.-

Notwithstanding anything contained in the provisions of this

Chapter, the expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply, if all the following conditions are satisfied, namely, -

(i) the supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorisation by such recipient;

(ii) the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and

(iii) the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.

Explanation.- For the purposes of this rule, the expression "pure agent" means a person who-

(a) enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;

(b) neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply;

(c) does not use for his own interest such goods or services so procured; and

(d) receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.

Illustration. *— Corporate services firm A is engaged to handle the legal work pertaining to the incorporation of Company B. Other than its service fees, A also recovers from B, registration fee and approval fee for the name of the company paid to the Registrar of Companies. The fees charged by the Registrar of Companies for the registration and approval of the name are compulsorily levied on B. A is merely acting as a pure agent in the payment of those fees. Therefore, A's recovery of such*

expenses is a disbursement and not part of the value of supply made by A to B."

Some of the examples of pure agency are:

(a) Ticket in railways is booked by a travel agent on behalf of the customer and the charges for such ticket are recovered by the agent along with the commission by showing them separately

(b) Customs duty, dock dues, transportation, port clearance charges etc. are paid by the customs broker on behalf of the importer and recovered along with his commission from the importer

(c) Advertisement charges to the newspaper are paid by advertising agency on behalf of the customer and recovered separately along with commission

(d) In an ex-factory delivery contract, if the transportation charges are paid by the supplier on behalf of the recipient and recovered separately from the recipient along with the price of the goods

To establish that the conditions of pure agent are getting satisfied, it is recommended that there should be a written contract between the supplier and the recipient. The clauses of the agreement should clearly point to compliance with all the conditions as discussed above with regard to pure agent. This will act as the most reasonable defence if any questions are raised by the Department later on. However, even if the contract is not in writing, it can be established by other available evidence that the conditions of pure agent are satisfied. However, any contract in writing may be considered as more persuasive in nature.

Further, in order to claim any amount as a deduction in the form of a pure agent, the dealer will have to demonstrate with substantial evidence that the liability to incur the cost was on the recipient and that the dealer has incurred such cost merely for convenience sake. Further, the dealer has to ensure that the invoice/ bill of supply/ receipt have been received in the name of the recipient, who is the ultimate beneficiary.

Q185. Whether reimbursement of expenses constitutes supply under GST? If yes, whether it will be treated as composite supply or individual supply?

Ans. If the supplier of service in the course of rendering service has to make certain payments on behalf of the service receiver, they are known as reimbursements. Section 15 of the CGST Act, provides that tax shall be levied on the transaction value of supply *including incidental* expenses such as commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services [Section 15(2) (c)]. However, there is an exception to this provision as given in Rule 33 of the CGST Rules. This rule states that the expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply, subject to the following conditions –

- enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;
- neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply;
- does not use for his own interest such goods or services so procured; and
- receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.

The important thing to note is that a pure agent does not use the goods or services so procured for his own interest and this fact has to be determined from the terms of the contract. Another important fact is that, the person who provides any service as a pure agent receives only the actual amount for the services provided.

If the above conditions are met, then reimbursements will not be included in the value of supply and no GST will be applicable.

If the above conditions are not met, then value of reimbursements will be included in the value of supply and tax has to be charged on the same. Reimbursements will be treated as a composite supply and tax has to be levied at the rate applicable to the principal supply.

Q186. Mr. X runs a general store and he himself bundles some goods with different MRP. Whether value of those goods will be summation of all the MRPs and treating it as a mixed supply he should charge the highest rate of GST on transaction value?

Ans. Section 8 of the CGST Act, discusses the tax liability on composite and mixed supplies. The section is extracted below:

> ***"8. The tax liability on composite and mixed supplies***
>
> *The tax liability on a composite or a mixed supply shall be determined in the following manner, namely:—*
>
> *(a) a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply; and*
>
> *(b) a mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax."*

Further as per Section 15(1) of the CGST Act, -

> "*The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply."*

In the given case, Mr. X the storekeeper will have to pay GST on the transaction value and the rate of tax shall be the highest rate of tax amongst the goods supplied by him as a mixed supply.

Q187. Whether old items by scrap or used material dealer eligible to exemption under GST as input credit is not available? If yes whether taxable value will be whole sale price or margin on the transaction?

Ans. *NN10/2017-CTR* exempts intra-State supplies of second hand goods received by a registered person, dealing in buying and selling of second hand goods and who pays the central tax on the value of outward supply of such second hand goods as determined under sub-rule (5) of rule 32 of the CGST Rules, from any unregistered supplier, from the whole of the central tax levied under the CGST Act. Similar exemptions are also there in the respective SGST Acts.

Rule 32(5) of the CGST Rules *inter alia* provides:

> *"(5) Where a taxable supply is provided by a person dealing in buying and selling of second hand goods i.e., used goods as such or after such minor processing which does not change the nature of the goods and where no input tax credit has been availed on the purchase of such goods, the value of supply shall be the difference between the selling price and the purchase price and where the value of such supply is negative, it shall be ignored:*
>
> *Provided that the purchase value of goods repossessed from a defaulting borrower, who is not registered, for the purpose of recovery of a loan or debt shall be deemed to be the purchase price of such goods by the defaulting borrower reduced by five percentage points for every quarter or part thereof, between the date of purchase and the date of disposal by the person making such repossession."*

Illustration: For instance, a company say M/s ABC Ltd, which deals in buying and selling of used goods, purchases a used machine (Original price ₹ 5 lakh) for ₹ 3 lakhs from an unregistered person and sells the same after minor furbishing in July, 2017 for ₹ 3,50,000/-. The supply of the machine to the company for ₹ 3 lakh shall be exempt and the supply of the same by the company to its customer for ₹ 3.5 lakh shall be taxed and GST shall be levied.

The value for GST purpose shall be ₹ 50,000/-, i.e. the difference between the selling and the purchase price for the company.

In case any other value is added by way of repair, refurbishing, reconditioning etc., the same shall also be added to the value of goods and be part of the margin.

Q188. What will be the valuation in case of supply to related party if the related party is registered and taking credit in the manufacture of its final product?

Ans. Section 15 (1) of the CGST Act, *inter alia* stipulates: **"***The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.***"**

Rule 28 of the CGST Rules, specifically deals with determining value of supply between distinct or related persons as follows:

*"**RULE 28. Value of supply of goods or services or both between distinct or related persons, other than through an agent.***

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."

Hence, if the supplier has not charged any value or the recipient doesn't avail ITC, and then the second proviso to rule 28 of the

CGST Rules won't be applicable. Thus, it can be said, that if value is charged, the same shall be considered and credit can be availed. In case value is zero, the first proviso shall apply.

Q189. How to value the scrap generated in the manufacturing process, if the same cannot be done at arms-length basis?

Ans. The price at which such scrap is disposed of by the manufacturing unit, to an unrelated person, will be considered as the value of supply, and if the same is not possible, the price at which like kind and quality of goods sold to a recipient, would be the value of supply.

Q190. As per one of the options given for valuation of stock transfer it can be valued at 90% of the sale price, if the same is sold to an unrelated buyer. However, in case of tea, the price is determined by auction and the same is not known at the time of stock transfer. How should the stock transfer be valued in this case?

Ans. As per rule 28 of the CGST Rules, value of supply will be the open market value of such goods and when the open market value is not available, at the option of supplier, 90% of the price at which like kind and quality of goods sold by the recipient as such to a unrelated customer for money, will be value of supply. If the products are sold as such by the recipient, at the time of supply the price at which such goods are sold by the recipient will be accepted as the value of supply.

Q191. State the legal premise of post supply discount under GST, when such discount is not mentioned in GST invoice?

Ans. Section 15 (3) of the CGST Act, *inter alia* states:

"(3) The value of the supply shall not include any discount which is given —

(a) before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply; and

(b) after the supply has been effected, if —

(i) such discount is established in terms of an agreement

entered into at or before the time of such supply and specifically linked to relevant invoices; and

(ii) input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply."

Discount after supply of goods or services, are those that are allowed after supply through a credit note. Credit notes in the context of GST have been discussed in detail under section 34 which may be referred to identify whether in all cases of discount, credit notes are allowed to be issued. For such 'off-bill' discounts to qualify as reduction from the transaction value, adherence to the conditions specified in section 15(3) are enough. These conditions are very explicit and simple in their application. This simplicity is not to be equated with ease because these conditions specified are such that can cause great unease and result in many transactions where discount given after supply fail to satisfy these conditions. But when the conditions are satisfied, discounts given after supply can be reduced from the transaction value.

Quantity discounts are those that are aimed at reducing the price of each supply on the condition that a certain quantity of stocks needs to be exhausted within a specified duration of time. Here again, inquiry is required into the terms and conditions applicable to this quantity discount. Where the stock supplied by a manufacturer to a dealer are at a specified 'dealer price', which is applied in respect of supplies to all dealers along with additional discount linked to conditions – quantity and time – that is contingent at the time of supply by the manufacturer, this would be an eligible discount under section 15(3).

Q192. Where a headphone is supplied free with mobile, what will be the value of headphone? Whether such free supply is required to be mentioned in the invoice or statement in brochures are sufficient legal document to prove that the company is providing headphone free of cost with mobile?

Ans. Section 15 (1) of the CGST Act, accepts the transaction value as taxable value if the supplier and recipient are not related and price is the sole consideration. Though the headphone is mentioned as free,

the cost of it would already be built into the product price. Hence, if these two conditions are satisfied, the value charged on the Invoice shall be the value of supply.

Q193. If a manufacturing company supplies its product to local villagers at subsidized rates then whether transaction value shall be at that subsidized rate? If yes, can the company bill it at market value and consider subsidy provided as Corporate Social Responsibility (CSR) expense?

Ans. Section 15(1) of the CGST Act *inter alia* states that, "*The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply."*

Hence, the transaction value will be at the subsidized rate for which the local villagers pay the price. Hence, the company cannot bill the goods at market value and consider subsidiary provided as CSR expenses.

Q194. Whether taxable value of supply shall include cost of packing for safe transportation at the request of the purchaser?

Ans. 'Transaction value' is the price actually paid or payable for supply of goods and/or services. Incidental expenses, such as commission and packing, charged by the supplier to the recipient of a supply, including any amount charged for anything done by the supplier in respect of the supply of goods and /or services at the time of, or before delivery of the goods or, as the case may be, supply of the services shall form a part of transaction value.

Hence Taxable value shall include the cost of packaging for safe transportation at the request of the purchaser.

Q195. Whether subsidies provided by the Central Government and State Government are to be excluded from the value of taxable supply?

Ans. As per section 15(2) subsidy amount other than subsidy received from Central & State Governments is to be included in the transaction value.

Subsidy if received from Central & State Government shall have to be excluded from the value of taxable supply.

Q196. In case of "buy one get one" transaction what will be total value of supply and tax to be applied. For example, two shirts of ₹ 2,000 each are sold in "buy one and take two offers" for ₹ 2,000. What will be the transaction value in this case.

Ans. Output tax is to be paid on sale price unless the billing or packaging mechanism is changed. In the case of buy one get one free transaction, consideration paid will be treated as value of supply. For example two shirts of ₹ 2,000 each are sold in buy one and get one offer for Rs 2,000. The transaction value in this case is ₹ 2000 only.

Q197. Whether discount given at the time of supply will be considered for calculating value of supply under GST?

Ans. Discounts given before or at the time of supply will be allowed as deduction from transaction value. This discount amount must be clearly mentioned on the invoice.

Q198. What is the value of supply in respect of non-recovery of payments or bad debts under GST?

Ans. The adjustment of GST already paid is allowed only by way of issuance of credit/debit note in terms of section 34 of the CGST Act. The proviso to section 34(2) provides that no reduction in liability would be allowed if the incidence of tax has been passed on to another person. If bad debts are on account of deficiency in supply of services, or tax charged being greater than actual tax liability, or goods returned, GST paid on the same is refundable subject to fulfilment of the prescribed conditions. Therefore, GST already paid on bad debts, as used in the trade parlance, cannot be adjusted. In short, once an invoice is issued GST liability arises. Bad debt arises only if the dues are not collected despite best efforts to recover it. You have to write off both the **basic value** of the invoice and also the tax portion.

Q199. A supplier company announces schemes for distribution of their goods by distributor to retailers at a discounted price, later on reimbursed by Supplier Company to distributor in the

form of free goods. How valuation of such supply of goods by distributor to retailer is determined?

Ans. Valuation of such supply of goods by distributor to retailer is determined at discounted price only provided the conditions under Section 15 (3) (a) or (b) are satisfied by the distributor.

Q200. A canteen sells food to public at a concession rate. For e.g. a plate of idly costing ₹ 10/- is sold at ₹ 6/- and remaining ₹ 4/- is reimbursed by the Government. Whether GST has to be charged on sale price ₹ 6/- or the cost ₹ 10/-?

Ans. Section 15 (2) (e) of the CGST Act, states that subsidies shall form part of taxable value but excludes subsidies received from Central and State Governments. Hence in this case the subsidy of ₹ 4/- need not be included in the taxable value for paying GST.GST, if applicable is payable on ₹ 6/-.

Q201. In case of electronic goods, there is practice to sell goods by manufacturer with some free goods to retailers. Further, retailers sell the goods to consumers at a price arrived at by them by applying average cost per unit to retailer. Thus, even goods received free of cost from the manufacturer are sold by the retailers at average price. Whether this practice of charging consumer by retailer is followed, can the price be billed by manufacturer to retailer?

Ans. The two transactions *viz* between the manufacturer and retailer and retailer and final consumer are independent of each other and pricing of either cannot influence or entail any liability on the other. Even when the goods are sold at a lower price to the final consumer and such goods are priced higher or lower by the manufacturer, the price charged by the manufacturer cannot be questioned as in this case section 15(4) of the CGST Act has no application as the consideration is neither from a related party nor there is any consideration received in kind by the manufacturer.

Q202. Whether we have to maintain the records i.e. sale and purchase value, for each item for the purpose of margin on which tax has to be calculated in case of resale of old vehicles? How valuation will be done in that case?

Ans. Yes, you have to maintain the records i.e. sale and purchase value, for each item. The taxable value of supply of second-hand goods i.e., used goods as such or after such minor processing which does not change the nature of goods, shall be the difference between the purchase price and the selling price, provided no ITC has been availed on purchase of such goods. However, if the selling price is less than the purchase price, that negative value will be ignored.

Persons who purchase second hand goods after payment of tax to supplier of such goods will be governed by this valuation rule only when they do not avail ITC on such input supply. If ITC is availed, then such supply will be governed by normal GST valuation.

Chapter 7
Input Tax Credit

Q203. There is a Pvt. Ltd. Company which has built a building fully furnished with furniture, interiors etc. and uses the property for renting out. It has GST ITC on building construction, furniture, electrical infrastructures including Genets, ACs etc. It has to charge GST on rent. Will the purchases of capital goods be considered in furtherance of business and be allowed to use GST input credit against GST output on rent receivable from tenants?

Ans. Yes, GST ITC on capital goods except immovable property will be allowed against GST output on rent receivable.

ITC is allowed according to the Judgement of the Hon'ble High Court of Orissa in the matter of *Safari Retreats Private Limited Versus Chief Commissioner of CGST [2019 (25) G.S.T.L. 341(Ori.*)]. The High Court has answered the question raised by the appellant but has not specifically distinguished, (declared) section 17(5) (d) to be ultra-virus to the CGST Act and hence it will be risky to avail the credit of immovable property on the basis of the above Judgement.

Q204. In a case covered under Entry No, 1 of Schedule I the CGST Act, (deemed supply) an asset on which ITC was taken in pre-GST period is disposed without any consideration. Whether Schedule I covers only post-GST purchased assets or even pre-GST business assets.

Ans. Schedule I of the CGST Act, does not specifically provide for this, but a harmonious reading of Entry No.1 of Schedule I of the CGST Act, gives an understanding that it is also applicable for pre-GST procured assets. The intention of the law is to either deny ITC on business assets which are given free of cost or encourage payment of tax on disposal of ITC availed assets which are given free of cost.

Q205. How much ITC can be claimed, if a machine is used for both office and personal use?

Ans. As per section 17 (1) of the CGST Act, where the goods or services or both are used by the registered person partly for the purpose of any business and partly for other purposes, the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business. Rule 43 of the CGST Rules, does not specifically contain the methodology for reversal of ITC on capital goods when it is common for office and personal use. The prevailing Rule 43 provides only a reversal methodology when the output is towards both taxable and exempted.

Notwithstanding, the lack of machinery provision, if the taxpayer identifies that a capital goods has been used for both business and non-business purpose, then the same shall be reversed on any established reasonable basis.

Q206. A Production House prints media photographs and charges GST @ 18%. Can it claim input credit available for purchase of food and fees paid for hair stylist?

Ans. As per section 17(5) of the CGST Act, ITC on food and beverages supplied are blocked credit for registered persons except when it is either further supplied or supplied as part of mixed or composite supply. Thus, the Production House cannot avail ITC on food.

However, a fee paid to hair stylist is not for personal consumption and is in furtherance of business and thus ITC on the same could be availed.

Q207. Suppose office furniture and computers are purchased and ITC is claimed. After 4 years if these assets are condemned and disposed without consideration. What will be the ITC provision applicable in this case?

Ans. As per section 18(6) of the CGST Act, in case of supply of capital goods, with or without consideration, on which ITC has been taken, the registered person shall pay an amount equal to the ITC taken on the said capital goods or plant & machinery reduced by the percentage points as may be prescribed or the tax on the transaction value on such capital goods or plant & machinery determined under section 15 of the CGST Act whichever is higher. In this case capital goods are disposed off without consideration, and hence, the registered person shall pay an amount equal to the

ITC taken on the said capital goods or plant & machinery reduced by the percentage points, prescribed as 5% per quarter or part of a quarter from the date of the issue of the invoice for such goods (as per rule 40 (2) of the CGST Rules).

Q208. Mr. X a registered person purchased a truck and he is engaged in trading of sand.

Mr. X is not able to charge freight separately in invoice, but rate of sand includes transportation charges.

(A) If the freight is charged separately in invoice, what will be the value of taxable supply?

(B) Whether ITC can be claimed on purchase of truck and replacement of tyre?

Ans. (A) All ITC credits are available in GST, if conditions stipulated in section 16 of the CGST Act are satisfied by a registered person. Non-availability of ITC is mentioned in section 17 of the CGST Act. In the instant case, the truck is considered as motor vehicle and section 17(5) (a) of the CGST Act deals with credit on motor vehicle as under:

"(5) Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following, namely :—

(a) motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver), except when they are used for making the following taxable supplies, namely :—

(A) further supply of such motor vehicles; or

(B) transportation of passengers; or

(C) imparting training on driving such motor vehicles;"

The section is applicable in cases where motor vehicle is used for transportation of persons. In the instant case, the motor vehicle is used for transportation of goods and not for transportation of person. Thus, it means that credit is available, subject to satisfaction of section 16 of the CGST Act.

(B) For determining the transaction value of supply, we need to refer to section 15 of the CGST Act. If the contract with recipient is such that the price charged is inclusive of freight, then price charged is transaction value only and GST will be charged on the said amount. Rate applicable on sand will be the applicable tax rate.

(C) With reference to the rate to be charged on two types of supplies, the point relevant for consideration here is that there are two supplies one of goods and other of services. Supply of transportation service and supply of sand for which separate amount is mentioned in Tax invoice. Hence, we have to decide whether the supply is a composite supply or mixed supply. As per section 8 of the CGST Act, for the purposes of tax liability composite supply shall be treated as a supply of principal supply and the mixed supply is to be treated as supply of that particular supply which attracts the highest rate of tax. Hence the definitions of composite supply and mixed supply and as well as the rate at which these two supplies are charged assume importance.

Sand is charged at the rate of 5% (2.5% CGST+ 2.5% SGST)

As per *NN 12/2017-CTR*, the instant case is covered under transportation service and is exigible to "NIL" rate as the said service is not covered under GTA and courier agency:

Sl. No.	**Chapter, Section, Heading, Group or Service Code (Tariff)**	**Description of Services**	**Rate (per cent)**	**Condition**
(1)	*(2)*	*(3)*	*(4)*	*(5)*
18	*Heading 9965*	*Services by way of transportation of goods-* *(a) by road except the services of—*	*NIL*	*NIL*

		(i) a goods transportation agency; *(ii) a courier agency;* *(b) by inland waterways.*		

In order to determine the correct rate of tax, we would first have to determine whether the supply is a mixed supply or composite supply

Section 2(74) of the CGST Act, defines *"mixed supply" means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply.*

Section 2(30) of the CGST Act, defines *composite supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply.*

In order to consider a service as a composite supply following conditions need to be satisfied:

(I) All the Supply should be taxable supply:

As per Section 2(108)*; "taxable supply" means a supply of goods or services or both which is leviable to tax under this Act;*

In the instant case, the transportation of goods by road is a supply primarily leviable to tax under CGST Act at NIL rate due to *NN 12/2017-CTR*. Hence it is a taxable supply. Hence, one of the conditions to constitute the transaction as a composite supply is satisfied.

(II) *Supply should be naturally bundled*

The term naturally bundled has not been defined in the Act. However, the following criteria can be adopted.

1. If buyers mostly expect such services to be provided as a package, then the package will be treated as naturally bundled.
2. If most of the service providers in the industry provide a package of services, then it can be considered as naturally bundled.
3. The nature of the various services in a bundle of services will also help to identify whether the services are bundled. If there is a main service and the others are ancillary services then it becomes a bundled service.

On evaluation of the above criteria we can safely conclude that it is a bundled service and therefore, it is a case of composite supply.

(III) Principal supply

As per Section 2 90) of the CGST Act, *"principal supply" means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary.*

Again, another question arises as to what is the predominant supply. The term predominant supply has not been defined. Here the criteria will be what the recipient wants to buy and what the supplier wants to sell. Applying this criterion, the intention of both the supplier and buyer is to sell / buy sand only. Hence the predominant supply is sand. The rate of tax applicable for the whole composite supply is the rate applicable to sand.

(D) ITC can be claimed on purchase of truck and replacement of tyre

As per Section 17(5) (ab) of the CGST Act, services of general insurance, servicing, repair and maintenance in so far as they

relate to motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) of section 17(5) of the CGST Act are blocked and as such not allowed for taking the credit. However, purchase of truck does not come under clause (a) or clause (aa) and hence the ITC credit on the same will be allowed, subject to satisfaction of section 17 of the CGST Act.

Q209. Can we reverse credit taken, if the vendor has raised bill on us but the payment has not been made to the vendor within 180 days?

Ans. Yes, the second proviso to section 16(2), of the CSST Act, provides for reversal and the third proviso allows re-availment of ITC on account of non-payment once paid.

Q210. Whether GST is chargeable on the creditor balances written-off pertaining to Pre-GST era?

Ans. As per second proviso to section 16 (2) of the CGST Act, where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of 180 days from the date of issue of invoice by the supplier, an amount equal to the ITC availed by the recipient shall be added to his output tax liability, along with interest thereon [From the recipient's view].

Later, when the payment is made, the recipient can take the ITC

"Write off the creditor balance" means non-payment of dues; ITC has to be reversed & added back to the output tax liability.

Where goods are received before the GST regime, the same credit will be taken and claimed in **Form GST TRAN-1** as per the transitional provisions if not utilised in the previous regime.

However, the base amount that is added to the income for non-payment shall not be treated as supply and hence, no GST shall be attracted.

GST will be charged and to be added back to the output tax liability for the ITC taken on such supply.

Q211. When can the tax paid under RCM be claimed as credit? Can it be claimed in the same month when RCM is reported or in the month when actual payment is made?

Ans. The credit of tax paid under RCM can be taken in accordance with section 16 of the CGST Act, subject to section 17 thereof. The credit can be taken when the invoice is raised as per section 31(3) (f) of the CGST Act. Obligation to make payment of tax under RCM is casted on the recipient.

Q212. If the output supply is not taxable or exempted from the levy of GST, whether the RCM paid can be claimed as refund? Health care services and diagnostic services are exempt from the levy of GST. Whether tax paid under RCM and claimed as ITC in respect of every inward supply can be adjusted against any output service other than medical services?

Ans. ITC in respect of inward supplies covered under RCM can be availed subject to the provisions of section 16 and section 17 of the CGST Act in general and section 17(5) of the said Act in particular.

For taxable persons, having both exempt and taxable outward supplies, ITC to the extent used for taxable output supplies only can be claimed under section 17(2) / 17(3) of the CGST Act read with rule 42/ 43 of the CGST Rules.

Hence, the common ITC and specific identifiable ITC attributable to the rendering of any exempted supply had to be reversed and cannot be used for any taxable outward supply liability.

Q213. Can a tour operator whose output tax is charged @5% set off the same against the GST paid on foreign payments on reverse charge @ 18%?

Ans. Section 9 (3) of the CGST/SGST Act and section 5 (3) of the IGST Act deal with RCM ITC of RCM is available on payment basis. Based on the payment of taxes under RCM and self-invoicing thereof the taxpayers duly comply with the conditions of admissibility of ITC as mentioned under section 16(2) of the CGST Act and accordingly the taxpayers could claim the ITC of such tax paid under RCM. Hence, a tour operator can set off his GST liability against RCM paid in cash.

Q214. Whether TCS by e-commerce operator can be adjusted against GST payable by a supplier making supply through that e-commerce operator?

Ans. Yes, TCS by e-commerce operator will be reflected in the cash ledger of the supplier on filing of TCS return. On filling of **Form GSTR-8** return by e-commerce operator, data will be auto populated and supplier on confirming the same and accepting it will have the TCS amount reflected in cash ledger. This amount can be adjusted against GST payable or can be claimed as refund on filing of respective application.

Q215. A registered person has paid GST under RCM for 12 months April to March. It is found during the month of March (end of the financial year) that ITC of this RCM has not been taken. Advice whether the entire RCM paid since April can be claimed as credit?

Ans. As per section 16(4) of the CGST Act, *"A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier."*

In other words, it can be said that the overall time limit for availing ITC under GST is the due date of the return for the month of September of next financial year or annual return filing date for relevant financial year whichever is earlier.

Hence the taxpayer, who has not availed the eligible ITC on RCM supplies of any of the previous months, may avail such ITC in any of the subsequent months, but within the time limit mentioned above.

Q216. RCM under section 9(4) of the CGST Act in respect of inward supply from unregistered person to registered person is applicable and was payable till 13.10.2017. Output supply is partly taxable and partly exempt. RCM set-off is available towards taxable supply. Whether RCM ITC relating to inward supply can be used for making any exempt supply?

Ans. ITC in respect of inward supplies covered under RCM can be availed subject to the provisions of sections 16 and section 17 of the CGST Act, in general and section 17(5) thereof in particular.

For taxable persons, having both exempt and taxable outward supplies, ITC to the extent used for taxable supplies can be claimed under section 17(2) and 17(3) of the CGST Act read with rules 42 and 43 of the CGST Rules.

ITC claimed in respect of inward supplies including input credit relating to RCM, which is exclusively used for effecting exempt supplies, may have to be reversed. ITC attributable to outward exempt supply is to be reversed at the invoice level and if such ITC is a common credit the ITC reversal has to be based on the formula prescribed in rules 42 and 43 of the CGST Rules, in respect of inputs, input services and capital goods.

Q217. Furniture is sold by a company. It forms part of fixed asset register. No ITC taken as it was not allowed at the time of VAT. GST allows taking ITC on furniture. Whether GST applicable on sale of such furniture?

Ans. Disposal of goods for a consideration is a supply attracting GST levy. If ITC has not been availed on such assets which are being sold, then the provisions of section 18(6) of the CGST Act shall not apply. But it is still taxable at the appropriate rates against the corresponding HSN code.

Q218. Whether ITC is admissible on lift and escalator installed in office? Whether your answer will be different, if such office premises is let out?

Ans. ITC can be taken for all goods or services or both, if conditions of section 16 of the CGST Act are satisfied, subject to restrictions under section 17 thereof. On literal interpretation of section 17(5) (c) and (d), lift and escalator if installed in office will not be eligible for ITC. The provision *inter alia* states:

"Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following, namely :—.

(a) ……..

(b) works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;

(c) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

Explanation. — For the purposes of clauses (c) and (d), the expression "construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property"

Further, we would also like to refer to the decision of the *of Hon'ble High Court of Orissa in the matter of* ***M/s Safari Retreats Private Limited and Another Versus Chief Commissioner of Central Goods & Service Tax & Others*** *[2019 (5) TMI 1278].,* where Court has read down the provision and allowed ITC on taxes paid on various goods and services used in the construction of immovable property, when the said immovable property is let out. However, the Department has preferred an appeal before the Supreme Court.

Q219. In GST regime, whether ITC on services availed for providing water service, by water vending machines installed in public places is available?

Ans. If the eligibility conditions prescribed under section 16 of the CGST Act are fulfilled and not blocked under section 17 thereof, any input service related credit can be availed, if it is in the course or furtherance of business. In the case of water vending machines, if the service expense are in the course or furtherance of business, ITC can be availed, else not.

Q220. A Ltd provides both exempted and taxable supplies. How is ITC available? Is it in the ratio of exempt and taxable?

Ans. Section 17(2) of the CGST Act, provides that where the goods or services are used partly for effecting taxable supplies (including zero rated) and partly for exempt/ non-business use then the amount of

credit as attributable to exempt supplies or non- business use shall be reversed as per rule 42/43 of the CGST Rules.

Q221. Can IGST credit of one State be adjusted against IGST liability of another State?

Ans. IGST ITC can be availed by a person only if such person is registered. Registration is connected to the State and any ITC availed in that State can be utilised only in that State irrespective of whether it is CGST, SGST, UTGST or IGST. Hence IGST credit of one State cannot be adjusted against IGST liability of any other State or Union Territory.

Q222. M/s X Ltd purchases raw material from M/s Z Ltd and supplies goods to M/s Z Ltd. While paying the accounting dues M/s Z Ltd. pays to M/s X Ltd. net off the receivable and payable. However for discharging the GST liability it is properly collecting tax and paying the same in the appropriate State. Whether M/s Z Ltd. can claim full ITC, even though the netting off is done?

Ans. Second proviso to section 16(2) of the CGST Act, only provides that ITC reversal shall apply in cases of non-payment. It does not prescribe any particular mode of payment. Hence, even if payment is made by book entries within 180 days, it shall constitute payment and hence ITC reversal is not warranted. One can also refer to *Board Circular No. 122/3/2010-ST dated 30.04.2010* issued in the context of reversal under the CCR 2004 wherein the said interpretation has been accepted.

Q223. Suppose a company registered in Delhi takes a package from a tour operator located in Delhi for a hotel in Mumbai. Can ITC charged by tour operator be claimed by the company?

Ans. Both the tour operator and the company are situated in Delhi and hence the company is eligible to avail the ITC charged by the tour operator subject to the provisions pertaining to ITC contained in Chapter V of the CGST Act, being satisfied by the company.

Q224. M/s X Ltd., a local courier company is providing services to M/s Y Ltd, registered in India, for international movement of goods. What will be the place of supply and whether ITC can be claimed by M/s Y Ltd.?

Ans. As per section 12(8)(a) of the IGST Act, where location of supplier and recipient are in India and recipient is registered, the place of supply of services by way of transportation of goods through courier will be the location of the registered person. Thus, if the supplier and receiver are in the same State then CGST and SGST will be levied.

M/s Y Ltd can claim ITC as it is for the business, provided there is no bar by section 17 of the CGST Act.

Q225. X, a registered person in Mumbai, visited Haryana and stayed in XYZ Hotel. XYZ Hotel charged CGST and SGST. Whether, X can claim ITC while discharging the SGST and CGST Liability in Maharashtra?

Ans. From a reading of section 49(5) of the CGST Act, it is clear that the Goods and Services Tax is State and registration specific, and therefore ITC of one State cannot be utilised for payment of liability of another State. Hence, SGST and CGST input of Haryana State cannot be set off against SGST and CGST payable in Maharashtra.

Q226. In the case of construction contract, if the service recipient is in Gujarat and service provider is in Maharashtra providing his services for the construction site in Maharashtra, the service provider will raise CGST and SGST invoice, which means the service recipient, cannot claim ITC of such services. Explain.

Ans. GST is a destination-based tax, i.e., the goods/services will be taxed at the place where they are consumed and not at the place of their origin. From a reading of section 49(5) of the CGST Act, it is clear that the Goods and Services Tax is State and registration specific, and therefore ITC of one State cannot utilised for payment of liability of another State.

Q227. In the case of rent a cab services a person is opting for full GST @12%. Can GST paid on purchase of new vehicle @ 28% be claimed as ITC?

Ans. According to section 17(5) (a) of the CGST Act, ITC shall not be allowed in the case of motor vehicles for transportation of persons having approved seating capacity of not more than 13 persons (including the driver), except when they are used for making the following taxable supplies namely: -

A) further supply of such motor vehicles or

B) transportation of passengers or

C) imparting training on driving such motor vehicles.

Hence ITC is available to the taxable person who is in the business of rent a cab service.

Q228. Whether ITC is eligible on prefabricated steel structure (easily movable in nature) for erection of warehouse?

Ans. According to section 17(5) (c) of the CGST Act, ITC is not allowed in respect of *"works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;"*

Further as per section 17(5) (d), ITC is not allowed, where "goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business."

Warehouse constructed using pre-fabricated structure is immovable property and ITC of inputs used in such construction is not admissible.

Q229. Mr. X has started a business of a gaming center and provides the following services:

(a) Sports facility like cricket, golf (not computer games)

(b) Restaurant

(c) Bar

Mr. X has incurred capital expenditure and paid GST there on, which is available in credit ledger. In this month, they have revenue only from sale of food. He has collected GST on such sale of food @ 5%. He has not availed input on purchase of food items. However, there are other inward supplies like internet, advertisement and other common services which are used for both sale of food and other services. Please explain.

1. **Treatment of such common inputs; whether to reverse the amount of ITC from such common inputs proportionate to the revenue from sale of food (under rule 42 of the CGST Rules)**
2. **Can ITC on such inputs and inputs on capital expenditure be utilized for payment of GST on sale of food?**

Ans. 1. ITC shall be reversed as per rule 42/43 of the CGST Rules.

2. *Vide Notification No. 46/2017- Central Tax (Rate) dated 15.11.2017*, the GST rate applicable to services provided by restaurants, eating joint including mess, canteens etc. was reduced to 5% subject to a condition that input tax charged on goods and services used in supplying the service has not been taken. With respect to inputs which are used for making restaurant, etc., supplies @5%, reversal is required to be done in terms of rule 42 of the CGST Rules. In terms of explanation (iv)(b) in Para 4 to *NN 11/2017-CTR* ibid, where a rate has been prescribed in the notification subject to the condition that ITC on goods or services used for supplying such services has not been taken, it shall mean that-

   a. ITC on goods or services used exclusively in providing such service has not been taken.

   b. ITC on goods or services used partly for providing such services and other services eligible for credit shall be reversed as if supply of such service is an exempt supply attracting the provisions of section 17(2) of the Act.

   Section 17(2) of the CGST Act, requires reversal of ITC in terms of rule 42/43 of the CGST Rules when goods/services are used commonly for effecting both taxable and exempt supplies. Thereby, it can be said that the change in rate of tax w.r.t. restaurant service falls under the purview of section 18(4) of the CGST Act and reversal of ITC is required which shall be done in terms of section 17(2) of CGST Act read with rule 43 of the CGST Rules. From the above explanation in the notification read with section 17(2), it can be said that in case of restaurant service being taxed @ 5% from 15.11.2017, ITC of inputs held in stock, WIP and finished goods, needs to be reversed/paid as

per rule 42 of the CGST Rules. Further, ITC on capital goods also needs to be reversed / paid as per rule 43 of the CGST Rules.

3. ITC credit lying in the credit ledger can't be utilised for the liability arising from the sale of food.

Q230. Can a hotel claim input tax credit on repair of building. Will there be a different view if, the repair is substantial. Examine in the light of section 17(5) and the High Court judgements?

Ans. According to section 17(5) (d) of the CGST Act, goods or services or both received by the taxable person for construction of an immovable property (other than P&M) on his own account including when such goods or services or both are used in the course of furtherance of business, ITC is not allowed. For this purpose, the expression "construction" includes re-construction, renovation, additions or repairs, to the extent of capitalization, to the said immovable property. Thus, if expenses of renovation, repairs, re-construction or alterations are not capitalised in the books of accounts of taxable person, ITC is allowable.

The High Court judgement is relevant for that State and that judgement not being stayed by the Supreme Court, Hence, placing reliance on High Court judgments, the Auditor shall have to evaluate the risk in certifying **Form GSTR-9C** from legal angle.

Q231. The setting up of a badminton academy involves construction for the playing zone civil work, iron purchase, flooring etc. Can ITC be taken on this capital expenditure?

Ans. We have discussed *supra* in Q No. 218 regarding ITC for lift and escalator. The issue and law have been well covered therein. However, here we need to decide upon the question whether the set up cost incurred for badminton court is a plant and machinery for a registered person. If it is only then ITC is available.

Generally speaking, plant and machinery is an asset that is used by a business for the purpose of carrying on the business and is not either stock in trade or the business premises or part of the business premises. The difference between plant and machinery is that generally machinery will have moving working parts, and plant will not.

Oxford dictionary defines "plant and machinery" as "*The equipment required to operate a business*."

Considering the above point, we can say that if badminton need to be played, court and its maintenance will be required, without which the supply cannot be provided. We can therefore consider the badminton court as plant and can claim ITC on the same.

Q232. Is ITC available for staff bus input services?

Ans. According to section 17(5) (a) of CGST Act, ITC shall not be allowed in case of motor vehicles for transportation of persons having approved seating capacity of not more than 13 persons (including driver), except when they are used for making the following taxable supplies namely: - (a) further supply of such motor vehicles or (b) transportation of passengers or (c) imparting training on driving such motor vehicles. However, proviso to section 17(5) (b) of the CGST Act, stipulates : "*Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force"*. Hence, ITC can be claimed by the employer if it is as per any law for the time being in force.

ITC on services of renting, leasing or hiring is available only in case of bus or any motor vehicle having approved seating capacity of more than 13 persons (including driver) as per section 17 (5) (b) (i) of the CGST Act.

Q233. Is ITC available only if invoice is complete in all respects?

Ans. The proviso to rule 36(2) of CGST Rules, inserted w.e.f. 04-9-2018 reads as under:

> *"36.* ***Documentary requirements and conditions for claiming input tax credit.***
>
> *……*
>
> *(2) ……*
>
> *Provided that if the said document does not contain all the specified particulars but contains the details of the amount of tax charged, description of goods or services, total value of supply of*

goods or services or both, GSTIN of the supplier and recipient and place of supply in case of inter-State supply, input tax credit may be availed by such registered person"

In accordance with the above Rules, ITC is available if the invoice, contains the details of the amount of tax charged, description of goods or services, total value of supply of goods or services or both, GSTIN of the supplier and recipient and place of supply in case of inter-State supply. Hence, ITC is available even though HSN is not mentioned in the invoice.

Q234. Explain ITC provisions with regard to goods supplied on free of cost basis?

Ans. Section 17(5) (h) of the CGST Act specifically imposes the restriction on availment of credit with respect to goods disposed of by way of 'gift' or 'free samples'. The goods or services or both which are supplied free of cost (without any consideration) shall not be treated as 'supply' under the CGST Act, except where the activity falls within the ambit of Schedule I of the said Act.

Q235. In the light of the ineligibility of ITC on motor vehicle as per amendment w.e.f.1st Feb 2019, will ITC be available on any motor vehicle purchased or leased prior to that date? Are expenses like repairs, insurance etc. allowed both prior and post the amendment?

Ans. One has to grasp the provisions of section 17(5) of the CGST Act, before amendment and after amendment made by the CGST (Amendment) Act, 2018 read with *Notification No. 2/2019-Central Tax, dated 29.1.2019**("NN 2/2019-CT"),*** with effect from 01.02.2019.

Section 17(5) of the CGST Act - Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18,ITC shall not be available in respect of the following, namely:—

Before 01.02.2019	***From 01.02.2019***
(a) motor vehicles and other conveyances except when they are used– *(i) for making the following*	*(a) motor vehicles for* ***transportation of persons having approved seating capacity of not more than***

taxable supplies, namely:— *(A) further supply of such vehicles or conveyances ; or* ***(B) transportation of passengers; or*** *(C) imparting training on driving, flying, navigating such vehicles or conveyances;* *(ii) for transportation of goods;*	***thirteen persons (including the driver),*** *except when they are used for making the following taxable supplies, namely:—* *(A) further supply of such motor vehicles; or* *(B) transportation of passengers; or* *(C) imparting training on driving such motor vehicles;* ***(aa) vessels and aircraft except when they are used—*** ***(i) for making the following taxable supplies, namely :—*** ***(A) further supply of such vessels or aircraft; or*** ***(B) transportation of passengers; or*** ***(C) imparting training on navigating such vessels; or*** ***(D) imparting training on flying such aircraft;*** ***(ii) for transportation of goods;*** ***(ab) services of general insurance, servicing, repair and maintenance in so far as they relate to motor vehicles, vessels or***

	aircraft referred to in clause (a) or clause (aa) : ***Provided that the input tax credit in respect of such services shall be available—*** ***(i) where the motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) are used for the purposes specified therein;*** ***(ii) where received by a taxable person engaged —*** ***(I) in the manufacture of such motor vehicles, vessels or aircraft; or*** ***(II) in the supply of general insurance services in respect of such motor vehicles, vessels or aircraft insured by him;***

If we analyse section 17(5) of the CGST Act, as it stood before 01.02.2019, it could be seen that the starting paragraph of section 17(5) states that ITC shall not be available in respect of the following and lists out the ineligible ITC. The word "in respect of" led to interpretational issue and the interpretation was that ITC is not available only in respect of motor vehicle and not on incidental expenses incurred in relation to motor vehicles. Now the amended section 17(5) (ab) of the CGST Act expressly denies credit for services of general insurance, servicing, repairs and maintenance in

so far as it relates to motor vehicles. The amendment is not retrospective. Hence it is clear that ITC in respect of the above-mentioned services was available upto 31.01.2019 and not available from 01.02.2019.

Regarding eligibility of ITC in respect of motor vehicles the provisions upto 31.01.2019 and from 01.02.2019 are the same except the following:

From 01/02/2019: In respect of motor vehicles used for transportation of persons having approved seating capacity of not more than thirteen persons (including driver) ITC is available only when it is used for further taxable supply of motor vehicles or further taxable supply of service of transportation of passengers or service of imparting training on driving such motor vehicles. The ITC in respect of motor vehicles used for transportation of persons having seating capacity of more than 13 persons (including driver) is available without restriction of its usage. However, **upto 31.01.2019** this restriction was in force irrespective of the seating capacity. For e.g. if a registered person is using a bus having seating capacity of more than thirteen persons (including the driver) and is used for transportation of its employees ITC is available from 01/02/2019. The same was not available upto 31.01.2019. Note the word 'persons' which has been used in the amended section from 01.02.2019. The word passenger has not been used in that place. Transportation of employee will be covered by the term 'person' and not if the term used was passenger.

Q236. As per invoice we have CGST/SGST input but we have claimed IGST in the return. This pertains to FY 2018-19. What should be done? Can we adjust IGST with CGST/SGST?

Ans. As per section 16 of the CGST Act, credit can be taken for respective type of tax being levied. Now if by mistake IGST credit is taken in place of CGST and SGST, one should take following action:

(i) IGST credit needs to be reversed back by filing **Form DRC-03** and also pay interest on the same.

(ii) CGST and SGST input credit could have been taken till filing of **Form GSTR-3B** of September month due date of respective

State or Union Territory after the end of the financial year. If credit is taken, then same also needs to be reported in Table 13 of **Form GSTR-9** and if credit is not taken, then section 16(4) of the CGST Act, will disentitle you from taking the credit and same will lapse.

Q237. A registered person is having Head Office (HO) in Delhi and two manufacturing plants in Punjab and Uttarakand. Please explain the procedure by which the ITC available to Head Office can be availed by manufacturing plants.

Ans. If a registered person is having Head Office in Delhi and manufacturing plants in Punjab and Uttarakand, then the best way for transferring the credit is to take the Input Service Distribution (ISD) registration and transfer the credit in accordance with ISD procedure. Alternatively, many experts also believe that an invoice can be raised with respect to branch for services rendered to them by the Head Office.

Q238. A building is damaged due to fire and expenses in the nature of capital & revenue are incurred. How to claim credit on such expenses?

Ans. The answer to this question should be in the light of discussion made earlier in the answer to question no. 218 in the matter of ITC eligible on lift and escalator. Here we have identified that expenditure incurred on immovable property, which attracts the provisions of section 17(5) (c) and (d) as self-expenditure. ITC which is incurred and later capitalized in the books of account will be disallowed. However, ITC in respect of revenue expenditure which is charged to profit and loss account will be allowed.

Q239. Whether ITC is available for RCM paid on freight on exempt supply of goods?

Ans. Normally, ITC on the tax that is paid under RCM will be available only after making payment. In this case, the freight is being paid on the goods supplied that are exempt. Hence, ITC will be subject to reversal as required in section 17(2) of the CGST Act read with rule 42 of the CGST Rules. The tax paid under RCM on freight will not be eligible for credit as it is directly attributable to effecting exempting supplies.

Q240. In the case of educational institution, where there is no output tax liability, what will be the procedure to get ITC on various taxable supplies received by it as this increases various costs for the institution?

Ans. ITC is available to all registered persons as per section 16 of the CGST Act, subject to the restrictions placed under section 17. Section 17(2) of the CGST Act debars us by taking only proportionate credit which relates to taxable supply. An educational institution should first take the credit as per section 16 of the CGST Act and later need to reverse the same as per section 17(2) thereof for exempt services. One needs to refer Rule 42 of the CGST Rules which provides the manner of determination of ITC in respect of inputs or input services and reversal thereof.

Q241. What is the provision for claiming ITC, on insurance premium paid along with GST by a proprietary professional concern [where the proprietor himself is rendering the service as a professional]?

Ans. It is assumed that the question pertains to health and medical premium of proprietor, where proprietor himself is a professional.

Section 17(5)(b) restricts the ITC in respect of supply of health services, life insurance services etc., subject to two exceptions (i) where health services are used for making an outward taxable supply of the same category of services. (ii) The expenditure does not fall under the exceptions and hence ITC is ineligible. Further section 17(5) (g) denies ITC in respect of goods or services or both used for personal consumption. The Department can take a stand that these services are for personal consumption and may disallow the claim of ITC.

Q242. A manufacturer is importing goods and paying customs duty including IGST and has availed ITC. But the same is not reflected in Form GSTR 2A. How to apply Rule 36(4) for the same?

Ans. **The** amount paid as IGST at Customs will not be reflected in **Form GSTR-2A**. It will be at https://www.icegate.gov.in/ . You can visit the website and verify the same. Also, credit is to be taken on the basis of challan which is paid at Customs Port. To take the credit, the

important document is the challan through which duty is paid at Customs port. If everything is rightly mentioned the same will also be reflected at ICEGATE portal too.

Rule 36(4) is not applicable to IGST paid at Customs port for any Import of goods.

Q243. Please throw some light on the amendments to Rule 43 relating to reversal of ITC in case of capital goods along with examples comparing old and new rule.

Ans. Rule 43 of the CGST Rules has been subjected to several amendments since 2017 to till date. For easy understanding we can divide rule 43 between *Reversals for use of exempt service in case of construction contracts applicable to builders and in other cases*. We will discuss here the case which is applicable to general tax payers i.e. *"Reversal of capital credit for use of exempt supply for others".* Step by step rule with examples and remarks are given as under:

Rule	Identification	Particulars	Remarks	Example - Exempt Supply = 20, Taxable Supply= 80; Total Supply=100		
				Example 1 (Simple Purchase)	**Example 2 (Purchase for 100% Exempt supply later converted to Partially Exempt)**	**Example 3 (Purchase for 100% Taxable later converted to Partially Exempt supply)**
43(1)(a)	**P**	No credit if used for non-business purpose or used totally for exempt supplies	No Credit to electronic Credit Ledger (ECL). Practically approach is to take credit and Reverse it.		Date of Purchase of Capital Good 01.04.2018, Value of the Supply - ₹ 1,00,000/- IGST@ 18% - ₹ 18,000/- Useful life 5 year. Took credit and reversed in same month. On 1.09.2020 used for partial exempt supply	
43(1)(b)	**Q**	Exclusively used for taxable and ZRS	100% eligible for Credit. For Schedule II-Para 5 (b)- Zero as credit			Date of Purchase of Capital Good 01.04.2018, Value of the Supply - ₹ 1,00,000/- IGST@ 18% - ₹ 18,000/- Useful life 5 year. On 1.09.2020 used for partial exempt supply

Rule	Identification	Particulars	Remarks	Example - Exempt Supply = 20, Taxable Supply= 80; Total Supply=100		
43(1)(c)	**R**	Other than a and b as above, rest will be Denoted as "A"	Life of same Will be counted as 5 years from the Date of Invoice	Date of Purchase of Capital Good 14.07.2020, Value of the Supply - ₹ 1,00,000/- IGST@ 18% - ₹ 18,000/- Useful life 5 year.		
Proviso		Convert from **P** to **R**	Credit to ECL and "T" =Period which it stays under P will be calculated and "trf" to output tax liability with 5% per quarter or part thereof		Now converted into effecting both types of supplies. 2018= 3 Quarter, 2019= 4 Quarter, 2020= 3 quarter. So 10 Quarter, Rs 18000*5%*10= Rs 9,000/- [This amount pertain to 100% exempt supply period, which is ineligible for ITC]	
43(1)(d)		**Total credit to ECL(T_C) =Amount of R + amount of credit if Q is converted to R later, then amount**		Total credit firstly to be taken as Rs 18000/- to ECL	Amount to be taken Credit = ₹ 18000/-, with Reversal as ₹ 9,000/-	T_C=18000

Rule	Identification	Particulars	Remarks	Example - Exempt Supply = 20, Taxable Supply= 80; Total Supply=100		
		of Q also				
43(1)(e)		T_m is to be calculated as T_c divided by 60	T_m= T_c /60 (Better to calculate same for each fixed asset separately, as Life of 5 years is required to be counted from date of invoice)	Rs18000/60, Answer comes to ₹ 300/-	Rs18000/60, Answer comes to ₹ 300/-	T_m= 18000/60= 300/-
43(1)(g)		T_e i.e. ITC for Exempt supply to be calculated as	T_e= (E÷ F) x Tr	60 [300*20/100]	60 [300*20/100]	60 [300*20/100]
		E = aggregate value of exempt supplies, made, during the tax period		Answer comes to ₹ 60/-	Answer comes to ₹ 60/-	
		F=total turnover 8[in the State] of the registered person during the tax period				
		Proviso for Builder and Promoter				
		Proviso further	If no turnover during the period, last tax period needs to			

Rule	Identification	Particulars	Remarks	Example - Exempt Supply = 20, Taxable Supply= 80; Total Supply=100		
			consider for calculation			
43(1)(h)		Amount Calculated as T_e to be added to Output tax liability	with interest	₹ 60/- is amount applicable for Exempt supply, the same need to be reversed in **GSTR-3B** Table at ITC as under Rule 43 and also Interest need to be paid from date of credit to the month of reversal i.e. ₹ 60/- reversal month	₹ 60/- is amount applicable for Exempt supply, the same need to be reversed in **GSTR-3B** Table at ITC as under Rule 43 and also Interest need to be paid from date of credit to ECL to the month of reversal i.e. ₹ 60/- reversal month	₹ 60/- is amount applicable for Exempt supply, the same need to be reversed in **GSTR-3B** Table at ITC as under Rule 43 and also Interest need to be paid from date of credit to ECL to the month of reversal i.e. ₹ 60/- reversal month
		Explanation: Exempt supply to exclude Interest receipt	T_r is used as formula, but its calculation is removed from Rule as 43(1)(f) is omitted			
		Interest Liability		From Date of Credit= Normal	Very Less as now credit is taken	Very High, as credit was taken long back and now reversed

Q244. Restaurants charging GST @5% on the sales are not allowed to take ITC. If they have taken any services which is directly associated with main service, whether they are allowed to take credit in respect of that supply

Ans. Explanation No. (iv) to *NN 12/2017-CTR* provides as under:

Wherever a rate has been prescribed in this notification subject to the condition that credit of input tax charged on goods or services used in supplying the service has not been taken, it shall mean that,—

a) credit of input tax charged on goods or services used exclusively in supplying such service has not been taken; and

b) credit of input tax charged on goods or services used partly for supplying such service and partly for effecting other supplies eligible for input tax credits, are reversed as if supply of such service is an exempt supply and attract provisions of sub-section (2) of section 17 of the CGST Act, and the rules made thereunder.

ITC on goods or services is not available for restaurants charging a tax rate of 5%. The rates prescribed are mandatory rates and the tax cannot be levied at any other rate. This has been explained in the Explanation to Heading 9963 in the exemption notification.

Q245. If builders opt for concessional GST @5%, on what services/ goods procured can they take ITC?

Ans. With effect from 01-04-2019, the effective rate of GST (after 1/3rd deduction towards value of land) applicable on construction of residential apartments by promoters in a real estate project are 1% for affordable residential apartments & 5% for other than affordable residential apartments. These rates are applicable with the condition that the tax is to be paid in cash by debiting the electronic cash ledger only and also the credit of the ITC on goods or services used in supplying the service has not been taken. Thus, no credit is available on any goods or services received by the builder.

Q246. X, a Chartered Accountant in practice, bought a pair of spectacles without which he cannot read, study, drive etc., and thereby cannot perform professional obligations. Whether

purchase of spectacles can be classified as supply used in the course of profession and hence can claim ITC? Whether, ITC will be available if X provides to his employee's spectacles for their use in performing office work, since section 17(5) blocks ITC on health services but not on goods?

Ans. Spectacles purchased by a professional of self or for his employees is an expenditure of personal nature and the same is blocked under section 17(5) of the CGST Act. The personal element does not differentiate between goods and services.

Q247. The books of account of XYZ Ltd. were subject to Income Tax Audit and during such audit the Chartered Accountant observed that the exemption claimed on interest is not as per the Circular No. 73/47/2018-GST, dated 5-11-2018 and accordingly suggested to create a provision for *such* short pay-out.

The management of M/s. XYZ was ready to pay the tax but wants to know the following:

a. Can they collect the tax from their debtor?

b. Can they suggest to their debtor that the tax paid is available to them as ITC?

Ans. In the present query, the registered person wants to make the payment voluntarily along with interest. Section 73 of the CGST Act, provides a unique opportunity of self-correction to the registered person i.e., if a registered person has not paid, short paid or has erroneously obtained/been granted a refund or has wrongly availed or utilized ITC then before the service of a notice by any tax authority, the registered person may pay the amount of tax with interest.

For the queries raised by the management the reply will be as follows:

- Sub-section (3) of section 34 of the CGST Act, permits the registered person to issue debit note to collect the tax.
- They have to declare the particulars of such debit note in **Form GSTR-1** of the tax period.

- Sub-section (4) of section 16 of the CGST Act (as amended) permits the receiver to take credit on such debit note issued by the supplier.

Note: If the management pays the tax against the finding of the Departmental officer in notice issued under section 74 (5) of the CGST Act, the above reply will be negative.

Q248. Is it necessary for the recipient to reverse the ITC on discount, which is received by him after the supply has been effected?

Ans. The answer will depend on two conditions:

(a) Whether or not the discount meets the conditions of section 15(3) (b) (i) of the CGST Act, that is, discount is established as per the agreement entered into at or before the time of supply and specifically linked to relevant invoices.

(b) Credit note issued by the supplier is with GST in terms of section 34 of the CGST Act

Accordingly, answer is given below considering two possible scenarios (A) and (B):

(A) ***Discount is as per the agreement entered into at or before the time of supply and specifically linked to relevant invoices, but being passed on after supply has been effected:*** In this situation, the supplier may issue credit note for the discount amount plus the corresponding tax thereon as the transaction fulfils the conditions of section 15(3) (b) (i) of the CGST Act. Assuming that the credit note is issued with GST within the time line provided under section 34 (2) of the CGST Act, the supplier can exclude the discount from value of supply and also reduce his tax liability. In order to complete the process and enable the supplier to make *adjustment in value of supply as well as tax liability, it is necessary for the recipient to reverse ITC on discount, as required under section 15 (3) (b) (ii) of the CGST Act.* With such reversal, the tax paid and ITC availed against the same will match at invoice level between the supplier and recipient.

Where the supplier decides not to issue a credit note under section 34 of the CGST Act or is unable to issue the same due

to non-satisfaction of any condition under section 34 of the CGST Act, then there would not be any reduction in output tax liability involved for the supplier. Supplier may issue an accounting / commercial / financial credit note without impact of GST. Further, the recipient would not be liable to reverse the ITC for the reasons provided in Point B below.

(B) Discount not known or agreed at or before the time of supply is given by the supplier post sale due to certain business exigencies which were not considered earlier or where discount cannot be specifically linked to respective Invoices:

In such a situation, the supplier can issue credit note for the discount amount, generally referred to as financial or commercial credit note, but since the requirements of section 15 (3) (b) of CGST Act are not met, the supplier cannot reduce the discount from the value of supply and accordingly he cannot reduce his corresponding tax liability on discount amount. Thus, what he passes on to the recipient is the credit on the entire value of supply before discount. This position is as noted and clarified at point D "*Secondary Discounts"* of *CIR 92* . Here, the recipient pays to supplier basic amount plus tax as initially invoiced as reduced by the secondary discount provided at a later stage**.** The only provision which links the eligibility of ITC with the payment of consideration to the supplier is proviso to section 16(2) of the CGST Act read with Rule 37 of the CGST Rules. Failure to pay to the supplier within 180 days from the date of issue of invoice entails reversal of ITC taken earlier as per the said provisions. However, non-payment due to the reduction in the value of supply should not be equated with failure to pay. Only then one can state that reversal of ITC would not be attracted if credit note is received without GST by any recipient of supply. This provision has been discussed below:

1 Failure to pay should ideally arise in a situation where there is a requirement to pay in the first place. On issuance of an accounting/ financial/ commercial credit note by the supplier, there is an acknowledgement by the supplier

himself that there is no further requirement of payment. Where no payment is required, there cannot be a failure to pay.

2 Further, the payment required is towards the value. Through the credit note, the value which is required to be paid itself decreases. There is no further obligation of payment and the recipient stands discharged once he makes the payment net of the credit note. No reversal of ITC should be made in such a situation

3 *'Failure to pay'* is due to inaction by the recipient where they are unable to perform the positive activity of having made the payment within the specified time limit. However, when the credit note is received which dispenses with the requirement of having to make further payment, no further action is required by the recipient to the extent of the value of credit note. When no action is required, there cannot be any inaction on the part of the recipient. The recipient should not be penalized when there is no failure or inaction. Therefore there should not be any reversal of ITC.

4 Payment is also considered to have been made through book entry. There is no requirement of having a monetary consideration in each and every case. When the supplier's obligations are completed through a book entry, that itself can be considered as equivalent to payment. Where there are no pending obligations, there cannot be a failure to pay on the part of the recipient.

5 The mechanism of payment can be through netting of the payables and receivables. What is required to be paid is to be set off partly against receivables in the form of credit note from the point of view of the recipient. After this set off happens and the balance payment is made, both the parties are relieved of their obligations. Thereby the payment is already considered to have been made. As a result, failure to pay cannot arise in such a situation.

6 Raising of the credit note is a unilateral action by the supplier. It is the prerogative of the supplier whether to raise

a credit note within the GST law or a financial credit note without GST. Where due to no fault of the recipient, he has no option but to simply accept the credit note raised by the supplier, there should not be any penalty leviable on such recipient. Thereby, no reversal of ITC should be made by the recipient

7 Financial credit notes are subject to mutual dealings between the supplier and the recipient. There should not be any losses to any of the parties due to such dealings in B2B transactions. However, in this pure business transaction, there can be a loss to the recipient if the full amount paid as tax is not allowed as credit.

8 Allowance of credit on the undiscounted value without any reversal of ITC due to financial credit note is a revenue neutral exercise. This is because when the original supply had occurred, the complete ITC was availed by the recipient. At the time of reduction of the original value, if there is no reversal of output tax liability, ITC should not be reversed either. In this situation, no loss is caused either to the Government or the taxable person.

However, where the ITC is to be reversed by the recipient, it results in a loss proportionate to the value of credit note as the output tax liability had already been paid in full by the supplier. A simple business decision of giving credit note without GST due to any reason should not cause any loss to any person in the credit chain.

9 Reference may be made to *Circular No.122/03/2010 dated 30.04.2010* issued under the erstwhile law in the context of CCR 2004 in respect of services and also *Circular No. 877/15/ 2008 –CX. dated 17.11.2008* regarding reversal of CENVAT Credit, in case of subsequent trade discount or reduction / short payment of value. It is clearly provided that payment through debit in books of accounts should also be construed as payment. Further, it goes on to explain that where the settled payment by the recipient is less than the amount shown in the original invoice, the invoice would

stand amended to that extent. It finally says that the credit would be equivalent to the amount paid as tax. Though issued under earlier Acts, the circulars have persuasive value and they support the view that taxes paid and not subsequently reduced would be fully available to the recipient as credit.

10 *Circular No.105/24/2019 - GST dated 28.06.2019* , at para 5 provides:-

> *"the dealer will not be required to reverse ITC attributable to the tax already paid on such post -sale discount received by him through issuance of financial / commercial credit notes by the supplier of goods - - - - - - - - - - - - - - - as long as the dealer pays the value of supply as reduced after adjusting the amount of post- sale discount - - - - - - - - - - plus the amount of original tax charged by the supplier".*

Though this Circular has been withdrawn by the Board *ab-initio vide* Circular *No.112/31/2019 - GST dated 03.10.2019*, in view of representations received expressing apprehensions on the implication (of other) clarifications given therein relating to treatment of secondary or post sale discounts, the aforesaid clarification adequately amplifies/ clarifies thinking on the part of Board that reversal of credit is not required in such cases.

From the above, it can fairly be said that where credit note is received without GST, it is not necessary for the recipient to reverse ITC attributable to the value of discount.

Q249. In case an invoice of a supplier is dated more than 6 months old, can ITC be availed if- (a)payment is made within six months from the date of invoice and (b)payment is made after six months from the date of invoice

Ans. ***a) If payment is made within six months of the date of invoice***

If the payment for the invoice is being made within 6 months from the date of the invoice, and if this date of payment is on or before 30th September of the following FY or the date of filing of annual return whichever is earlier, then the credit of the tax paid

on such invoice of the supplier can be taken on the date of payment.

b) If payment is made after six months of the date of invoice

If the date of payment is within 30th September of the following FY then ITC can be availed.

There can be another scenario where the ITC has been availed but the payment towards the invoice has not been done in such a case, if the payment is not made within the period of 180 days from the date of invoice, and then the ITC so taken has to be reversed along with interest. Once the payment of the invoice is done, then ITC can be availed on that invoice.

Q250. Whether ITC of expenses related to CSR activities allowed/ permissible in GST?

Ans. The basic condition, as provided under section 16(1) of the CGST Act, for eligibility to take credit of input tax charged on supply of goods or services or both is that they are used or intended to be used by the registered person in the course or furtherance of his business. The CSR activities are carried out without any monetary consideration for the same. However, such activities are obligatory on the company in terms of the provisions of section 135 of the Companies Act, 2013 which mandates companies subject to specified thresholds to spend specified percentage of their profit on CSR activities. The CSR activities are thus not in the nature of gift or charity or some voluntary actions that cannot be enforced but have to be incurred under obligation under law. Non-compliance of such requirement can have implications for business and in that sense, such expenses can be said to be incurred in the course or furtherance of business. The expression *"course or furtherance of business"* has very wide scope. Besides, being obligatory in nature, the CSR activities help the company in improving their Brand image in the public, win good wishes and acceptability of the society in which it operates which are all essential for its sustainability in the long run. In this sense also, CSR activities can be said to be activities in the course or furtherance of business. One can therefore strongly argue that credit should be available on the tax paid while procuring goods and services used by company in its CSR activities.

Under the erstwhile indirect tax (service tax) regime the issue was considered by CESTAT in the case of ***M/s Essel Propack v. Commissioner of CGST****, Bhiwandi, decided on 31.08.2018.* CENVAT Credit in respect of CSR activities was allowed to the appellant observing that such activities are input service in respect of activities relating to business, production and sustainability. The CESTAT in coming to this conclusion also observed that CSR activities are not in the nature of charity, have a bearing on operations of the company, are incurred to win confidence of all stakeholders and to augment credit rating and that CSR which was mandatory requirement for the public sector undertakings has been made obligatory also for private sector. The CESTAT distinguished the relied case law equating CSR with charity.

Unlike the provisions of the Income-tax Act, 1961 which specifically deny the deduction for CSR expenses as business expenditure, there are no provisions in GST law to specifically bar ITC for CSR activities. However, the eligibility to ITC under section 16(1) of the CGST Act, is subject to the provisions of section 17(5) of the CGST Act which blocks credit in certain cases, one such being "goods lost, stolen, destroyed, written off or disposed by way of gift or free samples" under clause (h) thereof. These provisions of section 17(5) (h) may be invoked by the tax authorities to deny ITC on goods distributed free of cost for meeting CSR obligations though submission of trade would be that these are not "Gift" or they do not fall under the other eventualities specified.

It would be seen that section 17(5) (h) of the CGST Act, merely places ITC restriction on free distribution of goods and does not restrict ITC on provision of services for free and there appear two different tax treatments for the very same nature of expense - goods and services. It can therefore be argued that for services provided free of cost in the course of CSR activities such as provision of food, medical services, educational services, construction of facilities like schools, roads, wells for water supply, manpower assistance, hire of means of transport, hire of equipment, shelter in rented premises etc. ITC is not blocked under section 17(5) (h). However, guided by the position under the Income-tax Act with regard to tax deduction for CSR activities and also the possible treatment under GST Law

for goods used in CSR activities, with regard to services used in CSR activities, the possibility of the authorities taking a view that CSR obligation is the amount to be spent by the assesse without any tax relief from Government, cannot be ruled out.

Thus, while taking any decision on ITC for the CSR activities, one has to keep in mind its potential for litigation and take a call accordingly.

Q251. Whether ITC of GST paid on premium for Life Insurance Policies of employees is an eligible claim?

Ans. Generally, the GST paid on Life Insurance Policy of employees is not an eligible claim. However, with effect from 01-02-2019, a proviso has been inserted to section 17(5) (b) of the CGST Act, which entitles an entity to claim GST paid on life insurance premium, on the condition that it is obligatory for an employer to provide the life insurance under any law for the time being in force. Hence, an entity will be eligible to claim GST paid on Life Insurance Policies obtained to comply with an obligation under any law for the time being in force.

E.g.: Employee Deposit Linked Insurance Scheme Act, 1976 applies to all employees to whom the provisions of EPF Act, 1952 are applicable. This requires contribution only from the employer. GST paid on such schemes would also be eligible for the ITC.

Q252. A. is involved in car dealership business and claiming ITC on purchase of cars; subsequently these cars are sold at prices below the purchase price because of heavy discounts on sale. Whether excess ITC on such purchase can be adjusted on other sales or the ITC has to be reversed?

Ans. If the person is a dealer in new cars and not second hand cars ITC on the input can be taken for the intended use in the course of furtherance of the business. The ITC available to it can be used in the same GSTN for other types of sale also, provided all conditions of ITC are fulfilled.

Q253. If a manufacturer gives a discount by way of credit note, what is the position of law in respect of such discount? Please discuss from the perspective of both the supplier and recipient.

Ans. ***From the perspective of supplier:*** If such discounts are as per pre-sale agreement, the value of discount/tax thereon can be reduced from the value of supply made during the month in which such discounts are given. It is also essential to ensure that the recipient also reverses his ITC attributable to such discount.

From the perspective of recipient: If the credit notes are issued with GST component, the recipient should reverse the corresponding GST.

Even if the credit notes are issued without GST component, then also the recipient has to reverse the proportionate GST as per the second proviso of section 16(2) of the CGST Act.

Q254. During the course of audit of FY 2018-19 in the UT of Jammu and Kashmir, the auditor observed that an assessee had claimed the ITC of 2018-19 in the month of September, 2019 filed on 24th March, 2020. Whether the assessee will be eligible to claim the set off of 2018-19 considering the restrictions under section 16(4) of the CGST Act?

Ans. Yes, the assessee will be eligible to claim the input tax credit of 2018–19 *vide* **Form GSTR-3B** filed on 24.03.2020, since the due date for filing GST Return in **Form GSTR-3B** for the month of September, 2019 for UT of Jammu and Kashmir was extended from 20th October, 2019 to 24th March, 2020.

Q255. An Insurance Company also earns income such as interest and dividend. These incomes are not shown in Form GSTR-1 and Form GSTR-3B, either as outward supply or non-GST supply. Will the company have to restrict ITC to the extent of such exempt/ non-GST supply?

Ans. **(a)** ***Interest:*** Rule 42 of the CGST Rules, prescribes the manner of determination of ITC in respect of inputs and input services for reversal of common ITC in respect of exempt supplies. Explanation (b) to rule 43(2) of the CGST Rules, states that the aggregate value of exempt supplies determined under rule 42, shall *exclude* the value of interest on deposits in respect of extending of loans or advances except in case of a banking company or a financial institution engaged in supplying services

by way of accepting deposits, extending loans or advances. Hence, the company will not be required to restrict the ITC to the extent of exempt supply of interest on deposit / loan / advance earned.

(b) ***Dividend:*** Dividend income arises on account of holding of shares by the shareholders in a company. Securities have been defined under section 2(101) of the CGST Act, read with section 2 of the Securities Contract (Regulation) Act 1956 to include shares. Hence, shares are securities. The definition of goods and services as defined under section 2(52) and section 2(102) of the CGST Act, respectively *excludes* securities from the definition of goods and services respectively. Further, in the case of ***Kantilal Manilal v. CIT***., the Supreme Court while interpreting the definition of *'dividend'* held that dividend in its ordinary meaning is a distributive share of the profits or income of a company given to its shareholders. Distribution of profit by a company to shareholders cannot be a supply. When it is not at all a supply under CGST Act, the company need not restrict the ITC in respect of dividend.

Q256. Equal ITC under CGST and SGST claimed in Form GSTR-3B in place of IGST and after set off correct SGST liability paid through Form GSTR-3B i.e. net effect of ITC is the same; Whether ITC is available? Should it be paid and if paid then what about ITC of IGST?

Ans. Section 42 of the CGST Act requires matching of the input tax with corresponding output tax of the supplier. However, the ITC misclassification mistake can be rectified, if the due date of the return of September of the succeeding year has not lapsed [Section 16(4) of the CGST Act]. The classification can be rectified in any of the return of the succeeding year filed upto the due date of September or any return filed upto September, whichever is earlier. If the due date of September return has lapsed, the assessee is required to pay the incorrectly claimed ITC and any ITC not claimed correctly upto the return of September will lapse.

Q257. A Pvt. Ltd. Company has two segments of business. In one segment, it exports information technology related services with a turnover is ₹ 8 Crores in Maharashtra (zero rated supply -

exempt). Its second business, has 2 malls in Maharashtra and local business sale turnover is ₹ 2 crores (input tax is 16 lakhs). It pays rent ₹ 10 lakhs p.a. How much will be the input credit; is it ₹ 16 lakhs fully or only 20 % of the total turnover of ₹ 10 crores i.e. in the ratio of total turnover including export turnover?

Ans. Export of goods or services or both shall be treated as zero-rated supplies under section 16 of the IGST Act, and hence they are not exempt supplies under GST.

Section 17(2) of CGST Act provides:

> *"Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies."*

Hence, there is no restriction on availing ITC for zero rated supplies (exports) and A Pvt. Ltd Co. shall be eligible to avail full ITC i.e. ₹16 lakhs.

Q258. Whether ITC can be claimed by the recipient when the supplier has not recorded the transaction in his books of accounts during the year, but the supplier has issued the bill, supplied the goods, received payment and has also filed the return with GST Department, but has omitted to record the same in his books of accounts during the year. Can ITC be claimed by the recipient?

Ans. Yes, ITC can be claimed by the recipient on such purchases as conditions stipulated under section 16 of the CGST Act, are satisfied and the ITC is not blocked under section 17 of the CGST Act,. However, where audit is applicable under the GST Act, appropriate remarks are required to be recorded for the difference appearing in the statement of reconciliation in **Form GSTR-9C** in the supplier's GST Audit.

Q259. Whether ITC is admissible in the case of Initial Public Offer (IPO) expenses?

Ans. Yes. ITC is admissible in the case of Initial Public Offer (IPO) expenses.

IPO is the process by which a "private" company can go “public" by sale of its stocks to general public. An IPO basically allows a company to tap into a wide pool of potential investors to provide itself with capital for its business investments, working capital or to reduce onerous debt burden. IPO expenses like legal charges, registrar fees, underwriting commission, bank charges, publicity expenses etc. Would merit treatment as services used or intended to be used in the course or furtherance of business.

As per Section 16(1) of the CGST Act, the company would be entitled to take credit of input tax charged on supply of such services to it for IPO as these services are used or intended to be used in the course or furtherance of business as briefly explained earlier. Moreover, there is no blocking provision under section 17(5) of the CGST Act, in respect of such expenses. Hence, ITC can be availed in case of IPO expenses.

In the erstwhile indirect tax regime, under the CCR 2004, Rule 2(l) defines ‘input service’. In terms of Rule 2(l), services used in relation to financing were considered as input services eligible for credit. The issue of eligibility of IPO expenses for credit was considered by CESTAT, Bangalore Bench in ***M/s Kermax Microsystems (India) Limited v. Commissioner of Central Excise****, Customs and Service Tax, Hyderabad II; [2016 (42) STR 533]* wherein the IPO was arranged by the company for expansion of its activities. The Tribunal held that CENVAT Credit on input services like advertisement, used for collecting capital through IPO by the appellant could not be denied. Definition of 'input services 'under rule 2(l) of CCR 2004 is wide enough to cover such services.

Further, where the company making IPO is an altogether new company that has not yet started its operations, to be eligible for credit on IPO expenses, it will have to ensure that its registration under GST is in place before hand, (by applying for voluntary registration under section 25(3) of the CGST Act), since in terms of

the provisions of section 18 (1) and (2) of the CGST Act, ITC for services will be available only on registration.

Q260. As per Sr. No. 2 of *NN 12/2017-CTR*, sale of going concern attracts NIL rate of tax. What will be the impact of this transaction on credit for input services commonly used in all such undertakings? Will any portion of such credit have to be surrendered / reversed because of sale of the undertaking?

Ans. The transfer of business as a going concern will be treated as a supply of service under Schedule II of the CGST Act, and the same is exempted from tax as per *NN 12/2017-CTR*.

With the above transaction, the company has effected exempt supply, apart from any other exempt supplies made by it across its undertakings registered under same registration. The case of the company would get covered under the provisions of section 17(2) & (3) of the CGST Act, that is, partly effecting taxable supplies including zero-rated supplies and partly effecting exempt supplies, and the amount of credit will have to be apportioned between such taxable supplies and exempt supplies and shall be restricted to so much of credit as is attributable to taxable supplies including zero-rated supplies. The computation of credit attributed to exempt supply will have to be done as per rule 42 of the CGST Rules, and added to the output tax liability. The sale value of the undertaking will be included in the aggregate value of exempt supplies for this calculation. Thus, in effect, broadly such proportion of credit for common input services as attributed to such sale by ratio of thereof to the total turnover of the company in the State will be added to the output tax liability. This is because though transfer of a going concern, as a whole or an independent part thereof, is treated as exempt service, no exclusion in respect thereof is available while apportioning input credit between taxable and exempt supplies.

Q261. A registered person has units in Maharashtra and Gujarat. Maharashtra unit is going to be closed. Huge ITC remains in Maharashtra unit on account of movable machineries. Can the same be transferred to Gujarat so that ITC can be transferred? If yes, can it be transferred at WDV as per Income Tax Act, 1961?

Ans. (i) Yes. Machineries can be transferred to Gujarat at the value determined in terms of rule 28 of CGST Rules. Since both units are covered under same PAN they shall be regarded as related persons and transfer shall be treated as supply as per Entry No. 2 of Schedule I of the CGST Act, despite the fact that no consideration is involved.

(ii) As per rule 28 of the CGST Rules, in case Gujarat unit is eligible to take full ITC on the capital goods transferred then the value declared in the invoice shall be taken as open market value and tax shall be calculated on such value. In case Gujarat unit is not eligible to take full ITC then the value of capital goods shall be the open market value (OMV). If OMV is not available then the value shall be of goods of like kind and quality.

(iii) After determining the value and tax as above, the same shall be compared with value arrived in terms of section 18(6) of the CGST Act read with rule 40 of the CGST Rules. That is tax shall be payable on higher of the following:

- ITC availed in earlier reduced by 5% per quarter or a part thereof from the date of purchase invoice of such goods; or
- Tax on transaction value as determined in point (ii) above.

In view of the above discussion, capital goods can be transferred by following the above procedures and the same cannot be transferred at the WDV as per the Income-tax Act.

Q262. Is e-invoice mandatory for taking ITC? If yes, what are the consequences of non-compliance?

Ans. As per *Notification No. 68/2019 – Central Tax dated 13.12.2019*; the Central Government has brought out 8th Amendment to the CGST Rules. Under this notification sub-rules (4) and (5) have been inserted in rule 48 of the CGST Rules, which sets out the requirement of invoice for specified suppliers given as under:

*"(4) The invoice shall be prepared by such class of registered persons as may be notified by the Government, on the recommendations of the Council, by including such particulars contained in **FORM GST INV-01** after obtaining an Invoice Reference Number by uploading information contained therein on*

the Common Goods and Services Tax Electronic Portal in such manner and subject to such conditions and restrictions as may be specified in the notification.

(5) Every invoice issued by a person to whom sub-rule (4) applies in any manner other than the manner specified in the said sub-rule shall not be treated as an invoice."

Hence, it can be said that once the e-invoice has become mandatory ITC can be taken only on the basis of such e-invoice and non-compliance could result in disallowance of ITC.

Note- E–invoice has been made mandatory from 1-10-2020 for registered person, whose aggregate turnover exceeds ₹ 500 crores in any preceding financial year from 2017-18 onward and from 1-01-2021 for those exceeding ₹ 100 core.

Q263. X, a registered person, have availed service from a service provider and paid GST on the same and has also taken ITC on the same. But the service provider has not filed any returns under the Act. Would X be eligible to claim input on the basis of Invoice?

Ans. No, ITC in the given facts will not be available to the recipient of the service. Section 16 (2)(c) of the CGST Act, provides that if the tax charged by the supplier is not paid to the government either by cash or utilisation of credit, the recipient of services is not entitled to avail the ITC. Further section 42 of the CGST Act mandates matching of ITC with tax paid by the supplier and any excess credit taken by the recipient is required to be reversed.

Further, Rule 36 (4) of the CGST Rules also mandates a cap of 10% for unmatched ITC for invoices which have not been uploaded by the supplier. In other words, difference between ITC as claimed in **Form GSTR-3B** and as reflected in **Form GSTR-2A** cannot be more than 10% of the eligible ITC as per **Form GSTR-2A**.

Q264. Do we need to reverse the credit of IGST on Import of goods if the payment to exporter is not made by the importer?

Ans. As per proviso to section 5 (1) of the IGST Act, IGST on import of goods will leviable to IGST as per section 3 of the Customs Tariff

Act, 1975. Further section 3 (7) of the Customs Tariff Act, creates a levy of IGST on import of goods.

The definition of reverse charge given under section 2(98) of the CGST Act reads thus:

> *"reverse charge" means the liability to pay tax by the recipient of supply of goods or services or both instead of the supplier of such goods or services or both under sub-section (3) or sub-section (4) of section 9, or under sub-section (3) or sub-section (4) of section 5 of the Integrated Goods and Services Tax Act;"*

In other words, IGST on import of goods is not considered as reverse charge tax under GST law.

The second proviso to section 16 (2) of the CGST Act, reads as under:

> *Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed"*

It is evident that this proviso doesn't apply to supplies on which tax is payable on reverse charge basis, but as discussed above import of goods is not a supply under reverse charge basis and hence this proviso, in so far as this condition is concerned, shall apply.

Further, the proviso mandates that value of supply along with tax is paid to the supplier; in case of imports value is payable to the supplier whereas tax is payable to the Government directly and hence an importer is not covered by this proviso.

Reading the proviso further, it mandates that payment is required to be made within 180 days of date of issue of invoice.

'Invoice' is defined in section 2 (66) of the CGST Act as under:

> *(66) "invoice" or "tax invoice" means the tax invoice referred to in section 31;*

Section 31 of the CGST Act, mandates invoice to be issued by registered person supplying goods and a person who is required to pay tax under RCM, an importer clearly doesn't fall in any of these situations. Hence, there is an absence of '*Invoice'* in the case of an importer and therefore the proviso shall not apply to a transaction involving import of goods.

In view of the above discussion an importer will not be required to reverse the credit taken of IGST paid by him on import of goods for failure to pay the consideration to the exporter.

Q265. X, (owner of a medical shop) a registered person, sold medicines to the customers. However the medicines have been returned by the customer. Please explain the ITC provisions with respect to return of supplies.

Ans. Section 34 (1) of the CGST Act, provides that where the goods supplied are returned by the recipient, the supplier can issue a credit note to the buyer containing all the particulars as prescribed in Rule 53 of the CGST Rules for reversing the output tax paid at the time of issuance of original invoice.

Further, section 34 (2) of the CGST Act mandates that such credit notes issued by the supplier have to be declared in the return for the month in which they has been issued. However, it also provides that such credit notes can be reported not later than September following the end of the financial year in which such supply was made, or the date of furnishing of the relevant annual return, whichever is earlier, and the tax liability shall be permitted to be adjusted. It also provides that reduction in output tax liability of the supplier shall not be permitted, if the incidence (burden) of tax and interest on such supply has been passed on to the customer.

Example: A Chemist shop sells medicines to a customer on 01.03.2020 worth ₹ 1,000 plus GST ₹ 180 and he returns all the medicines on 10.08.2020. Chemist refunds the entire payment of ₹ 1,180 to the customer. The chemist can issue a credit note for ₹ 1,180 (Basic 1000 + GST 180) to the customer and upload the same in August month **Form GSTR-1** and also reduce his August 2020, output tax by 180 while filing **Form GSTR-3B** for this month. He can also upload the same in the September returns but not later

than that. However, if the said chemist issues a credit note of ₹ 1,000 (Basic amount only) to the customer, then in such case reduction of output tax liability is not permitted as incidence (burden) of tax has been passed on to the customer

Q266. If X pays RCM liability of FY 2017-18 in FY 2020-21 along with interest. Can he claim ITC on the GST so paid? Is the time limit to claim ITC applicable to ITC on RCM as well?

Ans. As per section 31 (3) (f) of the CGST Act, a registered recipient who is liable to pay tax under RCM is required to issue an invoice in respect of goods or services received by him from the supplier who is not registered on the date of receipt of goods or services or both, accordingly the responsibility of issuing invoice in case of RCM is cast on the recipient and the last date for issuance of such an invoice is on the date of receipt of goods or services.

Section 16(4) of the CGST Act, provides that a person shall not be entitled to take ITC in respect of any invoice after the due date of furnishing of the return of September following the end of financial year to which such invoice pertains or furnishing of the relevant annual return, whichever is earlier.

In the given facts, RCM liability pertains to FY 2017-18 which means that the underlying goods or services were received in 2017-18. As discussed above, as per section 31 (3) (f) of the CGST Act, the taxpayer is mandated to issue a self-invoice latest by the date of receipt of the goods or services which in this case should have been issued in 2017-18. Now on reading section 16 (4) of the CGST Act, it is clear that any ITC can be claimed latest by the due date of September return for the next financial year.

Accordingly, ITC of FY 2017-18 cannot be claimed in FY 2020-21 even if the underlying tax was paid in FY 2020-21 with interest.

Q267. A non-resident Indian is having property in India from which he earns rental income. For paying GST on such rental income he has taken registration as *non-resident taxable person*" under GST in India. Every year he comes to India for renewal of agreements. Whether ITC will be available to him for the purchase of laptop, printer, Mobile phone and flight tickets?

Ans. Chapter V (sections 16 to 21) of CGST Act contains provisions on ITC. Sub-section (5) of section 17 of CGST Act, 2017 contains list of blocked ITC i.e., ITC which cannot be taken by the taxpayer. Clause (f) of sub-section (5) of section 17 is as under:

> *"(5) Notwithstanding anything contained in sub-section (1) of section 16 and subsection (1) of section 18, input tax credit shall not be available in respect of the following, namely: —*
>
> *(f) goods or services or both received by a non-resident taxable person except on goods imported by him;"*

Thus, ITC cannot be taken by the person registered as non-resident taxable person except on goods imported by him.

In the instant case, ITC is related to purchase of laptop, printer, mobile phone and flight tickets, none of which is imported and hence ITC in respect of any such goods will not be available to the non-resident taxable person.

Q268. The taxpayer is a luxury bus operator having AC and Non-AC buses engaged in transportation of passengers within and outside the State. Can he take ITC for tax paid on supplies of bus body building and supply of vehicles received by him?

Ans. *NN 11/2017-CTR* as amended by *Notification No. 31/2017 -Central Tax (Rate) dated 13.10.2017* provides the service wise GST rate to be charged by the supplier on supply of service on fulfilment of the condition mentioned against the entry, if any. Following are the extracts of relevant entries:

Sr. No.	***Heading***	***Description of Service***	***Rate***	***Condition***
8	*9964*	*(vi) Transport of passengers by motor cab where the cost of fuel is included in the consideration charged from the*	*2.5*	*Provided that credit of input tax charged on goods and services used in supplying the service, other than the input tax credit of input service in*

		service recipient		*the same line of business (i.e. service procured from another service provider of transporting passengers in a motor vehicle or renting of a motor vehicle), has not been taken.* *[Please refer to Explanation No. (iv)]*
			Or	
			6	**-**

"4. Explanation—For the purposes of this notification, —

(iv) Wherever a rate has been prescribed in this notification subject to the condition that credit of input tax charged on goods or services used in supplying the service has not been taken, it shall mean that,—

(a) credit of input tax charged on goods or services used exclusively in supplying such service has not been taken; and

(b) credit of input tax charged on goods or services used partly for supplying such service and partly for effecting other supplies eligible for input tax credits, is reversed as if supply of such service is an exempt supply and attracts provisions of sub-section (2) of section 17 of the Central Goods and Services Tax Act, 2017 and the rules made thereunder."

In terms of the above-mentioned entries of the referred Notification, there are two options available to the supplier of transportation services:

Option	*GST Rate on outward supplies*	*ITC Availability*
1	5%	ITC on inward supplies used exclusively in providing such services will not be available
2	12%	ITC on inward supplies will be available

The ITC on motor vehicle used for transportation of passenger is disallowed except when they are used for making the taxable supply of (amongst others), transportation of passengers. In present case, since the outward supply is transportation of passengers, ITC on the supply of bus body building and vehicle manufacturing as received by such person is available to him unless he opts for non-ITC rate. Hence, if the taxpayer opts to pay GST at the rate of 5% then ITC for such inward supplies would not be available. But if the taxpayer opts to pay GST at the rate of 12% then ITC of such inward supplies would be available.

Q269. As per the CGST Rules, ITC on insurance and annual maintenance contract can be taken on receipt of last instalment of service. Can the taxpayer avail ITC on such services when there is no certainty that service will be required?

Ans. Availment of ITC on receipt of last instalment is specifically relevant in case of supply of goods and not in case of supply of service. The same has been prescribed in the first proviso to sub-section (2) of section 16 of CGST Act. The said proviso is as under:

> *"Provided that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment"*

In the present case, an AMC or insurance service is primarily an assurance which is received on the date of entering into the AMC and what follows is only a fulfilment of the obligation of the supplier for the period under the contract. Hence the service is received on the date when such right to receive the indemnity is received by the recipient. Making good of actual loss is not a service.

Thus, on the basis of the above interpretation, ITC can be availed on the date of entering into such insurance and annual maintenance contract if such ITC is eligible; otherwise as per the provisions of sections 16 and 17 of the CGST Act.

Q270. Whether the recipient of inward supply of goods or services is eligible to take ITC in respect of inward supply which is reflected in Form GSTR-2A of the recipient but invoices of such inward supply is not available with the said recipient?

Ans. Under the GST law, a tax invoice is an important document. It not only proves the supply of goods or services but is also an essential document for the recipient to avail ITC. A registered person cannot avail ITC unless he is in possession of a tax invoice or a debit note.

- Section 16 of the CGST Act dealing with eligibility to avail ITC reads:

"*(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.*

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,-

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

(b) he has received the goods or services or both.

Explanation.-— For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services-

(i) where the goods are delivered by the supplier to a

recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person.

(c) subject to the provisions of [section 41 or section 43A], the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilization of input tax credit admissible in respect of the said supply; and

(d) he has furnished the return under section 39 :

Provided that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment:

Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed:

Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon."

According to section 16(2) (a) of the CGST Act, one of the conditions to avail ITC is, the recipient must have been in possession of tax invoice of inward supply of goods and

services as issued by a registered supplier. Thus, to conclude even if the details of the Invoice is uploaded by supplier & reflected in **Form GSTR-2A** in respect of inward supply but the recipient is not in possession of tax invoice then he will not be eligible to claim the said ITC. Such recipient can request for a duplicate copy of such invoice from the supplier to substantiate his claim.

Q271. Suppose a person buys goods @ 18% and takes ITC, and later on the GST rate on such goods is reduced to 12%, is there any need to make any reversal of ITC?

Ans. The conditions for availing ITC have been specified in section 16(2) of the CGST Act. [Please refer QNo. 270 for Section 16(2) in detail].

There is no mention in any of the conditions in Section 16(2), that for a recipient who has availed ITC, reversal has to be done in case later on the GST rate on availed ITC is reduced. Also, the emphasis is to be provided on the intent to use the same in furtherance of business at the time of availment of such ITC and hence the question of reversal does not arise at all.

Q272. Whether pure agent is eligible for taking ITC when he has incurred some expense and recovered such expense from the recipient of supply excluding GST (i.e. only taxable value of expenses incurred as pure agent will be recovered)?

Ans. Input tax has been defined under section 2(62) of the CGST Act as under:

"(62) "input tax" in relation to a registered person, means the central tax, State tax, integrated tax or Union territory tax charged on any supply of goods or services or both made to him and includes —

(a) the integrated goods and services tax charged on import of goods;

(b) the tax payable under the provisions of sub-sections (3) and (4) of section 9;

(c) the tax payable under the provisions of sub-sections (3) and (4) of section 5 of the Integrated Goods and Services Tax Act;

(d) the tax payable under the provisions of sub-sections (3) and (4) of section 9 of the respective State Goods and Services Tax Act; or

(e) the tax payable under the provisions of sub-sections (3) and (4) of section 7 of the Union Territory Goods and Services Tax Act,"

but does not include the tax paid under the composition levy;"

Only goods and services are supplied to him and thus, he is the person who is the recipient of such goods and services which entitles him to the credit of tax paid on such goods and services as credit. In case the supply of such goods and services is not made to him, he is not the person entitled to the tax paid on such goods and services as ITC. The supply of goods and services in case of *pure agent* is not made to him but his principal and such pure agent merely makes the payment on behalf of the recipient and thus, is eligible to claim such amount from the recipient as reimbursement.

Explanation to Rule 33 of CGST Rules, explains the concept of pure agent. [Please Refer Q184 for Rule 33]

Under the concept of pure agent, the agent receives supplies of goods and services on behalf of the recipient of supply. Thus, he does not receive goods or services in his own capacity. Further, invoice will be issued by the supplier in the name of the recipient and not in the name of the agent.

Further, Section 16 of the CGST Act specifies the eligibility and conditions for availment of ITC. [Please refer Q No.270 for Section 16(2)]

As per section 16(2) of the CGST Act, possession of tax invoice and receipt of goods or service are the essential conditions to avail ITC by the taxpayer. The agent is not in possession (custody does not mean possession) of invoice. The difference between custody and possession is that a possessor has complete dominion over the property while a custodian merely has the duty of care or supervision over the property. Thus, he is not the possessor of such invoice. Also, he cannot be said to have received goods or services as no supplies are made to him. Hence ITC would not be available to him.

Hence, the person acting as pure agent should recover the full amount of expense from the recipient including the value of GST. The recipient will be eligible to take ITC as per section 16.

Q273. How to treat following transactions:

(i) Supply / delivery shortages in transit.

(ii) Customer gets less quantity than invoiced and also pays less based on actual receipt.

In case of shortage of receipt quantity than invoiced quantity, whether ITC should be taken in proportion to the quantity received?

Ans. In case of supply shortages, unilaterally the recipient should not account for the ITC. Such shortages in quantity are to be reconciled with the supplier and it is advisable that the supplier may issue credit note to the customers based on actual supplies.

If the value of the invoice is not to be changed, then the recipient should recognize the normal and abnormal loss in transit. Any acceptable or normal loss in transit as per the industry norms may not entail reversal of ITC. Excess shortage of receipt of quantity may require blockage of ITC under section 17(5) of the CGST Act.

Q274. What are the criteria for availing ITC in case of goods received in lots or in installments?

Ans. As per first proviso to section 16(2) of the CGST Act, in case goods covered under an invoice are not received in a single consignment but is received in lots/ installments, ITC can be claimed only upon receipt of the last lot/ installment.

Q275. A supplier has shown sales as B2C. Is the recipient eligible to claim ITC, if he possesses tax invoice?

Ans. Possessing tax invoice alone is not enough to be eligible to claim ITC, even assuming that it is a *bona fide* transaction for receipt of goods or service and that the recipient's GSTIN is correctly mentioned therein.

One of the requirements to be eligible to claim ITC, as provided under section 16(2) of the CGST Act, is that the tax charged in respect of such supply has been actually paid by the supplier to the Government, either in cash or by utilization of ITC. In terms of section 37 of the CGST Act and Rule 59 of the GGST Rules, the supplier is required to furnish details of his outward supplies in

Form GSTR-1, *inter alia,* invoice wise details of supplies to registered persons, including taxable value and tax, and in particular GSTIN of the recipient.

These details in turn are available to the recipient in Part A of **Form GSTR-2A** to confirm that ITC claimed by him and the supplier's declaration are in line.

Where, if the supplier has shown sales as B2C, no details of his outward supply would be updated by him with recipient GSTIN. Consequently, no information on how the supplier has shown the transaction in his outward supplies will be available with the recipient in **Form GSTR-2A** to match the same with the ITC taken by him.

The recipient will thus fail to show that the ITC claimed by him meets the aforesaid requirement under section 16(2); the tax charged has been paid by the supplier to the Government as he cannot co-relate the ITC with supplier's outward details. This will jeopardize his claim for credit.

Incidentally, the practical way out in such a situation to protect ITC would be to take up with the supplier and request him to amend the details of outward supply by including this transaction in B2B Table and amending it from B2C to B2B. However, this needs to be done within the timeline of section 16(4) of the CGST Act, for taking credit.

Q276. How to take input credit in third party transfer directly by the supplier instead of routing through the original purchaser for operational conveniences. When the original purchaser does not want to disclose the purchase price to the third party, is it possible?

Ans. As per section 16(2) of the CGST Act, one of the conditions to avail ITC is that the recipient of supply should have received the goods or services or both.

In terms of the explanation below section 16(2) (b) of the CGST Act it shall be deemed that the registered person has received the goods or services–

(i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person.

Hence, in case supplies are made directly by the third person without actually receiving the goods from the original supplier, still ITC would be available to the said third person.

If the original purchaser does not intend to show the value of supplies to the third party who actually receives the goods, he may ask the supplier to issue delivery challan instead of tax invoice, for such transaction, and e–way bill can also be generated through such delivery challan.

Another option is the original purchaser may provide 'Bill from' address as his own and 'Ship from' address as his supplier's address in the invoice raised to the final buyer as well as within the e-way bill. The original purchaser may not hand over the copy of his purchase invoice either to the transporter or the final buyer.

Q277. If seller does not deposit the GST with the Government then as per section 16(2) (c) of the CGST Act, the buyer cannot claim input tax of the same? Is depositing tax amount by the seller a pre-condition for availing ITC?

Ans. As per section.16(2) of the CGST Act, one of the conditions to claim ITC is that the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of ITC admissible in respect of the said supply.

Given the current **Form GSTR-3B** structure wherein the buyer may not know if the seller has paid the taxes and can prove his *bona fides*, then the deposit of taxes may be challenged by such buyer.

From October 2019, Rule 36(4) of the CGST Rules, provides for restriction of ITC to 120% (reduced to 110% from 1st January 2020) of the eligible credit being reflected in **Form GSTR-2A**. There may

be practical challenges to the accurate implementation of this rule though.

Q278. Whether 180 days criteria are applicable for whole payment or only for the payment of GST? Assuming if a recipient had paid only the GST portion of invoice to the supplier and not the entire payment whether the recipient can take entire ITC as tax value has been paid by him?

Ans. As per second proviso of Section 16(2) of the CGST Act, when the recipient fails to pay to the supplier of goods or services or both, the amount towards the value of supply along with tax payable thereon within a period of 180 days from the date of issue of invoice by the supplier, an amount equal to the ITC availed by the recipient shall be added to his output tax liability, along with interest thereon.

Note: The above restriction shall not apply to supplies on which tax is payable on reverse charge basis by the recipient.

Also, the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.

The question under consideration is, if the recipient pays only the tax value to the supplier, whether he is eligible for the ITC or not.

Since the payment requirement as stipulated above is towards the value of supply along with tax payable, payment of Tax component and availment of the same as ITC is not permissible. Also, when part payment is made towards the value of supply, proportionate credit towards the value of supply paid shall be eligible for ITC as per Rule 37 of the CGST Rules.

In case if the payment is not made within 180 days the ITC claimed by the supplier need to be reversed along with Interest from the date of taking the credit till the date of payment or reversal along with Interest as per Section 50(1) of the CGST Act. In case if the payment to supplier is made after reversal of ITC at a later date, the supplier is eligible to re-claim the credit.

Q279. Can ITC be claimed by the recipient, when both the supplier and recipient agree in writing that the value of supply shall be made after 180 days based on a contract?

Ans. As per second proviso to section 16(2) of the CGST Act, the registered person must pay the supplier the value of goods along with tax amount within 180 days from the date of invoice. In case of failure to do so, corresponding credit availed by the registered person will be added to his output tax liability along with interest of 18 % (from the date of availing credit to the date on which the amount was added to his output liability). However, credit can be fully availed, once payment is made to the supplier. Hence, even if it is agreed between the supplier and recipient for payment of value of supply after 180 days based on contract, ITC shall still not be available to the recipient for such supply. Having said this, re-availment of ITC upon making the payment at a later date is without any time limit.

Q280. Explain the meaning of "*receiving of invoice for taking of credit*". Will the date of invoice be deemed as date of receiving of invoice or date of actual receipt by mail or by post?

Ans. One of the conditions for taking ITC as per section 16(2) of the CGST Act, is that the recipient is in possession of a tax invoice or debit note issued by a registered, or other prescribed tax payer. . Hence for availment of ITC, the recipient should be in possession of the same. Actual receipt of invoice which entitles him to such possession would be the pre-condition for entitlement of ITC.

Q281. In case of non–payment to supplier within 180 days, the recipient has to reverse the ITC but if the supplier has already deposited the tax and also provided the proof of deposit of tax, will the recipient be able to avail the ITC?

Ans. As per the second proviso to section 16(2) of the CGST Act, when the *recipient fails to pay to the supplier* of goods or services or both, the amount towards the value of supply along with tax payable thereon within a period of 180 days from the date of issue of invoice by the supplier, an amount equal to the ITC availed by the recipient shall be added to his output tax liability, along with interest thereon. Hence, the fact that the supplier paid the tax amount does not change the above provisions. ITC can be re-availed upon payment of value of supplies to the supplier.

Q282. ITC claimed but payment to supplier done after 2 years. Whether entitled to take ITC after 2 years?

Ans. Payment to supplier is not a condition precedent to be entitled to ITC nor does the GST Law provide any timeline for payment to supplier.

However, the second proviso to section 16(2) of the CGST Act provides that where ITC has been availed in respect of any supply but the recipient fails to pay to the supplier the amount towards the value of supply along with the tax payable thereon within a period of 180 days from the date of issue of invoice by the supplier, an amount equal to ITC availed by the recipient shall be liable to be added by the recipient to his output tax liability, along with interest thereon, in such manner as may be prescribed.

Further, Rule 37 of the CGST Rules, in effect provides that in such an eventuality, the amount of ITC proportionate to such amount not paid to the supplier shall be added to output tax liability of the recipient for the month immediately following the period of 180 days from the date of issue of the invoice; besides, the recipient shall be liable to pay interest as specified in the rule. In nutshell, ITC is required to be reversed together with interest where the supplier has not been paid for the supply within 180 days of invoice date.

In the instant case, ITC has been claimed but the supplier was paid only after two years. In view of the provisions stated above, such ITC shall be liable to be reversed and paid back after 180 days of invoice date with interest. Assuming that it has been done, the next issue to address is whether the recipient can claim ITC after two years when he pays the supplier.

As per the third proviso to section 16(2) of the CGST Act, the recipient who has reversed / paid back the amount of ITC as per the provisions discussed earlier, shall be entitled to re-avail ITC on payment made by him to the supplier towards the value of supply along with tax payable thereon. Moreover, as per Rule 37(4) of the CGST Rules, the timeline specified under section 16(4) for availing ITC shall not apply to a claim for re-availing of the credit that had been reversed earlier on account of non–payment to the supplier within specified period.

Hence, in the instant case, ITC can be re-availed after payment is made to the supplier after two years.

Q283. Supplier has uploaded invoice details in Form GSTR-1, but the recipient is not in possession of the invoice. In such a case what is the criteria for availing credit?

Ans. One of the conditions for taking ITC as per section 16(2) of the CGST Act is that the recipient is in possession of a tax invoice or debit note issued by a registered, or other prescribed tax payer. Hence for availment of ITC, the recipient should be in possession of the same.

When the recipient of supply is not in possession of tax invoice or other valid prescribed documents, ITC cannot be claimed even though the said invoice appears in his **Form GSTR-2A**.

Q284. A recipient of supply has reversed the ITC on account of non-payment of the value of supply to supplier. When subsequently payment is made towards such supply, is he entitled to avail the ITC? Is there any time limit prescribed for such re-availment?

Ans. As per second proviso of section 16(2) of the CGST Act, the registered person must pay the supplier the value of goods along with tax amount within 180 days from the date of invoice. Upon the failure of doing so, corresponding credit availed by the registered person will be added to his output tax liability along with interest at the rate of 18 % (from the date of availing credit to the date when the amount was added to his output liability). However, ITC can be fully availed, once payment is made to the supplier.

As per Rule 37(4) of CGST Rules, the time limit specified under section 16(4) of the CGST Act, for normal availment of ITC, *shall not apply* to a claim for re-availing of any credit, in accordance with the provisions of the Act or the provisions of this Chapter that had been reversed earlier. Hence, there is no specific time limit restriction for re-availment of reversed ITC.

Q285. Can CGST and State GST paid for hotel stay in one State be used as ITC for a person registered in another State? Whether, ITC on CGST portion of such tax paid reflected in the electronic credit ledger can be availed?

Ans. As per section 2(62) of the CGST Act *'Input tax'* in relation to a registered person, *inter alia*, means, the CGST, SGST and IGST charged on any supply of goods or services to the registered person. CGST and SGST are two components of the GST charged on intra-State supplies and IGST is the GST charged on inter-State supplies.

Section 49(4) of the CGST Act provides that the amount available in the electronic credit ledger, as defined under section 2(46) of the CGST Act, may be used for making such payment towards outward tax liability. The electronic credit ledger contains the balance of ITC on inward supplies as per the return of a registered person.

As input tax and its credit are always linked with, the question as to whether the person is registered or not, the two components of GST paid on inward intra-State supply in a State, could have been taken credit of, if only registration is taken in that particular State. The architecture of the GST Act is such that even if a person is registered in different States all such registrants will be treated as distinct persons, and input tax in the credit ledger of one such person is not transferable to the credit ledger of another. If the person is not registered in a particular State, the tax paid on the inward supplies in that State is not *'input tax'* in relation to the said person and hence no ITC shall be allowed in such case.

Q286. With regard to IGST paid on import or tax paid under RCM, whether ITC is allowed even if the supplier has not provided its details in Form GSTR-2A, or the restriction stipulated under Rule 36(4) of the CGST Rules will apply?

Ans. As the above items cannot be reflected in **Form GSTR-2A**, the recipient is entitled to take ITC based on the documentary evidence of payment of tax. Restrictions provided in Rule 36(4) of the CGST Rules, shall not apply to the above items. This has also been clarified in *Circular No. 123/42/2019-GST dated 11.11.2019*

Q287. Whether a dealer can claim ITC in subsequent month even though the invoice raised by the supplier was in the previous month? Whether ITC availment can be deferred for subsequent periods?

Ans. The time limit for availment of ITC as per section 16(4) of the CGST Act is available upto the due date of furnishing of the return under

section 39 for the month of September following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier; the recipient may avail ITC within the above said time limits. The dealer may avail the ITC in any of the months preceding this outer time limit.

Q288. Will the ITC remaining unutilised in electronic credit ledger be available on transfer on account of sale, merger, demerger, amalgamation, lease or transfer of business per section 18(3) of the CGST Act? What is the treatment in case of demerger?

Ans. As per section18(3) of the CGST Act, read with Rule 41(1) of the CGST Rules, a registered person shall, in the event of sale, merger, de-merger, amalgamation, lease or transfer or change in the ownership of business for any reason, furnish the details of sale, merger, demerger, amalgamation, lease or transfer of business, in **FORM GST ITC-02**, electronically on the common portal along with a request for transfer of unutilized ITC lying in his electronic credit ledger to the transferee.

In case of demerger, the ITC shall be apportioned in the ratio of the value of assets of the new units as specified in the demerger scheme. It is worth noting that for the purpose of this sub-rule, "*value of assets"* means the value of the entire assets of the business, whether or not ITC has been availed thereon. *Circular No.133/03/2020-GST dated 23.03.2020* provides further clarification in such transactions.

Q289. Whether handing over of goods by supplier to transporter can be assumed as receipt of goods for the purpose of availing ITC?

Ans. Relevant conditions specified under section 16(2) of the CGST Act, for availment of ITC are -

- Recipient is in possession of a tax invoice or debit note issued by a registered supplier,
- Recipient has received the goods or services or both.

It shall be deemed that the registered person has received the goods where the goods are delivered by the supplier to a recipient

or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise.

In the given case, when the goods were intended for movement and the supplier has handed over the same to the transporter, it shall not be treated as receipt of goods by the recipient and hence does not satisfy the conditions under section 16(2) of the CGST Act for availment of ITC.

Q290. We have been exempted from payment of IGST while importing under EPCG Scheme. Later due to non-fulfillment of export obligation, we had to pay the duty again (Say after 3 years). How to take ITC of IGST paid after 3 years from invoice date.

Ans. In such cases, the mechanism of payment is through TR-6 challan. Even though not specified as a relevant document specifically, it may be regarded as *'any similar document issued under the Customs Act, 1962'* for the purpose of availment of ITC. Further, the pre-condition of payment of tax arises during the year. [Section 16(2) (c) of the CGST Act] One may argue that the ITC arises in the year of payment and the outer time limit of section 16(4) of the CGST Act would arise accordingly.

Q291. Is the restriction provided in Rule 36(4) of the CGST Rule, be calculated supplier wise or on consolidated basis?

Ans. The restriction imposed under Rule 36(4) of the CGST Rule, is not supplier wise. The credit available under Rule 36(4) is linked to total eligible credit from all suppliers against all supplies whose details have been uploaded by the suppliers.

Further, the calculation would be based only on those invoices which are otherwise eligible for ITC. Accordingly, those invoices on which ITC is not available under any of the provisions (say under sub-section (5) of section 17 of the CGST Act) would not be considered for calculating revised 10% of the eligible credit available.

The above has also been clarified *vide Circular no. 123/42/2019-CGST dated 11.11.2019*.

Q292. Explain Rule 86A of the CGST Rules relating to conditions of use of amount available in the electronic credit ledger?

Ans. Rule 86A of the CGST Rules is as follows:

"*86A. Conditions of use of amount available in electronic credit ledger.*

(1) The Commissioner or an officer authorised by him in this behalf, not below the rank of an Assistant Commissioner, having reasons to believe that credit of input tax available in the electronic credit ledger has been fraudulently availed or is ineligible in as much as –

(a) the credit of input tax has been availed on the strength of tax invoices or debit notes or any other document prescribed under rule 36 -

(i) *issued by a registered person who has been found non-existent or not to be conducting any business from any place for which registration has been obtained; or*

(ii) *without receipt of goods or services or both; or*

(b) the credit of input tax has been availed on the strength of tax invoices or debit notes or any other document prescribed under rule 36 in respect of any supply, the tax charged in respect of which has not been paid to the Government; or

(c) the registered person availing the credit of input tax has been found non-existent or not to be conducting any business from any place for which registration has been obtained; or

(d) the registered person availing any credit of input tax is not in possession of a tax invoice or debit note or any other document prescribed under rule 36,

may, for reasons to be recorded in writing, not allow debit of an amount equivalent to such credit in electronic credit ledger for discharge of any liability under section 49 or for claim of any refund of any unutilised amount.

(2) The Commissioner, or the officer authorised by him under sub-rule (1) may, upon being satisfied that conditions for disallowing debit of electronic credit ledger as above, no longer exist, allow such debit.

(3) Such restriction shall cease to have effect after the expiry of a period of one year from the date of imposing such restriction."

Rule 86A has been inserted *vide Notification No. 75/2019 – Central Tax dated 26.12.2019*. This Notification has been issued by the Government in exercise of the powers conferred by section 164 of the CGST Act, to make rules, on the recommendations of GST Council, for carrying out the provisions of the Act. It is pertinent to note that the GST Council in its 38th Meeting held on 18.12.2019 had recommended *"to check the menace of fake invoices, suitable action to be taken for blocking of fraudulently availed input tax credit in certain situations"* and subject rule is one of the provisions brought in to give effect to this recommendation of the Council. Thus, Rule 86A, is not any procedural rule concerning ITC but it is an anti-evasion measure to control misuse of ITC by authorising the tax authorities to block ITC for the time being under the specified circumstances. It may also be noted that whereas the authority acting under the provisions of this rule is required to record in writing the reasons for the same, the concept of notice and show cause has been done away with.

An analysis of the Rule shows that it provides for two-fold action:

(a) Action against fraudulent credit by those who involve into invoice trading without goods or services or those who avail credit fraudulently. The provisions under clause (a), (c) and (d) of sub-rule (1) deal with such situations. Genuine taxpayers and professionals have no issue on this part as it concerns fraudulent credit.

(b) Action against ineligible credit contemplated *under clause (b) of sub-rule (1),* in cases of non-payment of tax in respect of which ITC has been availed (this clause has been highlighted in the provisions of Rule 86A of the CGST Rules reproduced earlier). This provision in the rule is discussed below in greater details as it has implications for genuine taxpayers.

In the context of ITC, there can be two situations of non-payment of tax- either invoices are not uploaded by the supplier, or the invoices are uploaded but payment and return have not been made/ uploaded by him. In either of these situations, the aforesaid provisions of Rule 86A, in respect of ineligible credit cannot be faulted in as much as it is in consonance with one of the conditions under section 16(2) (c) of the CGST Act, for eligibility of ITC that tax charged in respect of supply (of which ITC is availed) has been actually paid to the Government.

However, there are other issues as well in having such a provision in the statute book. First, in a tax system working on forward collection basis, responsibility lies on the supplier to pay on time the taxes collected. The recipient pays the supplier including taxes under contractual terms which the supplier is to pay to Government on time.

Secondly, there are procedural restrictions on availing ITC which the recipient must comply like Rule 36(4) of the CGST Rules, which limits credit of invoices not uploaded to 10% of eligible credit uploaded by suppliers.

Thirdly, there are ample powers with the Government to deal with errant suppliers for ensuring compliance and recovery. Therefore, from compliance perspective to punish a recipient for default of supplier may not be a fair proposition.

In fact, Government authorities would find it easier to block credit rather than pursuing the supplier for payment. Moreover, when the recipient has followed the process of law, in a value added tax system like GST, whether credit of tax on inputs or input services is a vested right of recipient and can the same be diluted, itself is a contentious issue. Further, as mentioned earlier, in rule 86A of the CGST Rules, even the concept of notice and showing cause has been done away with. All this makes this part of the rule concerning ineligible credit, as contained in clause (b) of sub-rule (1), a matter of concern for taxpayers and a contentious issue going ahead.

Q293. Whether scanned copy of invoice received through email can be treated as original invoice for the purpose of section 31 of the CGST Act?

Ans. Rule 36 of the CGST Rules, prescribes the documents for claim of ITC by a registered person. Rule 36(1) of the CGST Rules mandates '*an invoice issued by the supplier of goods or services or both in accordance with the provisions of section 31*;' as one of the documents available for availing ITC. As per section 31 of the CGST Act, read with Rule 46 of the CGST Rules, tax Invoice for goods shall be prepared in triplicate and for services in duplicate.

There is no mandatory condition in Rule 36 stating which copy of the invoice should be used for availing ITC. Hence any of the copies *viz*., Original, Duplicate or Triplicate as the case may be, shall be used for availing ITC. But use of a photocopy or scanned copy is not in line with the expectation of Rule 36 and hence should not be treated either as original invoice or eligible document for availing ITC.

Q294. Can you please clarify if ITC on airfare is allowed as credit if used for business travel?

Ans. This doubt arises because of the disallowance under section 17(5)(b) (iii) of the CGST Act, which provides that ITC shall not be available in respect of 'travel *benefit's extended to employees on vacation such as leave or home travel concession'*. However, it is pertinent to note here that the restriction is applicable only if the airfare pertains to employees travelling for vacation or leave (personal use). If the employee/director makes any travel for business purposes there is no restriction under section 17(5) of the CGST Act and ITC is fully allowed provided all conditions under section 16 of the CGST Act are satisfied.

Q295. Can a company take credit of a motor vehicle with a seating capacity of more than 13 used for transportation of employees?

Ans. From 01-02-2019 section 17(5)(a) of the CGST Act, provides that ITC shall be disallowed on *motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver)*. Hence ITC on motor vehicle with seating capacity of more than 13 is allowed if it is used in the course or furtherance of business including use for transportation of employees. However, prior to 01-02-2019, ITC was not allowable.

Q296. Whether gold coins distributed to customers as sales promotion is eligible for credit?

Ans. As per section 17(5) (h) of the CGST Act, ITC is disallowed on *'goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples'*. It is a general view that gold coins distributed to customers as sales promotion should be disallowed under section 17(5) (h) of the CGST Act.

Q297. Whether ITC on insurance on motor vehicle used for transportation of goods available?

Ans. The restriction placed by section 17(5) of the CGST Act, shall apply only in the case of motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver). There is no restriction with regard to ITC on motor vehicles used for transportation of goods. Further, ITC on all expenses including insurance expenditure would be allowable under the law.

Q298. We are association of person (AOP) registered under GST. We conduct social gathering functions for our members and charge fees for the same and collect GST. We provide lunch or dinner to our members during those gatherings. Whether GST paid on catering services provided for these functions can be claimed as eligible ITC ?

Ans. As per section 17(5) (b) of the CGST Act, ITC shall not be available in respect of food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) except when used for the purposes specified therein, life insurance and health insurance.

It may be noted that ITC in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply.

In the given case, the registered AOP is not eligible for availment of ITC on account of payment made to catering supplies.

Q299. A retailer has booked an under-construction commercial shop in same city say Vashi in Navi Mumbai as his branch and he has paid GST while purchasing commercial shop. Can he claim ITC of GST paid on purchase of shop, to be utilized against his regular output liability?

Ans. Section 17(5) (d) of the CGST Act, specifically places a restriction for availment of ITC with respect to construction of an immovable property including when such property is used in the course or furtherance of business. It reads :

> *"(d) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business*
>
> *Explanation.-For the purposes of clauses (c) and (d), the expression "construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property;"*

Further, as per Schedule II of the CGST Act read with *NN 11/2017-CTR*, sale of under-construction unit is deemed construction service. Therefore the retailer is not eligible for availment of ITC on purchase of shop.

Q300. Discuss "Buy One, Get One Free", with respect to section 17(5) (h) of the CGST Act.

Ans. Section 17(5) (h) of the CGST Act, specifically restricts credit with respect to goods disposed of by way of 'gift' or 'free samples'. It may appear at first glance that in case of offers like *"buy one, get one free",* one item is being supplied free of cost without any consideration, and thus may qualify as gift.

However, as per the commonly understood definition of 'gift', it is something given graciously, without any consideration whatsoever in return. In case of "buy one, get one free", the price of the item given free is actually included in the price of the first item. Thus, it can be said that restriction under section 17(5) of the CGST Act, does not apply to such offers.

Q301. 'A' owns a pharmacy. If A gives a gift to its customers upon a specific purchase, which gift is not related to medicine, then what is the legal position of ITC on such goods given free?

Ans. The principle outlined in the answer to question no. 300 will apply, irrespective of whether the item given free is related or otherwise. Hence, ITC will be available.

Q302. Stocks written-off being old or non-moving, is ITC needed to be reversed? Is reversal required even in case such stock is still held physical stock of the registered person?

Ans. Yes. Section 17(5) (h) of the CGST Act, provides that ITC shall not be available in respect of goods lost, stolen, destroyed, *written off* or disposed of by way of gift or free samples. Thus, ITC is to be reversed on stock which is written-off. However, one can take a legal position that the above restriction may not apply in case stock is only partially written-off.

The aforesaid reversal of credit is true irrespective of whether the stock is physically held by the registered taxpayer even after writing-off.

Q303. If assets are written-off without any sale value, what are the GST implications?

- **Scenario 1-Original asset purchased during pre-GST era**
- **Scenario 2-Original asset purchased during GST era.**

Ans. Following are the possible solutions for the given scenarios;

Scenario I: Original Asset purchased during pre-GST era;

Since asset is purchased in pre-GST era, there is no ITC and technically there shall be no GST impact. Refer definition of ITC under GST regime.

Scenario II: Original Asset purchased during GST era;

There shall be reversal of input tax liability pursuant to section 17(5) (h) read with section 18(6) of the CGST Act. Once ITC is reversed, Schedule - I may not be applicable.

Following are the relevant provisions (relevant extract);

Section 2 (63) of CGST Act: *"input tax credit" means the credit of input tax.*

Section 2(62) of CGST Act: *"input tax" in relation to a registered person, means the central tax, State tax, integrated tax or Union territory tax charged on any supply of goods or services or both made to him and includes—*

(a) the integrated goods and services tax charged on import of goods;

(b) the tax payable under the provisions of sub-sections (3) and (4) of section 9;

(c) the tax payable under the provisions of sub-sections (3) and (4) of section 5 of the Integrated Goods and Services Tax Act;

….."

Section 17(5) of CGST Act: *Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following, namely:—*

(a) ***…….***

……..

(h) Goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples.

Section 18(6) of the CGST Act **:**

(6) In case of supply of capital goods or plant and machinery, on which input tax credit has been taken, the registered person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and machinery reduced by such percentage points as may be prescribed or the tax on the transaction value of such capital goods or plant and machinery determined under section 15, whichever is higher:

Provided that where refractory bricks, moulds and dies, jigs and fixtures are supplied as scrap, the taxable person may pay tax on the transaction value of such goods determined under section 15.

Schedule I CGST Act, Activities to be treated as Supply even if made without consideration

"Para 1: *Permanent transfer or disposal of business assets where input tax credit has been availed on such assets."*

Schedule II CGST Act, Activities to be treated as Supply of Goods or Supply of Services

"Para 4: Transfer of business assets;

(a) Where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, whether or not for a consideration, such transfer or disposal is a supply of goods by the person;

(b) Where, by or under the direction of a person carrying on a business, goods held or used for the purposes of the business are put to any private use or are used, or made available to any person for use, for any purpose other than a purpose of the business, whether or not for a consideration, the usage or making available of such goods is a supply of services;

(c) Where any person ceases to be a taxable person, any goods forming part of the assets of any business carried on by him shall be deemed to be supplied by him in the course or furtherance of his business immediately before he ceases to be a taxable person, unless –

(i) The business is transferred as a going concern to another person; or

(ii) The business is carried on by a personal representative who is deemed to be a taxable person.

Q304. A registered person fails to claim GST input in FY 2018-19, though it was reflected in the audited financial statement. This was further pointed out in Form GSTR 9C by the Auditor, after the due date of filing of GST Return Form 3B of the month of September, 2019. Can the registered person claim this ITC?

Ans. As per section 16(4) of the CGST Act, the ITC for the FY 2018-19 can be claimed only upto the due date of filing of return for the

month of September of the succeeding financial year. In the present case, the registered dealer will not be able to claim the ITC, since it has not been claimed within the due date of return for the month of September – 2019. Further, the ITC not claimed within eligible time will lapse and the GST Auditor may disclose the same accordingly in the **Form GSTR – 9C**.

Q305. Whether ITC is required to be reversed against non-supply income?

Ans. The transactions listed in Schedule III of the CGST Act are *"not supplies"* and hence they are neither *'exempt supplies'* nor are they *'non – taxable supplies'*. The explanation added to section 17(3) of the CGST Act, [*vide* The Central Goods and Services Tax (Amendment) Act, 2018 w.e.f. 01-02-2019], provides that no ITC is required to be reversed for Schedule III supplies except Entry No. 5 of the said Schedule i.e., in respect of land and completed building. Hence ITC is not required to be reversed for non-supply income except in case of land and completed building.

Q306. A builder, who is engaged in construction services, is allowed one-third deduction on the value of flat towards the value of land; because of this deduction are they required to reverse ITC?

Ans. As per section 17(2) of the CGST Act, the need for reversal would be applicable if the supplier is engaged in both taxable and exempted supplies. In this case, the said deduction is as part of determination of value and will not be considered as an exempted supply. Hence, reversal of ITC is not warranted. However, when the undivided share of land (UDS) is sold and the said value is accounted in the books, ITC reversal needs to be done as per explanation provided in Rule 42 of the CGST Rules.

Q307. An exporter of goods receives duty drawback or export incentive as duty credit scrips, which are subsequently sold by the supplier to others. He has availed ITC on purchase of goods, telephone bill, consultancy services, audit fees on goods which as exported. How to calculate and what service to be considered for reversal?

Ans. Duty drawback is not a supply; however sale of duty credit scrips is exempted goods. If the supplier is engaged in supply of both taxable and exempted goods, then as per section 17(2) of the CGST Act, the need for reversal would arise. The reversal of ITC will depend upon the ratio of taxable and exempted services applied on the common credit arrived as per Rule 42 of the CGST Rules.

Q308. Whether ITC is available on destroying the perishable goods like ice cream on its expiry date as per instruction of supplier as a matter of ethical trade practice?

Ans. As per section 17(5) (h) in case of goods lost, stolen, destroyed, written off or disposed off by way of gift or free samples, ITC need to be reversed. In the instant case, ice creams are destroyed due to its expiry and as per instruction of supplier as a matter of ethical trade practice; ITC available on such supplies needs to be reversed.

Q309. ABC a registered person has installed a plant and machinery, which will be used for providing testing services. This plant and machinery are attached to land using concrete mixture. As per clarification received from client this machinery can be moved and fitted anywhere. My question is whether we can take credit of ITC on materials and services used for construction of this plant and machinery?

Ans. Section 17(5) of the CGST Act, is an overriding section, restricting the ITC on inward supplies by way of defining blocked credits. section 17(5) (c) and section 17(5) (d) of the CGST Act, blocks the credit of tax paid on purchase of goods, services or works contract used for construction of immovable property other than Plant and Machinery. Further, the explanation to section 17(6) of the CGST Act defines *"Plant and Machinery"* to mean apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods and services or both and includes such foundation and structural supports but excludes – (i) land, building or any other civil structures; (ii) telecommunication towers; and (iii) pipelines laid outside the factory premises.

Hence, it can be inferred that ABC is eligible to take ITC on materials and services used for construction of this plant and machinery.

Q310. In respect of an NBFC or a Bank that has opted to avail 50% ITC as per section 17(4) of the CGST Act, whether the NBFC/bank can avail full ITC of tax paid under RCM or only 50% can be availed? Further, how the ITC on fixed assets shall be availed?

Ans. As per section 17(4) of the CGST Act, a banking company or NBFC which has opted for this method, their eligible ITC taken or availed on input, input services and capital goods in excess of 50% shall lapse. Hence, the NBFC or Bank has to reverse ITC on all input services on which they have claimed ITC where taxes were paid under forward charge mechanism or RCM including capital goods.

Q311. A supplier is supplying goods or services to SEZ unit, under the cover of LUT without payment of IGST. Instead of taking refund of ITC paid by the supplier on his purchase, which are used for supplies to SEZ unit, can the supplier use such ITC claimed on purchase to offset tax in respect of outward taxable supplies other than SEZ supply?

Ans. Yes, the supplier of goods or services to SEZ unit without payment of tax, can use his accumulated ITC on inward supplies which are used for SEZ outward supplies, towards set-off of tax payable on outward supplied of goods or services made to other than SEZ units. Any ITC available in his electronic credit ledger in excess after such adjustment will be available for claiming refund.

Q312. A Supplier exported goods worth of ₹ 5 Crore and on such export he was entitled for a MEIS Scrip. Such scrip was subsequently sold by the supplier for a value of ₹ 10 Lacs, which is exempted from levy of GST. Is the exporter required to reverse ITC proportionately on all purchase or only on common expense like professional fee, expense on which ITC was claimed?

Ans. Sale of duty credit scrips are exempted as per the GST Law. As per section 17(2) of the CGST Act, the need for reversal would arise if the supplier is engaged in both taxable and exempted supplies. In this case, the reversal of ITC will be calculated as per Rule 42 of the CGST Rules.

As per the said rule, the ITC to be reversed proportionately will be based on inputs or input services, which are commonly used for both

taxable and exempted supplies. Hence, ITC will be proportionately reversed on common expenses only.

Q313. Do we need to reverse the credit of the GST on goods which are used for free supply under warranty period?

Ans. Certain kinds of goods are sold which require the manufacturers to provide a period-based warranty, wherein if the goods face any issue the manufacturer repairs the same at his own cost which may involve replacement of spares. Classic case which can be taken as an example here would be a motor car.

If car having 2 years warranty sold by an authorised dealer faces a malfunction within the first 2 years, the customer has the right to get it repaired free of cost. Sale price of the car includes the cost of warranty as well. Dealer repairs the car and replaces say ₹ 1 lakh worth of spares and raises the invoice for these spares to the manufacturer who bears the cost. Spares so replaced are provided to the customer free of cost because at the time of purchase, the car came with 2 years of warranty.

From the standpoint of the dealer, whatever spares are replaced by him he had purchased those from the manufacturer and on behalf of the manufacturer has supplied it to the customer for a consideration and hence the question of reversal of its ITC does not arise. As far as the manufacturer is concerned, promise of warranty was sold to the customer along with the car and therefore the sale price of the car included warranty as well on which GST has been borne.

All conditions prescribed in section 16 of the CGST Act, are fulfilled by the manufacturer and hence the question of reversal of ITC does not arise.

Further, section 17 (5) (h) of the CGST Act, provides that ITC will not be allowed if goods are:

a. Lost

b. Stolen

c. Destroyed

d. Written off or

e. Disposed of by way of

(i) Gift or

(ii) Free Samples

Goods supplied under warranty are not covered under any of the situations outlined in the above section.

Lastly, in the FAQs issued by the CBIC on IT and ITES, the Government has clarified issues relating to warranty supply as under:

> ***"Question 20:*** *What would be the tax liability on replacement of parts (no consideration is charged from a customer) under a warranty and whether the supplier is required to reverse the ITC?*
>
> ***Answer:*** *As parts are provided to the customer without a consideration under warranty, no GST is chargeable on such replacement.* ***The value of supply made earlier includes the charges to be incurred during the warranty period. Therefore, the supplier who has undertaken the warranty replacement is not required to reverse the input tax credit on the parts/components replaced.***
>
> ***Question 21:*** *An Original Equipment Manufacturer (OEM) has an obligation to provide repair services to their customers in the warranty period. This activity is outsourced by OEM to 'D', who bills the OEM for the services he provides to the customer. What is the tax liability of 'D'?*
>
> ***Answer:*** *'D' is providing service to the OEM. GST is payable on the value of any supplies made by 'D' to OEM i.e. in respect of bills raised by 'D' on the OEM."*

In view of the above, the supplier is not required to reverse the credit of goods which are used for free supply under warranty period.

Q314. An individual and his spouse are carrying on distribution business for few years. Both are registered dealers under GST. Now they formed a partnership firm and decide to carry on their respective businesses together. Can their respective input credits be transferred to the new firm?

Ans. As per section 18 (3) of the CGST Act, *"Where there is a change in the constitution of a registered person on account of sale, merger, demerger, amalgamation, lease or transfer of the business with the specific provisions for transfer of liabilities, the said registered person shall be allowed to transfer the input tax credit which remains unutilised in his electronic credit ledger to such sold, merged, demerged, amalgamated, leased or transferred business in such manner as may be prescribed."*

In the instant case if the partnership firm succeeded the proprietorship firm in any of the above- mentioned methods, then the ITC accumulated in the hands of proprietorship firm, can be transferred.

Q315. IGST was paid on imported capital goods during the period between 01.07.2017 to 31.08.2017, which was otherwise "not payable" after a Notification was issued in respect of advanced authorisation license holders. How to treat the same in the books of accounts of the supplier if the goods are subsequently exempted? Can ITC be claimed fully in one go or does Rule 43 applies?

Ans. Where any person has imported capital goods upon payment of IGST, they are eligible to claim ITC immediately on receipt of machinery into their place of business. Yes, as the entire ITC paid will be eligible for credit immediately, entry can be made in the books of accounts. If the imported goods are subsequently used for manufacture of exempted goods, ITC on such capital goods has to be reversed as per Rule 43 of the CGST Rules.

Q316. What will be the treatment of ITC credit as on appointed date of registered person or un-registered person in the first return under section 40 of the CGST Act?

Ans. As per section 18(1) (a) of the CGST Act, *"a person who has applied for registration under this Act within thirty days from the date on which he becomes liable to registration and has been granted such registration shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of this Act;*".

Hence, the registered person can claim such credit in his first return.

Q317. Outdoor catering service is availed by us for serving food to our employees. Whether we are eligible to take ITC since we are paying tax on supply of food to employee?

Ans. Yes, set off is available as per proviso to section 17(5) (b) of the CGST Act, where outward supply falls in the same category of goods or services or both or as an element of a taxable composite or mixed supply.

Q318. Is second proviso to section 17(5) (b) applicable on sub-clause (i) of the said section?

Ans. No. Sub-clause (iii) ends with words similar to sub-clause (i) and hence the proviso is applicable only to sub-clause (iii) and not to all three sub-clauses. Also, the intent of the proviso is such that it is applicable only to sub-clause (iii) i.e., section 17(5) (b) (iii) of the CGST Act.

Q319. Is sale of vehicle used for carrying goods sold whose WDV is higher than sale value counts in exempt supply?

Ans. Sale of vehicle is a *taxable supply;* however by virtue of *NN 8/2018-CTR,* value of the said supply is the value that represents margin of the supplier, which is deemed to be zero in case the WDV is higher than the sale value. Hence it is taxable supply with value for taxation purpose to be zero rupee. However, this notification will apply only if the registered person has not taken input tax credit.

It is mentioned that the vehicle is used for carrying goods. If the registered person has claimed ITC, then the taxable amount will be an *amount* equal to *input tax credit attributable to* ***remaining useful life*** *or* the *tax* on the transaction value of such capital goods determined under section 15, whichever is higher.

As per rule 44(6) read with rule 44(1) (b) of the CGST Rules, the remaining useful life in months shall be computed on pro rata basis, taking the useful life as five years.

Q320. Is ITC available on Interior decoration service taken for setting up a new office or the same is blocked by section 17(5) of the CGST Act?

Ans. Interior decoration services in relation to a new office may involve many facets like services of interior decoration consultant, services

of, carpenter electrician, plumber etc. which may be availed from one agency jointly or may be availed from different agencies

Section 17(5) (c) and (d) of the CGST Act read as under:

"(5) Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following, namely :—

…….

(c) works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;

(d) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

Explanation. — For the purposes of clauses (c) and (d), the expression "construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property;

…."

It can be seen from both the above sub-clauses that ITC on construction is not allowed, if the same pertains to an immovable property. The term 'construction' is defined in an inclusive manner but interior decoration work is not included therein.

If the interior decoration work results in the creation of movable property like tables, chairs, curtains, etc. then ITC on the same will be available as the restriction in these sub-clauses will not apply. However, if the interior decoration work results in creation of immovable property then ITC will not be available.

Q321. What is the time limit for availing ITC for F.Y 2018-19?

Ans. Section 16 (4) of the CGST Act reads as under:

"(4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods

or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier"

In terms of the aforesaid provision, the time limit for taking ITC for the FY 2018-19 is up to the date of filing of return **(Form GSTR-3B)** for the month of September 2019. The due date of filing of Form GSTR-3B for the month of September, 2019 was 20th of October, 2019. There is no relaxation given beyond this date.

Note : It is pertinent to mention here that *vide* The Finance Act, 2020, it is proposed to delink the date of issuance of debit note from the date of issuance of the underlying invoice for the purposes of availing ITC, by proposed amendment in Section 16(4) of the CGST Act. The sub section reads thus:

"(4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or ~~invoice relating to such~~ debit note pertains or furnishing of the relevant annual return, whichever is earlier".

Q322. An asset no more useful in business is taken over by businessmen for his personal use in the fourth year. Whether he will have to reverse ITC on such asset, claimed at the time of purchase?

Ans. According to section 18(6) of the CGST Act, in the case of supply of capital goods or plant and machinery, on which ITC has been taken, the registered person shall pay an amount equal to the ITC taken on the said capital goods or plant and machinery reduced by such percentage points as may be prescribed or the tax on the transaction value of such capital goods or plant and machinery determined under section 15 of the CGST Act, whichever is higher.

The amount of ITC for the purpose of section 18(6) of the CGST Act shall be determined in the manner specified in rule 44 of the CGST Rules. The amount shall be determined separately for ITC of Central Tax, State Tax, Union Territory Tax and Integrated Tax.

Further, rule 44 of the CGST Rules provides that the reversal should be made for such period for which the asset is not used in a period of 5 years by taking a rate of 5% for each quarter part of the quarter is to be considered as full quarter.

Example - M/s ABC Ltd., purchased a machine on 01.07.2017, for ₹ 10,00,000 on which IGST was paid @ 18%. He availed the ITC and utilised the capital goods. On 02.10.2018 he sold the machinery as second-hand goods for ₹ 7,50,000. State what steps he is required to take to comply with statutory provisions.

Answer – M/s ABC had taken ITC in July 2017 of ₹ 1,80,000. The capital goods have been utilised by M/s ABC Ltd. for following quarters - Year 2017 -2, Year 2018 - 4. Thus, M/s ABC Ltd can keep ITC @ 5% per quarter i.e.30%. Thus, it can retain ITC of ₹ 54,000 (30% of ₹ 1,80,000) and is required to pay amount equal to balance credit of 70% i.e. ₹ 1,26,000.

The capital goods were sold for ₹ 7,50,000. IGST paid on the transaction value @ 18% is ₹ 1,35,000.

M/s ABC Ltd. is required to pay an 'amount' which is higher of the above. Thus, they are required to pay IGST of ₹ 1,35,000. If capital goods were sold within the State, SGST of ₹ 67,500 and CGST of ₹ 67,500 would be payable.

M/s ABC Ltd should prepare tax invoice for this purpose.

Q323. Can a person who has not received payment within 180 days and deposited GST on invoice issued, claim back GST as input credit or otherwise.

Ans. There is no such relief mentioned in GST Law for the supplier of goods/services. However, GST Law has been stringent for the recipients of goods/services. Second proviso to section 16(2) of the CGST Act, states:

> **"***Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax*

credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed:

Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon."

Thus a supplier of goods/services is not entitled to claim the amount paid on invoice as ITC in case of delayed payment by the recipient. Also, for claiming ITC, provisions of section 16 of the CGST Act have to be followed which provide for invoice, for claiming ITC as per section 31 of the CGST Act and other conditions, which cannot be fulfilled by the supplier of goods/services.

Q324. Does it mean that for all suppliers in the country, we have to check if they have sold land or building or sold securities and in case of an individual who is a registered supplier, if he buys and sells securities also outside his business then also 1% of sale of security is to be treated as value of exempt outward supply and ITC need to be reversed?

Ans. Normally such details must be verified in order to ensure that ITC reversal is done meticulously. With regard to an individual, who buys and sells shares in his personal name for his personal use, or sells land or building in his personal capacity, the ITC is not eligible and reversal of ITC is not warranted. However, in case the same is in the course or furtherance of his business the common ITC used need to be reversed proportionately by the registered person.

Q325. An export company made a claim for refund of all input services or inputs used for export of services for Q2 FY 18-19 and the GST refund was received in cash from Department. GST Department issued notice citing error in refund that the company is required to repay the same using input credit accumulated in Q3 FY 18-19. Advice.

Ans. In case of wrong or erroneous refund of ITC, the same can be recovered by the Department as per section 73 or 74 of the CGST Act. The refund granted erroneously may be made good by reversal of ITC or payment by cash to Government along with interest as per section 50 of the CGST Act.

Q326. A company has various segments which include supply of both exempt and taxable goods. In that case, whether reversal of ITC will be on segment wise basis or on whole company basis?

Ans. If different segments as mentioned in the question are registered individually then calculation for reversal should be done on the basis of segments. However, if single registration is taken by the company, then the company is left with no option than to prepare the calculations on whole basis. However, in any case involving different States, since different GSTIN have to be obtained, the reversal will have to be done on the basis of GSTINs only.

Q327. A petrol pump dealer is a registered person and he also deals in lubricants which are taxable under GST. HPCL is charging license fees and collecting GST on license fees. Whether such GST on licence fee can be claimed as ITC?

Ans. The license fee paid is in connection with both taxable supply which is supply of lubricants and exempted supply which is sale of petrol. Hence as per section 17(2) of the CGST Act, read with rule 42 of the CGST Rules, the registered person is entitled to claim proportionate ITC on the said license fee.

Q328. Whether negative value addition permissible in GST or corresponding portion of negative GST component needs to be reversed?

Ans. As per provisions of GST Law, there is no need to reverse any ITC in case of any negative value additions.

Q329. M/s ABC Ltd engaged in leasing business has entered into contract for construction of building and other amenities such as lifts, storage tank, firefighting system, chillier etc. There is a clear mention for billing to be done for each item. Whether ITC is blocked under section 17(5) of the CGST Act on DG sets, AC, UPS, exhaust units etc. procured from the same contractor, considering that these have been received for construction of immovable property or can ITC be claimed considering them as plant and machinery?

Ans. Section 17(5) (c) of the CGST Act is restricted to works contract service supplied for construction of an immovable property. DG

Sets, AC, UPS should form part of plant and machinery and said credit is not blocked. However, in the case of centralised air-conditioning system, the ducts are fastened to the walls and hence to that extent it can be said that for construction ITC should be blocked under section 17(5) (c) of the CGST Act.

Q330. Can liability under reverse charge of 2017-18 be paid now, after raising a self-invoice and then avail as ITC in the year 2020-21?

Ans. There are two important pre-conditions for taking ITC as per section 16(2):

a) tax should actually be paid to the Government

b) the supplier should be in possession of the tax invoice

The first condition that tax should be paid to the Government is satisfied only in the current month. Thereby the eligibility to avail the ITC also arises in the current month. Once this pre-condition is met, the ITC is allowed to be taken. Therefore ITC belongs to the current financial year.

The second condition for availing ITC is the possession of tax invoice. If self-invoice is raised in the current period, then this condition also gets satisfied only in the current period. Section 16(4) allows the ITC of invoice of any period upto the due date of September return of next financial year. Thereby, the time period for availment of ITC is also not elapsed.

Further press release dated 3rd July 2019 provides the following in respect of reverse charge:

"Many taxpayers have requested for clarification on the appropriate column or table in which tax which was to be paid on reverse charge basis for the FY 2017-18 but was paid during FY 2018-19. It may be noted that since the payment was made during FY 2018-19, the ITC on such payment of tax would have been availed in FY 2018-19 only. Therefore, such details will not be declared in the annual return for the FY 2017-18 and will be declared in the annual return for FY 2018-19"

The above also signifies that the liability and ITC for reverse charge belongs to the financial year in which it is paid. Since reverse charge is paid in the current year, ITC is also available in the current year.

Reverse charge can be paid in the year 2020-21 and ITC can also be availed in the same financial year.

Q331. An advance payment towards supply of service by a person who is located in UAE to an Indian registered entity has been made in September 2020.The services along with the respective invoice have been received in the month of November 2020. Can ITC be claimed in the month of payment of advance itself?

Ans. The eligibility to ITC shall be as per the provisions of Chapter V of the CGST Act, as amended. Apart from various other conditions, two very important conditions to be satisfied are the receipt of said services and possession of a valid tax invoice against the service received. Being a case of reverse charge requiring the issuance of self-invoice under section 31(3) (f) of the CGST Act, ITC shall not be eligible on just payment of an advance amount towards the service. Therefore, all conditions of the said provisions shall be satisfied in letter and spirit.

Q332. Can credit on factory shed be taken?

Ans. Section 17(5) of the CGST Act reads as under:

"(5) Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following, namely :—

……

…….

(c) works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;

(d) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

Explanation. — For the purposes of clauses (c) and (d), the expression "construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property;

…….

Explanation. — For the purposes of this Chapter and Chapter VI, the expression "plant and machinery" means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes —

(i) land, building or any other civil structures;

(ii) telecommunication towers; and

(iii) pipelines laid outside the factory premises."

Hence, if the supplies fall under the definition of the "*Plant and Machinery*" then credit is available. Otherwise, no credit will be available.

Q333. A registered dealer records ITC correctly while submitting Form GSTR-3B every month. However, there are differences in Form GSTR-2A as one of his suppliers has uploaded invoices under a different GST No. How can the original dealer recover these ITC and what is the responsibility of the auditors of such registered dealers? Whether any interest/penalty provisions will be applicable?

Ans. If conditions of section 16(2) are satisfied by the dealer, he is entitled to get the GST credit of the said supply. If it is noticed with in time, then the said supplier of the dealer can amend the GST number by Invoice Number of that month **Form GSTR-1** filed by him in the coming month. The Auditor of the dealer has no role on the suppliers' **Form GSTR-1** but he should find out the reasons for the shortfall in the ITC in **Form GSTR-2A**.

Q334. Can ITC be availed on installation of Water Fountain, if such water fountain is installed at a hotel?

Ans. If the water fountain expense has been grouped under Revenue Expense in the books of account, then, the ITC relating to the expense shall be available.

However, if the expense has been capitalised in books of accounts, then also ITC shall be available.

Q335. I have not filed my GST returns since 2nd half year of FY 2019-20. Can I claim ITC credit of those months at the time of filing the pending returns?

Ans. Section 16 (4) of the CGST Act reads as under:

> *"(4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier."*

As per the aforesaid provision, the time limit for taking ITC for the months of October 2019 to March 2020 is upto the date of filing of return (**Form GSTR-3B**) for the month of September 2020. The due date of filing of **Form GSTR-3B** for the month of September 2020 was 20th of October 2020.

If the returns for the months of October 2019 to March 2020 are filed after 20th October 2020 then ITC for that period cannot be availed.

Chapter 8
Tax Invoice, Credit and Debit Notes

Q336. A buyer refused to take delivery of goods sent by the supplier through road transport. At what value the credit note should be raised for bringing back such goods?

Ans. In terms of section 34(1) *of the CGST Act the supplier may issue to the recipient one or more credit notes for supplies made in a financial year, each containing such particulars as prescribed in rule 53(1A) of the CGST Rules, in the following cases*:

(a) *where one or more tax invoices have been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to exceed the taxable value; or*

(b) *tax payable in respect of such supply, or*

(c) *where the goods supplied are returned by the recipient, or*

(d) *where goods or services or both supplied are found to be deficient.*

In the present case, the buyer refuses to take delivery of goods through road transport which are not covered in above situations.

Section 34(2) of the CGST Act inter alia states: *"Any registered person who issues a credit note in relation to a supply of goods or services or both shall declare the details of such credit note in the return for the month during which such credit note has been issued but not later than September following the end of the financial year in which such supply was made, or the date of furnishing of the relevant annual return, whichever is earlier, and the tax liability shall be adjusted in such manner as may be prescribed:*

Provided that no reduction in output tax liability of the supplier shall be permitted, if the incidence of tax and interest on such supply has been passed on to any other person."

In view of the above statutory provision, in the scenarios of material not having been received inside the premises of recipient and ITC

not having been availed for the same, a simple declaration by way of endorsement as *"not received inside the premises and not taken ITC"* on the supplier's original invoice will suffice.

Here, credit note for the entire value may be issued by the supplier so as to claim reduction of tax liability in the same month or subsequent month as the case may be.

Q337. (**a**) **Can a supplier issue a credit note where a customer fails to make the payment after supply?**

(b) What would be the impact on the supplier's GST liability?

(**c**) **Can the supplier cancel the invoice where the supply has not been made, but the invoice has been issued?**

Ans. (a) As per section 34, where a tax invoice has been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to exceed the taxable value or tax payable in respect of such supply, or where the goods supplied are returned by the recipient, or where goods or services or both supplied are found to be deficient, the registered person, who has supplied such goods or services or both, may issue to the recipient a credit note containing such particulars as may be prescribed. Hence, for non-payment of consideration after supply/ after issuing invoice, credit note under section 34 of the CGST Act cannot be issued.

(b) Since a credit note cannot be issued by the supplier as mentioned in (a) above, the tax liability has to be discharged by the supplier irrespective of whether or not the payment is received from the recipient.

(c) The GST law does not permit cancellation of invoices. In this case, the reason for the issuance of invoice has to be checked first. Section 31 mentions the time at which a tax invoice has to be issued. If the event necessitating the issuance of invoice has taken place, then it cannot be stated that the supply has not been made. The supplier shall maintain strong proof/reasons to prove that the supply has not been made. In case the supply does not take place, then only a credit note can be issued by the supplier in accordance with section 34 of the CGST Act against the invoice already raised.

Q338. Whether a general credit note issued after sale can reduce the supplier's outward liability?

Ans Credit notes can be issued only by the supplier. When a credit note is issued within the time prescribed by section 34(2) of the CGST Act, then the output tax liability can be reduced to the extent of value as mentioned in the credit note. General credit note here means financial or commercial credit note which contains no reference to the GST amount. The base price is considered, and no GST impacts are considered.

Hence, GST credit note is different from financial credit note and GST may not impact the transaction.

Q339. Can a supplier reverse the tax paid on the advance received in case the final supply is not made?

Ans. Yes, the tax can be reversed as the final supply has not been made to the recipient. A refund voucher needs to be issued and same can be adjusted in **Form GSTR-3B** *in the month in which the refund voucher is issued.*

Chapter 9
Registration

Q340. A milk vendor, is engaged in trading of milk with a turnover of ₹ 39 lakhs, which is exempt. He is also engaged in trading of taxable products like paneer, ghee and milk sweets and the turnover of such taxable products works out to ₹ 2 Lakh. Whether the milk vendor has to take registration under GST?

Ans. Going by the third proviso to section 22(1) of the CGST Act if a supplier is engaged exclusively in the supply of goods and whose aggregate turnover as per section 2(6) of the CGST Act in a financial year exceeds ₹ 40 Lakhs, then such supplier is liable to take registration under GST. Aggregate turnover includes both taxable supply as well as exempted supply. Thus in the given case, the aggregate turnover, of milk vendor works out to ₹ 41 Lakhs as it includes the receipts from trading of Milk for ₹ 39 Lakhs which, though exempted as per *Sl.No. 25 of NN 2/2017-CTR* under the heading HSN 0401, has to be considered for computing the aggregate turnover and the taxable turnover from trading of paneer, ghee and milk sweets as per *NN 1/2017-CTR* which works out to ₹ 2 Lakh is also to be considered. Since the aggregate turnover in a financial has exceeded the threshold limit of ₹ 40 Lakh, the milk vendor is liable to take registration as per section 22(1) of the CGST Act.

Q341. Whether the place of supply of goods or services determines the requirements of registration in a particular State. Discuss this in the light of the phrase '*from where he makes a taxable supply of goods or services or both*' used in section 22 of the CGST Act read with section 22 of the SGST Act?

Ans. The place of supply of goods or services will not determine the requirements of taking registration in a particular State as per section 22(1) of the CGST Act or section 22(1) of the SGST Act but is being applied only for determining the nature of supply, whether it is inter-State supply as per Section 7 of the IGST Act or intra-State supply as per section 8 of the IGST Act. The place of supply of goods or services is separately dealt with in Chapter V of the IGST Act in sections 10 to 14. Though the meaning of the phrase '*place of*

supply' can be easily understood from common parlance, it is being given legal sanctity and whose meaning is to be determined by examining the respective sections of Chapter V of the IGST Act and it has to be identified for deciding the nature of supply. Thus, the application of place of supply of goods or services has no relevance and will not be a determinant for taking registration under GST.

However the phrase *'from where he makes a taxable supply of goods or services or both'* used in section 22(1) of the CGST Act is to guide the supplier in which State he has to take registration under GST. Especially the phrase '*from where*' means the location or place of business from where all the business decisions are being taken or where the '*seat of management and control*' is located, who will decide the activity of supply of goods or services or both. Thus registration is required to be taken only at the place of business where business is ordinarily carried on.

Place of business as per section 2(85) of the CGST Act includes –

(a) a place from where the business is ordinarily carried on, and includes a warehouse, a godown or any other place where a taxable person stores his goods, supplies or receives goods or services or both; or

(b) a place where a taxable person maintains his books of account; or

(c) a place where a taxable person is engaged in business through an agent, by whatever name called"

Place of business therefore not only includes the place where the business is ordinarily carried on but also all geographical locations like warehouse or godown or any other place, where the taxable person stores goods under his control for further supply. This could have been the reason for not defining the '*location of supplier of goods*' in law as the goods can be easily traced, unlike services, where the '*location of supplier of services*' has been defined specifically in section 2(71) of the CGST Act.

Place of business and place of supply cannot be understood synonymously. Registration is required only at the place of business

and not at the place of supply. For instance in case of renting of immovable property service the registered person is holding registration certificate in Maharashtra but owns properties in Rajasthan and Gujarat which he has let on hire for commercial purpose. Thus in this example the place of supply of service may be the location where the immovable property is located (i.e.) in Rajasthan and Gujarat, but the place of business is the location where the business decisions are ordinarily taken (i.e.) Maharashtra.

Similarly in another example, a supplier in Maharashtra intends to supply goods to a customer in Andhra Pradesh, but the goods are imported and presently in Customs Bonded Warehouse at Kolkata. Question arises whether such supplier is required to take registration in Kolkata for dispatching the goods to the customer in Andhra Pradesh. Registration is not required in Kolkata, West Bengal, because the goods are cleared for domestic consumption in the name of the supplier and will be handed over to the customer at Andhra Pradesh and until then the risk and reward will be with the supplier. Moreover registration is not required for all locations where the goods will be stored during transshipment as point of storage at the discretion of the transporter. Place of supply of goods in this example as per section 10(1) (a) of IGST Act shall be the location where the movement of goods terminates for *delivery* to the recipient (i.e.) Andhra Pradesh. Registration also not required in Andhra Pradesh as that is not the location *'from where'* the taxable supply took place.

Q342. A Football Academy is supplying services from Delhi and Mumbai. Whether the Academy should take separate registration in each State?

Ans. If a Football Academy is supplying services from both the locations namely Delhi and Mumbai, then as per section 22(1) of the CGST Act read with section 22(1) of Maharashtra GST Act and Delhi GST Act, it is liable to take separate registrations under respective State GST Acts. Thus, two separate registrations have to be taken. Every State will be treated as a separate taxable territory in GST. Such registered persons will be treated as distinct persons for the purpose of section 25 of the CGST Act. Any supply of goods or services or

both between these entities shall be treated as supply as per Entry No. 2 of Schedule I to the CGST Act, even though such supply is without consideration.

Q343. A registered person is engaged in the sale of seeds, which are exempt from GST. Is it possible for such registered person to cancel their registration already taken under GST regime?

Ans. Registered person can very well cancel their registration if they are exclusively engaged in the sale of seeds that are exempted as per *NN 2/2017-CTR*.Though the registered person has taken registration earlier voluntarily under section 25(3) of the CGST Act, but now they can avail the exemption from registration as per section 23(1) (a) thereof, as such person is engaged exclusively in the supply of seeds which is wholly exempt from tax. Thus, such registered person can very well apply for cancellation of registration as per section 29(1) (c) of the CGST Act expressing his intent to opt out of the Registration voluntarily made under Section 25(3) thereof.

Q344. A Residential Apartment Owners Welfare Society receives monthly subscription for maintenance and other facilities, which is less than ₹ 7,500/- per month per member. Aggregate contribution per annum from the Members on account of subscription works out to ₹ 50 Lakhs. Apart from this the Society receives rental income and advertisement income which works out to ₹ 5 Lakhs. Whether such society is liable to be registered under GST?

Ans. As the Residential Apartment Owners Welfare Society is engaged in supply of service to their members in the form of maintenance and other facilities and the subscription collected per month per member is less than ₹ 7,500/-, its services are exempt by virtue of Sl.No.*77 (c) of NN12/2017-CTR* under heading 9905. However for computing the threshold limit for taking registration as per section 22(1) of the CGST Act, both exempted as well as taxable supplies have to be considered for computing the aggregate turnover as per section 2(6) thereof. In the given case, the aggregate turnover of the Society works out to ₹ 55 Lakhs, which includes exempted supply of subscription from members of ₹ 50 Lakhs and taxable supply of rental income & advertisement income of ₹ 5 Lacs. Since the

aggregate turnover in a financial year has exceeded the threshold limit of ₹ 20 Lakh, the Society is liable to take registration as per section 22(1) of the CGST Act and has to discharge appropriate tax liability on rental income and advertisement income.

Q345. Whether GST registration is required even if the export turnover is less than ₹ 20 lakh?

Ans. Export of goods or services or both are treated as inter-State supplies as per section 7(5) (a) of the IGST Act. Hence, as per section 24(i) of the CGST Act, the person who is engaged in export of goods or services or both are compulsorily required to take registration irrespective of the fact that such export turnover is less than ₹ 20 Lakhs. However by virtue of *NN 10/2017-ITR* as amended by *Notification No. 3/2019-Integrated Tax dated 29.01.2019* read with section 20 of the IGST Act and section 23(2) of the CGST Act, the persons making inter-State supply of taxable services are being exempt from taking registration if the aggregate turnover computed on all India basis is less than ₹ 20 Lakhs. For example, freelance journalists, software professionals, visiting faculty to foreign universities, etc. who are engaged exclusively in supply of services though naturally work from home, need not take registration if their aggregate turnover is below the threshold limit of ₹ 20 Lakhs.

But this exemption from registration is not applicable for the persons who are engaged in export of goods and thus they are mandatorily required to take registration as per section 24(i) of the CGST Act since inception. However such persons can export the goods or services or both, as per section 16(3) of the IGST Act, either without payment of integrated tax under LUT or Bond and can claim refund of such unutilised ITC or with payment of integrated tax and can claim refund of such Integrated tax paid.

However, in the case of export of services, when turnover is less than the threshold limit, the GST paid on inward supplies will form part of the cost of output services in case registration is not taken. It is pertinent to mention here, that taxpayer can avail the benefit of refund only if registered under GST, even if turnover is less than that of the threshold limit.

Q346. Whether reverse charge value to be considered in threshold turnover for the purpose of registration?

Ans. The definition of the term "aggregate turnover" under section 2(6) of the CGST Act, specifically excludes inward supplies on which tax is payable by a person on reverse charge basis. Therefore, the value of transaction, liable for RCM and paid by the recipient of goods/ services, may not be considered for the purpose of the threshold limit of turnover for the purpose of registration under section 22(1) of the CGST Act.

It may also be noted that a person who receives supplies liable for payment of taxes under the RCM is liable for compulsory registration under section 24 of the CGST Act.

Q347. Whether registration is required for a person who is engaged in sale of alcoholic liquor for human consumption and whose annual turnover exceeds the threshold limit of registration under section 22(1) of the CGST Act?

Ans. The person is engaged exclusively in supply of alcoholic liquor for human consumption, which is a non-taxable supply as per section 2(78) of the CGST Act. Though, the turnover exceeds the threshold limit for taking registration as per section 22(1) of the CGST Act, still such person is not required to take registration. This is because section 23(1) (a) of the CGST Act specifically provides that a person engaged exclusively in the business of supplying goods or services or both that are not liable to GST is not required to get registered under the Act. As per section 22(1) of the CGST Act, it seems that registration is required if the aggregate turnover as per section 2(6) of thereof exceeds the threshold limit of ₹ 20 Lakhs or ₹ 40 Lakhs, as the case may be. The definition of aggregate turnover includes exempt supplies as per section 2(47) of the CGST Act, which in turn includes non-taxable supply as defined in section 2(78) of the CGST Act. As such non-taxable supply means the supplies which are not leviable to GST *viz.,* alcoholic liquor for human consumption, petroleum crude, high speed diesel, and motor spirit, natural gas and aviation turbine fuel.

Based on the foregoing discussion, it is concluded that the person who is engaged exclusively in supply of alcoholic liquor for human consumption is not required to take registration under the GST law.

Q348. Whether sale of old furniture on YLX (Electronic Commerce Operator) will entail compulsory registration and attract tax collection at source ("TCS")?

Ans. As per Section 24(ix) of the CGST Act, every person supplying goods through an electronic commerce operator ("***e-commerce operator***") who is required to collect tax at source under Section 52, shall be mandatorily required to obtain registration irrespective of the value of supply made by him.

Further, Section 52 of the CGST Act provides for TCS, by the e-commerce operator in respect of the taxable supplies made through it by other suppliers, where the consideration in respect of such supplies is collected by such e-commerce operator.

In the instant case, the supplier selling old furniture through YLX shall be directly negotiating the price with the buyer and collect the consideration from the buyer since YLX is a classified platform and does not handle payments on behalf of the suppliers.

Therefore, the supplier shall not be required to compulsorily obtain registration under GST and YLX shall also not be required to collect tax at source under Section 52 as the consideration is not collected by YLX.

Q349. Explain the concept of distinct persons as specified in section 25 of the CGST Act?

Ans. Section 25(4) and (5) of the CGST Act reads:

"(4) 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.

(5) 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."

As could be inferred from above, two or more units or branches of same business entity having a common PAN, but having separate

registrations under GST law in the same State or in different States, are considered as distinct persons for the purpose of GST Law as provided in section 25(4) & section 25(5) of the CGST Act. Supply of goods or services between these distinct persons are liable for GST even if such supply is done without consideration as per Entry No. 2 of Schedule I of the CGST Act. For example, the Mumbai branch of State Bank of India in Maharashtra and Chennai branch of State Bank of India in Tamil Nadu are two distinct persons for the purpose of section 25 of the CGST Act.

Q350. If a person is engaged in the supply of both goods and services, how the threshold limit will be calculated for registration purpose as per section 22 of the CGST Act?

Ans. If a supplier is engaged in supplying both goods and services, then such supplier has to take registration if the aggregate turnover as per section 2(6) of the CGST Act exceeds ₹ 20 Lakhs as per section 22(1) thereof. Aggregate turnover includes both taxable supply and exempted supply. This is very much evident from the third proviso to section 22(1) of the CGST Act by which the threshold limit for registration was enhanced to ₹ 40 Lakh only in case such supplier is engaged exclusively in the supply of goods. The only exception for the above is even if a person is engaged in the supply of service by way of extending deposits, accepting loans or advance and the consideration is received only in the form of interest or discount, still he will be considered as a person engaged exclusively in the supply of goods. For example if a taxable person is supplying goods for ₹ 35 Lakhs and interest income from fixed deposit in a bank is ₹ 4 Lakhs. Then in such case the taxable person need not take registration, inspite of the fact that the taxable person has engaged in the supply of the above specified services, as the threshold limit is only ₹ 39 Lakhs.

Q351. Whether turnover on account of sale of alcoholic liquor for human consumption and crude oil will form part of aggregate turnover to determine the threshold limit for taking registration under GST?

Ans. As per section 2(6) of the CGST Act, aggregate turnover includes the value of exempt supplies. Exempt supply as per section 2(47) of

the CGST Act includes non-taxable supply. Non-taxable supply as per section 2(78) of the CGST Act means a supply of goods or services or both which is not leviable to tax under GST. Thus supply of alcoholic liquor for human consumption and crude oil though being non-leviable to tax under GST law as per section 9 of the CGST Act, however will form part of aggregate turnover computed on all India basis for computing the threshold limit for taking Registration under section 22(1) thereof.

Q352. When a person is engaged in the supply of both good and services then what is the threshold limit for taking registration in a State other than the Special Category State?

Ans. On a conjoint reading of section 22(1) of the CGST Act and the third proviso to section 22(1) thereof it is understood that if a person is engaged in supply of goods and services then the threshold limit for taking registration in a State other than the Special Category States, is only ₹ 20 Lakhs. Special Category States for the purpose of registration under section 22 of CGST Act is Mizoram, Manipur, Nagaland and Tripura. Further, the threshold limit of ₹ 40 Lakhs is applicable only for a person who is engaged exclusively in supply of goods and the only exception is that even such person can engage in supply of services and that service should be only by way of extending deposits, loan or advances and the consideration is received in the form of interest or discount.

Q353. A Hotel is engaged in supply of residential / lodging accommodation and also restaurant service. Hotel room charges are less than ₹ 1000/- per day. Aggregate receipts from lodging / accommodation service and restaurant service works out to ₹ 15 Lakh p.a. and ₹ 8 Lakhs p.a. respectively. Whether, such hotel is required to take registration under GST?

Ans. As per *Sl.No. 14 of NN12/2017-CTR* if a hotel is engaged in letting a room on hire for residential or lodging purposes, it is exempted from GST, if the value of supply collected is upto ₹ 1000/- per day per room. Going by this exemption entry, in the given case, since the room charges collected by the hotel is less than ₹ 1000/- per day it is exempted from the levy of GST. However, the Restaurant services provided by the Hotel are taxable and liable for GST. As per section

22(1) of the CGST Act, if a person is engaged in supply of goods and services then the threshold limit for taking registration in a State other than the Special Category States is only ₹ 20 Lakhs. Special Category States for the purpose of registration under Section 22 of the CGST Act is Mizoram, Manipur, Nagaland and Tripura. Aggregate turnover as per section 2(6) thereof includes both taxable supply as well as exempted supply.

Thus in the given case, the aggregate turnover, of hotel works out to ₹ 23 Lakhs as it includes the receipts from accommodation service of ₹ 15 Lakhs which is exempted and the restaurant service of ₹ 8 Lakhs which is taxable. Since the aggregate turnover in a financial year has exceeded the threshold limit of ₹ 20 Lakh, the Hotel is liable to take registration as per section 22(1) of the CGST Act and discharge the tax liability accordingly on the Restaurant services.

Q354. Whether an unregistered person can engage himself in inter-State taxable supply or not?

Ans. As per Section 24(i) of the CGST Act, if a person intends to make any inter-state taxable supply, whether of goods or services or both, is compulsorily required to take registration irrespective of the threshold limit specified in section 22(1) thereof. Thus if a person located in Pune, Maharashtra wants to supply goods to Kolkata, West Bengal, then he is required to take registration mandatorily. However, there is an exception to this - if the person intends to make inter-State supply of services then such person need not compulsorily take registration if the aggregate turnover in a financial year has not exceeded ` 20 Lakhs [Section 23(2) of the CGST Act read with *NN 10/2017-ITR* as amended by Notification No. 03/2019 - Integrated Tax dated 29.01.2019.]

For example, a Practicing Chartered Accountant in Chennai, whose aggregate turnover is only ` 18 Lakhs, did not take registration in GST and now he wants to empanel himself as an Examiner with a University in New Delhi for valuation of exam answer scrips, and for supply of this inter-State supply of service he need not take registration as per the above Notification. But this specific exemption from registration is not applicable for the persons who are engaged in inter-State taxable supply of goods and thus they are mandatorily

required to take registration as per section 24(i) of the CGST Act since inception.

Q355. A Hotel is engaged in supply of residential / lodging accommodation service, restaurant service and supply of alcoholic liquor for human consumption in it's Bar. Annual aggregate receipts from lodging accommodation service are ₹ 30 Lakhs, restaurant service is ₹ 30 Lakhs and supply of alcoholic liquor for human consumption is ₹ 40 Lakhs per annum. What would be the aggregate turnover for the purpose of computing the threshold limit for taking registration under GST?

Ans In the given case, supply of residential / lodging accommodation service may be either a taxable service or an exempted service if the value of supply (i.e.) room charges collected per unit of accommodation is upto ₹ 1000/- per day, as per *Sl. No. 14 of NN12/2017-CTR*. Either way for computing the aggregate turnover both taxable and exempted supply has to be considered. Similarly the receipts from Restaurant Service constitute a taxable supply, which has to be considered for computing the aggregate turnover. Finally as far as the supply of alcoholic liquor for human consumption in Bar is concerned, it is a non-taxable supply as per section 2(78) of the CGST Act and thereby it is included in the exempt supply as per section 2(47) thereof and is to be considered for computing the aggregate turnover.

Thus in the given case, the aggregate turnover, of Hotel works out to ₹ 100 Lakhs as it includes the receipts from accommodation service of ₹ 30 Lakhs, Restaurant service of ₹ 30 Lakhs and Bar Income of ₹ 40 Lakhs. Since the aggregate turnover in a financial year has exceeded the threshold limit of ₹ 20 Lakh, the Hotel is liable to take registration as per section 22(1) of the CGST Act and discharge the tax liability accordingly.

Q356. A Freelancer in Chennai is supplying services to foreign entrepreneurs through Online Websites. Whether the threshold limit for taking registration under GST is ₹ 40 Lakhs or the registration has to be taken from the inception of the business?

Ans. The service provided by the Freelancer to the foreign entrepreneurs through Online Websites amounts to export of services as per *Section 2(6) of the IGST Act* as the following conditions are sequentially fulfilled:

a. Location of supplier (freelancer) as per *section 2(15) of the IGST Act* is in Chennai, India

b. Location of recipient (foreign entrepreneurs) as per *section 2(14) of the IGST Act* is outside India

c. As per *Section 13(2) of the IGST Act*, the place of supply of services provided through Online Websites by the freelancer shall be the location of the recipient (foreign entrepreneurs) which is outside India

d. Payment for such service was received in convertible foreign currency

e. The supplier of service being the freelancer and the recipient of service being the foreign entrepreneur are not merely establishments of a distinct person in accordance with *Explanation 1 in section 8 of the IGST Act*.

Once the service provided by the freelancer is treated as export of services, we have to determine whether registration has to be taken mandatorily since inception of the business.

Export of services is treated as inter-State supplies as per *section 7 (5)(a) of the IGST Act*. Hence as per *section 24 of the CGST Act*, the person who is engaged in export of services is compulsorily required to take registration from the beginning irrespective of the threshold limit specified in *section 22(1) thereof* (i.e.) ₹ 20 Lakhs. However by virtue of *NN 10/2017-ITR* as amended by *Notification No. 3/2019-Integrated Tax dated 29.01.2019* read with *section 20 of IGST Act and section 23(2) of the CGST Act*, the persons making inter-State supply of taxable services are being exempted from taking registration if the aggregate turnover computed on all India basis is less than ₹ 20 Lakhs. Thus, in the given case the Freelancer can be adviced to take registration under GST from the beginning so that the GST paid on inputs can be claimed as a refund.

Q357. Whether a person wholly engaged in supply of services on a PAN India basis, by way of collection of toll charges for access to a road or bridge on payment of toll charges is required to take registration mandatorily under GST?

Ans. As per *Sl. No. 23 of NN12/2017-CTR*, services by way of access to a road or bridge on payment of toll charges is wholly exempt from tax under Heading 9967. In that case if a person is engaged exclusively in the above services which are wholly exempt from levy of GST, then such person is not liable to take registration as per section 23(1)(a) of the CGST Act, irrespective of the threshold limit specified in section 22(1).

Thus, in the given case if it is presumed that the person in the question happens to be a sub-contractor appointed by the main contractor for collection of 'toll charge' from the end user, then the question arises in such case as to whether the exemption entry specified in *Sl. No. 23 of NN12/2017-CTR* extends to such sub-contractor also. It is informed that the toll charges are collected by the sub-contractor; still the exemption provided in *Sl. No. 23 of NN12/2017-CTR* applies to him, as the services by way of access to a road or bridge on payment of 'toll charges', is an activity based exemption, irrespective of the fact as to who provides the service or who receives the service.

Further, the issue here will be if such sub-contractor retains a portion of 'toll charges' as his margin while remitting the toll collection amount to the main contractor then the said exemption will not apply to the extent of that margin amount. This is because the services provided by the sub-contractor to the main contractor for which the margin amount is retained by him as consideration, is not equivocal to toll services. Thus the sub-contractor is liable to pay GST on the margin amount retained by him and as far as the registration for such sub-contractor is concerned, the sub-contractor is providing two services- one is the services provided to the end user by way of allowing them the access to the road or bridge by collecting toll charges which is exempted as per the above entry and another one is to the main contractor by way of collection of toll charges in a fiduciary capacity from the end user for which he retains a portion of toll charges as margin amount, which is taxable.

As the aggregate turnover as per section 2(6) of the CGST Act includes both taxable supply as well as exempted supply. Thus, if sub-contractor's gross receipts from both the above services exceed ₹ 20 Lakhs, then he is hit by section 22(1) of the CGST Act and thereby he is liable to take registration under GST.

Q358. A Registered person is primarily engaged in trading in Medicines. Now he has sold his business old furniture and paid GST as applicable. Selling furniture is not his main business. For selling this furniture whether such registered person has to amend his Registration Certificate to include the HSN code of furniture.

Ans. Though the registered person is primarily engaged in trading of Medicine, but when he intends to sell business old furniture, then HSN Code applicable for such furniture has to be entered in the Goods Tab in Registration Portal by making an amendment as prescribed in *section 18 of CGST Act read with Rule 19 of CGST Rules*. But, the common portal will allow a registered person to include only 5 HSN Codes to be entered in the Goods Tab and such HSN entries will usually be mentioned only on the basis of the top 5 goods they are dealing in maximum. In the given case, since the registered person's main business is trading in Medicines, if he had already entered 5 HSN entries relating to Medicines in the Goods Tab, then in such case it may not be possible for him to include, further entries. In that case technically there is no scope for the registered person to include the HSN code for furniture in Goods tab. One suggestive action, though not specifically mentioned in the law, but for good governance, could be that a mail can be sent to the Jurisdiction Officer about this sale of old furniture and its corresponding HSN code. However, if 5 entries are not already entered in the Goods Tab, then it is advisable to enter the HSN code for furniture through an amendment which does not require any approval of the tax official.

Q359. Section 23 of the CGST Act *inter-alia* provides exemption for entities engaged exclusively in exempt supplies. What if a doctor or advocate sells their used office furniture or equipment? Will it trigger section 22 of the CGST Act for registration?

Ans. Section 23(1)(a) of the CGST Act specifically exempts a person from taking registration if such person is engaged exclusively in the supply of goods or services which are wholly exempted from GST, irrespective of the threshold limit specified in section 22(1) thereof. Thus a Doctor, being an Authorised Medical Practitioner, who is primarily engaged in health care services which is exempted from levy of GST as per *Sl. No. 74 of* NN12/2017-CTR */ Sl. No. 77 of NN 9/2017-ITR,* need not take registration as per section 23(1) (a). But if such Doctor is engaged in any of the supplies which are taxable, for instance, sale of used office furniture or equipment, then he is hit by section 22(1) of the CGST Act and if the aggregate turnover from such activity of the Doctor exceeds the threshold limit of ₹ 20 Lakhs, then he is liable to take registration.

Similarly, in case of an Advocate who is exclusively engaged in supplying Legal Services to a business entity then as per *section 9(3) of the CGST Act read with Sl. No. 2 of NN 13/2017-CTR,* the applicable tax on such legal services shall be paid by the recipient (i.e.) the business entity located in taxable territory under RCM. Thus, as per *Notification No. 5/2017-Central Tax dated 19.06.2017 read with Section 23(2) of CGST Act*, such Advocate is exempted from taking registration. Further, if the same Advocate is also engaged in supply of Legal Services to a person other than business entity, then in such scenario also, he is exempt from taking registration as per *Section 23(1) (a) of CGST Act*, as such Legal Services are exempt from levy of GST as per *Sl. No. 45 of NN 12/2017-CTR / Sl. No. 47 of NN 9/2017-ITR.* But, if such advocate is engaged in providing any of the supplies which are taxable, for instance, sale of used office furniture or equipment, then he is hit by *Section 22(1) of CGST Act* and if the aggregate turnover exceeds the threshold limit of ₹ 20 Lakhs, then such Advocate is liable to take registration.

Q360. A Lady Doctor (Dentist) has gross annual receipts from her profession of ₹ 18 Lakhs. Apart from this, she receives rent of ₹ 5 Lakhs p.a. from letting on hire her commercial property. Further she also receives Family pension of ₹ 2 Lakhs p.a. Whether she is liable to take registration under GST, and if so, whether she has to collect GST on commercial rent?

Ans. Section 23(1)(a) of the CGST Act specifically exempts a person from taking registration if such person is engaged exclusively in supply of goods or services which are wholly exempt from GST, irrespective of the threshold limit specified in section 22(1) thereof. Thus the lady doctor, being an Authorised Medical Practitioner, primarily engaged in Health Care Services which is exempt from levy of GST as per *Sl. No. 74 of NN12/2017-CTR / Sl. No. 77 of NN 9/2017-ITR*, need not take registration as per section 23(1) (a). But since such doctor is also engaged in certain supplies which are taxable, for instance, she receives rent of ₹ 5 Lakhs p.a. from letting on hire her commercial property, which is taxable at rate specified in *NN 11/2017-CTR*, she is hit by section 22(1) and if the aggregate turnover exceeds the threshold limit of ₹ 20 Lakhs, then she is liable to take registration.

The lady doctor also receives family pension which is in the form of regular monthly amount payable by the employer to a person belonging to the family of an employee in the event of his death as per the *Explanation to section 57 of the Income Tax Act, 1961.* Thus, for receiving this family pension the lady doctor has not done any activity which amounts to consideration for the recipient who pays the family pension and thus the Family pension received by the lady doctor will not fit in to the scope of supply as provided in section 7(1)(a) of the CGST Act. Hence this need not be included while computing the aggregate turnover for calculating the threshold limit for taking registration under GST. Aggregate turnover as per section 2(6) of the CGST Act includes both taxable supply as well as exempted supply.

Thus in the given case, the aggregate turnover, of the lady doctor works out to ₹ 23 Lakhs as it includes the receipts from Health Care service of ₹ 18 Lakhs which is exempt and ₹ 5 lakhs being the rent from the letting out of her immovable property which is taxable. Since the aggregate turnover in a financial year has exceeded the threshold limit of ₹ 20 Lakh, the lady doctor is liable to take registration as per section 22(1) of the CGST Act and discharge the tax liability on rent received from letting on hire of her immovable property.

Q361. A Practicing Chartered Accountant [CA] in Chandigarh, apart from his profession, engaged in supply of renting of immovable property service by way of letting on hire his immovable properties located in Haryana, Delhi, Punjab and Chandigarh. Whether such practicing CA has to take separate registration in Haryana, Delhi and Punjab, apart from his existing registration in Chandigarh, for supplying renting of immovable property services in those States or he can raise Bill from his Chandigarh Registration by levying IGST.

Ans. The Practicing CA, registered in Chandigarh, has to take separate Registration in all the States viz., Haryana, Delhi and Punjab where the immovable properties are situated and all services in relation to immovable properties including renting are supplied only from those States where the immovable properties are located, as per Section 22(1) of the CGST Act. For determining whether the Practicing CA has to take registration in other States where the immovable properties are located, it is pertinent to know the place from where he makes a taxable supply of goods or services or both and such place shall be construed as place of business as per Section 2(85) of the CGST Act. Thus in the instant case the place where the immovable property is situated shall be place from where the business is ordinarily carried on, hence it is suggested to take registration in all States where immovable property is located as taxable supply of service is effected from such States.

Similarly for determining whether IGST or CGST & SGST has to be levied, first we have to determine the nature of Supply whether it is Inter-State supply as per Section 7 of the IGST Act or Intra-State supply as per Section 8 of the IGST Act. For a supply to be an Inter-State supply the location of supplier of service and place of supply of such service should be in two different States and if it is in same State, then it will be Intra-State Supply.

Location of Supplier of Service as per Section 2(15) (a) of the IGST Act means a place of business from where supply is made for which the Registration has been obtained. In the given case, as per the foregoing discussions, the tax payer has to take registration in all the States viz., Haryana, Delhi and Punjab, where the immovable properties are located and all the those places will be construed as place of business from where the business is ordinarily carried on.

Once the registrations are taken in those States, eventually those places will become the Location of supplier of Service.

Further as per Section 12(3) of the IGST Act, the place of supply of service in relation to immovable property by way of granting of rights to use immovable property shall be the location where the immovable properties are located. Thus, in the instant case since the immovable properties are located in Haryana, Delhi and Punjab, the Place of Supply shall be that respective State where the immovable properties are located. Since the location of CA, being the supplier of service is in each State where immovable properties are located and the place of supply of such service are also in the same State, this is a clear case of Intra-State supply and CGST & SGST of that respective States has to be levied on such renting of immovable property services.

Q362. X who is registered in Bangalore wants to supply goods to Chennai by procuring the goods from a supplier in Chennai. Whether for making such supply fresh registration is required in Chennai?

Ans. Registration under GST is not required in Chennai because as per section 22(1) of the CGST Act, registration is required only in the State *'from where'* the taxable supply is being made. In the given case, the supply is being made only from Bangalore, Karnataka because there is no physical location in the form of warehouse, godown, stores or any other place, in Chennai, where the goods received from the supplier are being stored, under the control of X, before delivery to their customers in Chennai. Thus, on the basis of the direction of X in Bangalore the supplier in Chennai is delivering the goods to the customers of X. Moreover, registration is not required for all locations where the goods will be stored during transhipment as point of storage at the discretion of the transporter. Hence, no separate registration is required for X in Chennai for this supply. As far as this transaction is concerned X is making an inter-State supply of goods as per section 7(1) of the IGST Act. This is because, the Location of supplier of goods is in Bangalore, Karnataka and place of supply as per section 10(1) (b) of the IGST Act, shall be the location where the movement of goods terminates for *delivery* to the recipient (i.e.) in Chennai, Tamil Nadu.

Q363. A builder engaged in construction of building on a PAN India basis is having the Corporate Office in Bangalore, Karnataka. The builder also holds a registration in Bangalore, Karnataka. He is also engaged in construction services, being executed in different States. Whether the builder is required to take registration in all States where he is constructing buildings?

Ans. It is advisable to have registration in all States where the builder is doing construction work, because considering the nature of construction services though all the decisions regarding execution of work at the construction site may be taken at the Corporate Office in Bangalore, Karnataka, where the *'seat of management and control'* is located , those decisions which are taken are being effectively delegated to be carried out by the competent team located at the site with all necessary human and technical resources. Thus the construction site is characterised with permanence making it a fixed establishment as per section 2(7) of the IGST Act.

Further, in addition to the above in a construction project usually the builder will be procuring and storing the construction materials in a particular location and thereafter carries out the construction work at the site. Hence all those locations will be fulfilling the requirements of place of business as per section 2(85) of the CGST Act as it is defined to include '*any other place*' where the taxable person stores his goods or supplies or receives goods or services or both. Thus, all the construction sites where the Builder is storing goods will be considered as a place of business and he is liable to take registration for such construction sites.

Alternatively, it can also be argued that the builder will not be storing any goods at the construction site and will procure locally and will supply as and when needed. Even in that scenario, going invariably by provisions of fixed establishment concept as per section 2(7) of the IGST Act, one has to take registration if a place is characterised by sufficient degree of permanence and suitable structure in terms of human and technical resources to supply services or to receive and use services for its own needs. All these requirements will be fulfilled in case of a construction site without which the completion of construction services will not be holistic in a common industry practice. Once the construction site is treated as fixed

establishment, then it becomes the location of supplier of services and consequentially registration has to be taken for that construction site as per section 22(1) of the CGST Act, because that location in that State shall be the place from where the taxable supply of service is being made.

Based on the foregoing discussions, on an overall conclusion it is advisable for the builder to take registration in all States where the construction services are being carried out.

Q364. A person, whose aggregate turnover has not exceeded the threshold limit for taking registration under section 22(1) of the CGST Act, has received certain inward supplies on which he is liable to pay GST under RCM as per section 9(3) of the CGST Act. In such scenario, whether he is still required to get registered under GST and if so, under which section?

Ans. As per *section 24(iii) of the CGST Act*, a person is liable to take compulsory registration under GST, if such person is required to pay tax on inward supply of goods or services or both under reverse charge as per *section 9(3) or 9(4) of the CGST Act or section 5(3) or 5(4) of IGST Act*, irrespective of the fact that the aggregate turnover as per section 2(6) of the CGST Act is less than the threshold limit (i.e.) ₹ 20 Lakhs in case of goods and services/services alone or ₹ 40 Lakhs in case of goods alone. In the given case, though the person's aggregate turnover is less than the threshold limit for taking registration under GST, still such person is liable to pay GST on certain inward supply of goods or services or both under RCM, and is therefore liable to take registration mandatorily.

For example, a partnership firm engaged exclusively in sale of electrical items and the aggregate turnover is only ₹ 35 Lakhs per annum. But during the financial year the firm has availed the services of GTA and paid lorry freight of ₹ 50,000/- on 25 occasions. In such case the partnership firm is liable to pay GST under RCM as per *Sl. No. 1 of NN 13/2017-CTR read with section 9(3) of the CGST Act*. In such scenario, the partnership firm is liable to take registration as per section 24(iii) of the CGST Act, irrespective of the fact that its aggregate turnover is only ₹ 35 Lakhs, which is less than the threshold limit for taking registration under section 22(1) of

the CGST Act. Once registration is obtained, it has to comply with all the provisions as are applicable to a registered person. Thus, the partnership firm has to pay applicable GST on sale of electrical items.

It is pertinent to mention that, every inward supply is liable to tax under RCM but registration is not compulsory. For example, if the partnership firm is availing legal services from an Advocate and has paid ₹ 1 Lakh as legal fees, then in such case, the partnership firm is not required to pay GST under reverse charge as such partnership firm will be the business entity whose aggregate turnover is only ₹ 39 Lakhs which is less than threshold limit for taking registration and hence such legal services provided by an Advocate are exempted by virtue of *Sl. No. 45 of NN12/2017-CTR.* Therefore, the partnership firm is not required to take registration either under section 24(iii) of the CGST Act or under section 22(1).

Q365. If a person is engaged exclusively in supply of exempted goods or supply of exempted services in the form of services by an educational institution or health care services. Whether such person is required to obtain registration under section 24(iii) of the CGST Act as such person has received certain inward supply of goods or services on which tax is liable to be paid under reverse charge as per section 9(3) or 9(4) of the CGST Act?

Ans. As per section 23(1)(a) of the CGST Act, if a person is engaged exclusively in supply of wholly exempted goods as specified in *NN 2/2017-CTR* or wholly exempted services as specified in *NN12/2017-CTR*, then such person is exempted from taking registration under GST. However, if such person is a hospital being a clinical establishment engaged in supply of Health Care Services which is an exempted services by virtue of *Sl. No. 74 of NN12/2017-CTR / Sl. No. 77 of NN 9/2017-ITR.* And such Hospital has imported technical consultancy services with respect to information technology from an overseas supplier and it is deemed to be an import of services as per *section 5(3) of the IGST Act read with Sl. No. 1 of NN 10/2017-ITR,* then such Hospital is liable to pay IGST under reverse charge. Thus, as per section 24(iii) of the CGST Act such hospital is liable to get registration mandatorily.

But, the *issue here is whether section 24 of the CGST Act will prevail or section 23.* Section 24 overrides only section 22(1) of the CGST Act and not section 23. A logical conclusion can be derived that section 23 being a specific section provides for exemption from registration under GST, if the supplier is engaged exclusively in supply of wholly exempted goods or services, whereas section 24 makes registration compulsory if inward supply of any of the goods or services is received on which GST is payable under reverse charge. Thus application of both the sections is independent and it is a well settled principle of interpretation that the law should not be interpreted in such a way to make any part of the statute redundant. If the application of section 23 is adopted then the application of section 24 becomes redundant. However in the absence of the specific clarification from the Department, there are possibilities that the Department may dispute which has to be defended on merits.

Moreover, the only possibility for the Government is to issue a Notification by virtue of the power conferred in section 23(2) of the CGST Act. In the past the Government has issued various Notifications under the said provisions to exempt persons who were otherwise required to take registration. Until then, on a conservative approach, it is advisable to take registration under section 24(iii) of the CGST Act.

Q366. A newly incorporated software company engaged exclusively in export of software services has not been registered under the GST law since its inception. Meanwhile the company has raised invoices for export of software services and received payments from the overseas customers. The annual turnover of such software company works out to ₹ 65 Lakhs. Whether the software company has to take registration under GST and if so from which date they have to take registration. Whether they are liable to discharge GST on such export of services along with interest?

Ans. Export of services are treated as Inter-State supplies as per section 7(5) (a) of the IGST Act. Hence, as per section 24(i) of the CGST Act, the person who is engaged in export of services is compulsorily required to take registration irrespective of the fact that such export turnover is less than ₹ 20 Lakhs. However, by virtue of

NN 10/2017-ITR as amended by *Notification No. 3/2019-Integrated Tax dated 29.01.2019 read with section 20 of IGST Act and section 23(2) of the CGST Act*, the persons making inter-State supply of taxable services are being exempted from taking registration if the aggregate turnover computed on all India basis is less than ₹ 20 Lakhs.

Thus, in the given case the software company is liable to get registration as per section 24(i) of the CGST Act immediately after their aggregate turnover has exceeded ₹ 20 Lakhs, as they are engaged in inter-State taxable supply of services. In fact, only after obtaining the registration, the software company should have exported the services under bond or LUT without payment of integrated tax and can claim refund of unutilised input tax credit as per section 16(3) (a) of the IGST Act. Alternatively the software company should have exported the services with payment of integrated tax and claim refund of such tax paid on services as per section 16(3) (b) of the CGST Act. But the software company has neither taken registration nor obtained LUT/Bond for export of services for ₹ 65 Lakhs without payment of integrated tax. Now the question arises as to whether such software company is liable to pay IGST on supply of software services alongwith interest as specified under section 50(1) of the CGST Act.

The solution to this issue is that the software company can now immediately apply for registration and also apply for LUT immediately through Online in **Form GST RFD-11** as per Rule 96A(1) of the CGST Rules. Once **Form GST RFD-11** is filed in common portal LUT shall deemed to be accepted as soon as an acknowledgement for the same, bearing the application reference number (ARN) is generated online. But the dispute here is whether filing the LUT will ratify the defect of the software company in exporting services without payment of integrated tax. In this connection, it is emphasized that the software company would have fulfilled the following conditions for being export of services as per *Section 2(6) of the IGST Act*:

a. Location of supplier (software company) as per *section 2(15) of IGST Act* is in India

b. Location of recipient (overseas clients) as per *section 2(14) of IGST Act* is outside India

c. As per *section 13(2) of IGST Act*, the place of supply of software services by the software company shall be the location of the recipient (overseas clients) which is also outside India

d. Payment for such service was received in convertible foreign currency

e. The supplier of service being the software company and the recipient of service being the overseas clients are not merely establishments of a distinct person in accordance with *Explanation 1 in section 8 of IGST Act*.

Once it is concluded as export of services, then it will automatically be zero rated supply of services as per section 16(1) of the IGST Act.

Though the software company was not registered at the time when they supplied software services to their overseas clients but still it can be concluded as zero rated supply. But the only default is such zero rated supplies have been made before filing the LUT. For this, the Board has issued a clarification in *Para 4.1 of Circular No. 37/11/2018-GST dated 15.03.2018*, where in it has emphasised that the substantive benefits of zero rating may not be denied where it has been established that exports in terms of the relevant provisions have been made. The delay in furnishing of LUT in such cases may be condoned and the facilities for export under LUT may be allowed on *ex post facto* basis taking into account the facts and circumstances of each case. Though this Circular was superseded by the *Circular No. 125/44/2019-GST dated 18.11.2019*, but the proposition laid by the former Circular still holds good as the same clarification was reiterated by the Board in *Para No. 44* of this Circular. Hence, it is advisable for the software company to apply the LUT immediately through Online in the common portal to ratify the earlier procedural deviation.

Finally the software company need not pay IGST on the supply of software services along with interest under section 50(1) of the CGST Act, because non-filing of LUT / Bond is only a procedural deviation; as the fundamental requirement has been met other

procedural deviation can be condoned. This view is also upheld by the Hon'ble Supreme Court in ***Mangalore Chemicals and Fertilizers Ltd v. Deputy Commissioner [1991 (8) TMI 83 – SC]*** wherein it has been held that the procedural infraction of Notification, Circulars, etc. are to be condoned if exports have already taken place and law is settled now that substantive benefit cannot be denied for procedural lapse.

Chapter 10
Returns

Q367. A services provider submits his invoice for outward supply and on the same day two more invoice are raised, one for SEZ and another for a party outside India. Thus, there are three invoices. How to show same in Form GSTR-1?

Ans. As per Rule 59(1) of the CGST Act, outward supplies are required to be reported in **Form GSTR-1**.

Invoice wise details are required to be reported in **Form GSTR-1**.

a. If the domestic *customer is registered person*, invoice issued to him needs to be reported in Table 4A of the Form GSTR -1.

b. If the *recipient is unregistered person and value of invoice is more than ₹ 2.5 Lakhs,* then it needs to be reported in Table 5A of the Form GSTR -1 and

c. If the *value of invoice is less than ₹ 2.5 Lakhs,* then it needs to be reported in Table 7A (Intra State supply) or Table 7B (Interstate supply) of the Form GSTR -1.

d. *Supply to SEZ unit* needs to be reported under Table 6B of Form GSTR -1.

e. Supply to a person outside India,

   (i) If it is *export supply* needs need to be reported under Table 6A of the Form GSTR -1.

   (ii) If it is *not an export of service* it shall be reported in B2C Table 7B of the Form GSTR -1.

Q368. How to apply the 10% restriction of credit in terms of Rule 36(4) of the CGST Rules in case the supplier files return quarterly? Is it possible to take credit on invoices which are reflected in Form GSTR-2A in other quarter?

Ans. Rule 36(4) of the CGST Rules, restricts availment of ITC in **Form GSTR-3B** to the extent of 110% of matched ITC as available in **Form GSTR-2A**. It does not provide for any additional liberty in case

of supplier is filing Form GSTR-1 on quarterly basis. Credit can be availed within the limit of 110% only. In such scenario, if credit is more than 10% of the available limit, it can be availed only after reflection of credit in **Form GSTR-2A** i.e. filing of **Form GSTR-1** by supplier.

Q369. A supplier wrongly reported the supply as unregistered supply in Form GSTR-1; therefore same is not appearing in Form GSTR- 2A of the purchaser. Now the purchaser has complied with all conditions of section 16 of the CGST Act, but same is not appearing in Form GSTR 2A of the purchaser. Is the purchaser entitled to claim ITC?

Ans. CBIC has clarified this issue in Para 4 of Press Release No. 62/2018 dated 18.10.2018. Same is reproduced below.

> *"4. It is clarified that the furnishing of outward details in Form GSTR-1 by the corresponding supplier(s) and the facility to view the same in Form GSTR-2A by the recipient is in the nature of taxpayer facilitation and does not impact the ability of the taxpayer to avail ITC on self-assessment basis in consonance with the provisions of section 16 of the Act. The apprehension that ITC can be availed only on the basis of reconciliation between Form GSTR-2A and Form GSTR-3B conducted before the due date for filing of return in Form GSTR-3B for the month of September, 2018 is unfounded as the same exercise can be done thereafter also."*

As per the above clarification, credit can be availed by the purchaser. Further, section 16 of the CGST Act which provides for eligibility of ITC was envisaged with **Form GSTR-2** and **Form GSTR-3** in mind. But the concept of matching and filing of **Form GSTR-2** and **Form GSTR-3** have not happened so far. Therefore, if all the conditions as prescribed under section 16 of the CGST Act are fulfilled then credit can be availed by the purchaser. He needs to demonstrate the same during scrutiny.

However, w.e.f. 09.10.2019, Rule 36(4) has been incorporated in the CGST Rules, restricting availment of ITC in excess of 10% of matched ITC as reflected in **Form GSTR-2A**. If subject credit is more than prescribed limit of 10%, the same cannot be availed.

Q370. At the time of GST audit of FY 2018-19, whether the Chartered Accountant is supposed to check the payment of all invoices of which credit has been availed during the year, or invoices pertaining to March 2019 shall be evaluated at the time of audit of FY 2019-20 as payment is due by September 2019?

Ans. Second proviso to section 16 of CGST Act, prescribes that, in case a registered person fails to pay to supplier, value of supply along with tax payable on the same within 180 days from issue of invoice, ITC related to such non-payment needs to be added to output tax liability along with interest. This condition needs to be verified at the time of completion of 180 days from the date of invoice and not at the time of availment of ITC.

However, it may be noted that CBIC vide press release dated 03.07.2019 has clarified the *Role of Chartered Accountant / Cost accountant in certifying reconciliation statement; accordingly, their role is limited to reconciliation of value declared in annual return with audited annual account.* The CBIC clarification is re-produced hereunder for ready reference:

> *"(h)* ***Role of chartered accountant or a cost accountant in certifying reconciliation statement:*** *There are apprehensions that the chartered accountant or cost accountant may go beyond the books of account in their recommendations under* ***Form GSTR-9C****. The GST Act is clear in this regard. With respect to the reconciliation statement, their role is limited to reconciling the values declared in annual return (****Form GSTR-9****) with the audited annual accounts of the taxpayer."*

However, since the meaning of the term '*audit'* as defined under section 2(13) of the CGST Act, is very wide and audit report in **Form GSTR-9C** is to be certified with a 'true & fair view', the Auditor must apply his professional judgment and based on the facts of the case, verification can be done applying the various principles of auditing viz., materiality, subjectivity, objectivity etc.

Hence, it would be pertinent to verify payment of invoices pertaining March 2019 also to check if the same has been done within 180 days. If not done, whether such ITC has been reversed / added to liability shall have to be reported. If such data could not be verified then that fact should also be reported.

Q371. While filing Form GSTR-9, what should be the treatment of the difference in ITC as per Form GSTR-2A and Form GSTR -3B?

Ans. As clarified earlier in Q No. 369, upto 09.10.2019, reflection of ITC in **Form GSTR-2A**, was not a condition for availment of ITC. Therefore, there is only reporting requirement of difference between **Form GSTR-3B** and **Form GSTR-2A** in **Form GSTR 9**, if credit is otherwise availed as per prescribed conditions. The legal requirement of matching with **Form GSTR-2A** has arisen only from financial year 2019-20.

Q372. While filing Form GSTR-3B, if the ITC was reflected in Form GSTR 2A, but the supplier later made amendment, how to satisfy this condition.

Ans. If the supplier has revised **Form GSTR-1** to rectify his mistake, it indicates, credit was availed wrongly by the purchaser. In such a case, credit needs to be reversed. If credit was availed as per prescribed provisions, follow up needs to be taken with the supplier for re-correcting **Form GSTR-1**.

Q373. A Pharmacy is supplying medicines to a hospital. In the month of March, the pharmacy receives a debit note from the hospital. The value of the debit note exceeds the total sales of the pharmacy in the month of March. What should be the treatment of such turnover vis-à-vis the debit note in Form GSTR-1?

Ans. As per section 34 of the CGST Act, credit or debit note shall be raised only by a supplier. The retail chemist (supplier) shall have to raise a credit note corresponding to the debit note from the hospital. This credit note shall be reported in the **Form GSTR-1**. In **Form GSTR-3B**, such credit notes shall have to be reduced from the taxable value and net value shall have to be reported.

In the given situation, since the taxable value for March is lesser than the credit note amount, results in negative numbers the same shall not be reported in Form GSTR-3B. *Circular No. 26/26/2017-GST dated 29.12.2017* – Para 4 states: "*It may be noted that while making adjustment in the output tax liability or input tax credit, there can be no negative entries in the **FORM GSTR-3B**. The amount*

*remaining for adjustment, if any, may be adjusted in the return(s) in **FORM GSTR-3B** of subsequent month(s) and, in cases where such adjustment is not feasible, refund may be claimed.*"

In line with the above circular such negative numbers shall be adjusted against the subsequent period's liability.

Q374. In case where Form GSTR-1 is uploaded by supplier after due date, in which month the transactions would appear in Form GSTR-2A of his customer.

(a) the month in which Form GSTR-1 is uploaded by supplier or

(b) the month as per date of bill for which Form GSTR-1 is uploaded.

Ans. Say a bill dated 5th May is reported in **Form GSTR-1** in of May itself but **Form GSTR-1** is filed late (i.e. it is filed on 7th July as against 11h June), then the said bill will be updated in **Form GSTR-2A** of May month of the customer.

However, if the bill dated 5th May is reported in **Form GSTR-1** of June month, then the said bill will be updated in **Form GSTR-2A** of June month of the customer.

Q375. During the course of the GST audit it was observed that the taxable person (auditee) had not paid his creditors within 180 days but paid on or before 31.03.19, being an auditor, we observed that taxable person has not complied with the second proviso to Section 16(2). Accordingly, ITC availed should be reversed but auditee is not ready for such reversal since the amount is already paid as on the balance sheet date; what should the auditor do in this case and how shall he report in Form GSTR-9C.

Ans. In the given situation, say the bill is dated 1st May 2018 which is paid on 5th March 2019. As on 31st March 2019, bill has been paid and hence supplier is eligible for claiming set-off. However, legally the supplier should have reversed the same in the month of November (month following the end of period of 180 days i.e. 27th October) and eligible to claim set-off in month of March 2019.

Hence, the auditor shall ensure that interest for the November to March is paid for wrong availment of ITC along with interest for the period May to October as per second proviso to section 16(2) of the CGST Act and report this through comments in Part II of **Form GSTR-9C**.

Q376. Form GSTR-3B for the month of March is to be filed by 22nd April whereas Form GSTR-1 quarterly return is to be filed by 30th April. Accordingly, the transaction would not appear in Form GSTR-2A by 22nd April. In such cases how to claim the credit?

Ans. As per *Circular No. 123/42/2019-GST, dated 11.11.2019*, the taxpayer has to ascertain ITC reported by suppliers from his auto populated **Form GSTR-2A** as available on the due date of filing of **Form GSTR-1** under sub-section (1) of section 37 of the CGST Act.

However, the guidance provided under this circular will fail in the given case as the date of filing of **Form GSTR-3B** is earlier than the due date of **Form GSTR-1** and hence the conservative and practical approach will be to consider **Form GSTR-2A** as on the date of filing of **Form GSTR-3B**.

Q377. How to check whether the taxes are actually paid by the supplier as he might have filed Form GSTR-1 but not filed Form GSTR-3B and there is no tool to check whether the supplier has filed Form GSTR-3B

Ans. GSTN portal provides for "Filing table" of supplier through search taxpayer facility. The same can also be accessed in bulk through various GSP's.

However, one must consider that filing of **Form GSTR-3B** may not be conclusive evidence of payment of tax on respective supplies by the supplier and taxpayer shall take appropriate precautions against their suppliers to safeguard against any future liability regarding set-off of ITC in respect of the said supply.

Q378. For computing the net tax liability, the taxpayer has to take Form GSTR-2A of due date of Form GSTR-1 i.e. 11th of following month. Please guide.

Ans. **Due date of filing of Form GSTR-1** i.e. 11th of the following month as per Sl No 3 of point 3 of *Circular No. 123/42/2019-GST, dated 11-11-2019*.

Q379. Do we have to include value of supply liable to reverse charge while filing Form GSTR-3B?

Ans. According to section 17(3) of the CGST Act, outward supplies, on which the recipient is liable to pay tax on reverse charge basis, shall be treated as exempt supplies for the purpose of section 17(2) read with rule 42 /43 of the CGST Rules.

A view may be taken that supplies on which the recipient is liable to pay tax on reverse charge basis, shall be treated as exempt supplies only for the purpose of section 17(2) and not for any other purpose. However, considering reconciliation and reporting purpose in Annual returns among others, the following disclosure may be considered:

[This could be discussed from the perspective of both suppliers and as well recipient]

Supplier of RCM Services/goods: Registered person supplying specific goods and/or services where tax has to be paid on reverse charge basis by the recipient, the taxable value of such supplies shall be reported by the supplier in Table 3.1 (c) of **Form GSTR-3B**.

***Recipient of RCM Services/goods*:** Inward supplies liable to reverse charge will have to be reported by the recipient in Table 3.1(d) and (where ITC is claimed) in Table 4A(3) of **Form GSTR 3B** by the recipient.

Q380. A person is providing outward supplies which are taxable under RCM. Where to declare these outward supplies in Form GSTR-3B?

Ans. The declaration should be made in **Table 3.1(a)** which covers outward taxable supplies (other than zero rated, nil rated and exempted)

As per section 2(108) of the CGST Act, "*taxable supply"* means a supply of goods or services or both which is leviable to tax under this Act. Further outward supplies on which tax is payable are not covered under zero rated supplies, exempt supplies as per

section 2(47) of the CGST Act, or nil rated supplies. Hence, these shall be covered in Table 3.1(a).

Q381. ITC accounted for in the books of accounts but not claimed in Form GSTR 3B. Same was claimed in Form GSTR-3B of October month of next financial year. Is the taxable person eligible to claim ITC?

Ans. No, As per section 16(4) of the CGST Act, a registered person shall not be entitled to take ITC in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 of the CGST Act, for the month of September following the end of financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier.

Example – ITC set-off to be claimed ₹ 12 lakhs of FY 2019-20

Claimed ₹ 12 lakhs or partial amount through GSTR-3B of	***Return of the said month filed on***	***Due date of GSTR-3B of September 2020 (Assumed)***	***Whether set-off is Available as per law***
April 2020	20/06/2020	20/11/2020	Yes
September 2020	18/11/2020	20/11/2020	Yes
April 2020	25/11/2020	20/11/2020	No
October 2020	15/11/2020	20/11/2020	Yes
October 2020	25/11/2020	20/11/2020	No

Assuming Annual Return for FY 2019-20 is filed on 4th December, 2020.

Q382. Due to entry error total outward taxable supplies [Table 3.1 (a)] has been entered in inward supplies (liable to reverse charge). How can I rectify the same?

Ans. In **Form GSTR-3B** manual entry has to be made which has no inbuilt checks and balances by which it can be ensured that the data uploaded by each registered person is accurate, verified and validated.

The following remedies are available:

1. Submit a rectified **Form GSTR-3B** manual copy with a covering letter to the Jurisdictional Officer and also to the Nodal Desk Officer.
2. Raise a ticket to GST portal
3. Rectify the same if possible in **Form GSTR-9**, since your outward supply will be reflected there.
4. Also if you are under GST Audit, the comment for same should be mentioned in GST Report, so that it will be helpful, for any reply to Show Cause Notice by the Department.

For filing Manual **Form GSTR-3B** with Nodal Desk Officer you may quote ***Bharti Airtel Limited v. Union of India and Ors.*** *[W.P. (C) 6345/2018, CM APPL. 45505/2019 decided on 5-5-2020]*

Q383. (a) Financial year 2017-18 audit was conducted by some other CA and for F Y 2018-19 the audit is to be conducted by us. As per Rule 37 of the CGST Rules, (180 days payment) if opening balance is outstanding as on 1.4.2018 and 180 days expires during FY 2018-19. Whether we have to report now in FY 2018-19 as there was no input available in financial year 2018-19 and no amount to reverse as per Rule 37 of the CGST Rules.

(b) If any sale of 2017-18 is declared in financial year 2018-19 and is reflected in annual return of 2017-18 in columns 10 and 11. Where will this amount be reflected in the annual return for FY 2018-19?

Ans. (a) If ITC was reversed in the year 2017-18 and the amount is still not paid in the year 2018-19, no credit is required to be taken; if the amount is paid during the year 2018-19 then credit for the reversed ITC can be taken. Once credit is taken and later reversed due to rule 37 of the CGST Act, the time-limit under section 16(4) of the CGST Act would not bar it from taking credit again when payment is made later on. In respect of amounts outstanding as on 01.04.2018, and the period of 180 days expires during 2018-19, the ITC originally taken in respect of such outstanding is to be reversed with interest on the expiry of 180th day and it can be reclaimed when the payment is made.

(b) With regard to second question, there is no column in GSTR-9 of annual return, where we can put reconciliation outward liability figure which we have reported in the year 2017-18 annual return in tables 10 and 11.

CBIC VIDE Press Release dated 09th October, 2020 had clarified that the taxpayers are required to report only the values pertaining to Financial Year 2018-19 and the values pertaining to Financial Year 2017-18 which may have already been reported or adjusted are to be ignored. No adverse view would be taken in cases where there are variations in returns for taxpayers who have already filed their GSTR-9 of Financial Year 2018-19 by including the details of supplies and ITC pertaining to Financial Year 2017-18 in the Annual return for FY 2018-19.

However, it is adviced to keep your working papers ready. If you receive SCN from Department, you can very well inform the proper officer with your working paper and satisfy him.

Q384. What is the late fee for annual return Form GSTR 9? Is it ₹ 50,000 (25k + 25k) under section 125 of the CGST Act or it is levied under section 47 thereof?

Ans. Sub-section (2) of section 47 of the Act provides for levying late fees on those registered persons who failed to furnish the annual return in **Form GSTR 9** by the due date. The late fee prescribed is as follows:

Quantum	CGST	SGST
Minimum	₹ 100.00 for every day during which the failure continues.	₹ 100.00 for every day during which the failure continues.
Maximum	Quarter per cent of his turnover in the State or Union territory.	Quarter per cent of his turnover in the State or Union territory.

The registered person, who is required to get his accounts audited following the provisions of sub-section (5) of section 35 read with rule 80, has to furnish the annual return in Form GSTR 9 along with a copy of the audited annual accounts and a reconciliation statement in **Form GSTR 9C**. It is pertinent to note that in cases where the aggregate turnover exceeds the limit prescribed under rule 80 (3)

the registered person has to submit the annual return along with audited accounts and a reconciliation statement within the due date.

Late fee is levied for furnishing the annual return beyond the prescribed time.

Section 125 of the CGST/ SGST Act, imposes a penalty (not late fees) on any person, who contravenes any of the provisions of this Act or any rules made thereunder for which no penalty is separately provided for in this Act. The penalty may extend to ₹ 25,000/- each under CGST & SGST/UTGST Act.

Where the registered person fails to comply with the above-referred provisions, there is no separate penalty provided under the CGST/SGST Act. Hence, if a registered person fails to comply with any of the above provisions i.e., fails to get its books of accounts audited by CA or CMA OR submit the annual return along with audited accounts and a reconciliation statement within the due date, he shall be liable to a penalty under section 125.

Q385. There is no separate table to show the outward sales on reverse charge in Form GSTR-3B. Whether there is a necessity to show the same in Form GSTR-3B? If the answer is yes, then under which table of Form GSTR 3B the same is to be shown? For Example: Transporter "A" opts for 12% GST. Receiver B will remit the tax" on reverse charge basis and he will show the same under reverse charge in Form GSTR-1. Explain.

Ans. It can be shown under **Table 3.1 (c)** - Other outward supplies (Nil rated and exempted).

In **Form GSTR-1** there is a **Table 4B** to show such entries. It provides *"whether invoice is under reverse charge mechanism".* Once a supplier mentions "Yes" against the column, it implies that the tax payment has to be done by receiver. It is reflected in **Form GSTR-2A** as RCM invoice where the recipient needs to pay tax. One thing, we need to keep in mind while doing GST Audit, is that the auditor should also look for **Form GSTR-2A** for the above kind of entry and if found, enquiry need to be done whether tax under RCM has been paid or not.

For transporters there are two options, one is paying on forward charge which is 12% with ITC and the other is under RCM where the recipient is required to pay tax @ 5%. The transporter opting for 12% GST, has to pay the GST under forward charge. RCM is not applicable in such cases.

Q386. What will be the effect of amendment to Rule 36(4) of the CGST Rules, allowing 10% provisional credit made on 03.04.2020 *viz*, how to ensure compliance on cumulative basis in September 2020 returns?

Ans. Rule 36(4) restricts availment of ITC in **Form GSTR-3B** to the extent of 110% of matched eligible ITC as available in **Form GSTR-2A**.

A proviso was inserted by *Notification No. 30/2020-Central Tax dated 03.04.2020*, to this rule. As per the proviso the condition of 110% shall be applicable on cumulative basis for the period February to August 2020 and return for the period September 2020 shall be furnished giving effect of cumulative adjustment of ITC.

Further, *Circular 136/06/2020-GST dated 03.04.2020*, clarifies the scope of the above proviso. As per the circular, a proviso has been inserted in the CGST Rules, to provide that the said condition shall not apply to ITC availed by the registered persons in the returns in **Form GSTR-3B** for the months of February, March, April, May, June, July and August, 2020, but that the said condition shall apply cumulatively for the said period and that the return in **Form GSTR-3B** for the tax period of September, 2020 shall be furnished with cumulative adjustment of ITC for the said months in accordance with the condition under Rule 36(4) of the CGST Rules.

Examples:

CASE-A

₹ in Lakhs

Particulars	***Credit claimed in Form GSTR-3B***	***Credit as per Form GSTR-2A***	***Credit as per Rule 36(4) – 110% of Form GSTR-2A***	***Credit to be reversed in September 2020- return***
Cumulative Credit for the period February to August 2020	130	100	110	20 = 130 – 110

As per proviso to Rule 36(4) of the CGST Rules, ITC of ₹ 130 Lakhs can be availed in **Form GSTR-3B** for the period February to August 2020, whereas, as per Rule 36(4) of the CGST Rules, 110% of matching credit in **Form GSTR-2A** can be availed. As ₹ 100 Lakhs is matching credit as per **Form GSTR-2A**, maximum ₹110 lakhs credit can be availed for the period February to August 2020. Therefore, excess credit availed to the tune of ₹ 10 Lakhs needs to be reversed in **Form GSTR-3B** for the month of September 2020.

CASE-B

₹ in Lakhs

Particulars	***Credit claimed in GSTR-3B***	***Credit as per GSTR 2A***	***Credit as per Rule 36(4) – 110% of GSTR-2A***	***Credit to be reversed in September 2020- return***
Cumulative Credit for the period February to August 2020	130	120	132	NIL

As per proviso to Rule 36(4) of the CGST Rules, ITC of ₹ 130 Lakhs can be availed in **Form GSTR-3B** for the period Feb to August 2020.Whereas, as per Rule 36(4), 110% of matching credit in **Form GSTR-2A** can be availed. As ₹ 120 Lakhs is matching credit as per **Form GSTR-2A**, maximum ₹ 132 lakhs credit can be availed for the period February to August 2020. As actual availment of ITC is lesser than maximum limit of ₹132 Lakhs, no adjustment is required to be done in **Form GSTR-3B** for the month of September 2020.

If the unmatched ITC pertains to February & March 2020, then in any case the eligibility to avail ITC for the financial year 2019-20 shall cease from the due date of filing **Form GSTR-3B** for September 2020.

Q387. Whether input GST for FY 2017-18 can be claimed now? If no, whether the output GST can be reversed?

Ans. As per proviso to section 16(4) of the CGST Act, read with *Removal of Difficulty Order No. 02/2018- Central Tax dated 31.12.2018*, the time limit to avail ITC relating to financial year 2017-18 is the due date for filing **Form GSTR-3B** of March 2019. Therefore, Input GST for FY 2017-18 cannot be availed post that date.

Output GST cannot be reversed if ITC is not available. Output tax liability arises from the levy and can be recovered by the Department under the provisions of section 73 or 74 of the CGST Act.

On the other hand, ITC is a vested right of the tax payer which has to be availed and utilized by the tax payer subject to the provisions of Chapter V of the CGST Act relating to ITC.

Non availability of ITC does not waive the GST liability.

Q388. Should transactions made by an Indian company's branch offices located outside India be reported in the GST returns of the company under exempted/nil rated supplies?

Ans. The GST returns require details of the outward and inward supplies made by that particular registered person only. The transactions undertaken by the foreign branch of the Indian entity shall not be required to be reported in the GST returns. However, the supplies made by the Indian entity to the foreign branch or *vice versa* will be required to be reported by the Indian entity.

Q389. (a) **Are interest on fixed deposits, high-seas sale and MEIS license sale to be considered as taxable supply or as exempt supply?**

(b) What are the consequences of and the course of action to be taken if fixed deposit interest and high-seas sales have been reported wrongly as taxable turnover in Form GSTR-9 & Form 9C and if the taxable supplies of MEIS license sale have not been included in the taxable turnover in Forms GSTR-9 & 9C?

Ans. (a) *Interest on FD:* Interest on fixed deposits is exempt in terms of *NN 12/2017-CTR*.

High sea sale: High sea sale is treated neither as a supply of goods nor supply of services as per an insertion in Schedule III of the CGST Act *vide* the CGST (Amendment) Act, 2018 with effect from 1-02-2019. Hence, it is not at all regarded as supply under GST.

MEIS license sale (sale of duty credit scrip): Sale of duty credit scrip was taxable till October 12, 2017. Subsequently the same has been exempted *vide Notification No. 35/2017 Central tax - (Rate) dated 13.10.2017*. All are considered as exempted supply, as non-taxable supply is part of exempt supply.

(b) Once the annual return in **Form GSTR-9** and **Form GSTR 9C** are filed, the same cannot be revised. In case the above mentioned supply was omitted to be considered or wrongly considered based on the impact of such omission, or where it is huge, the supplier may make an intimation for the same to the jurisdiction officer, through a letter about such omission. Similarly, if any tax payable arises even after filing **Form GSTR-9** and **Form GSTR 9C**, the same can be determined by the taxable person and the determined tax be paid through **Form GST DRC-03** and the same be intimated to the jurisdictional Proper Officer.

Chapter 11
Interest

Q390. A tax payer had paid less tax on supplies made in March, 2018 in the regular return filed on 20th April, 2018. Later on he deposited the due tax in the month of May, 2018 through a regular challan and that amount was lying in cash ledger and was not utilised until the tax payer filed the return in FORM GSTR-9C in February, 2020. Later he filed FORM GST DRC-03 and paid a very small amount in cash. Whether interest would be charged from March, 2018 till February, 2020 on the gross amount of tax due or on the balance amount paid by him in February, 2020?

Ans. The interest is to be paid on cash component only from March, 2018 till February, 2020. This issue is not free from litigation. A proviso was inserted after section 50(1) through Finance Act, 2019 to the effect that interest is to be levied on cash component only. However, the proviso was not notified.

The proviso was made effective through *Notification No. 63/2020-Central Tax, dated 25.08.2020* ["***NN 63/22020-CT***"], prospectively w.e.f. 1st September, 2020.

Now, the issue arises to whether the interest already paid on gross liability will become refundable and what about the liability to interest that accrues prior to 1st September, 2020. To mitigate the issues as such and to avoid the refund claims the Board issued a press release dated 26th August, 2020, stating that *NN 63/22020-CT*, relating to interest on delayed payment of GST has been issued prospectively due to certain technical limitations. However, it has assured that no recoveries shall be made for past period as well by the Central and State Tax Administration in accordance with the decision taken in the 39th Meeting of GST Council. This will ensure full relief to the tax payers as decided by the GST Council.

Further, in the case of ***Refex Industries Ltd. v. Asstt. Commissioner of CGST***, W.P. No. 23360 of 2019, decided on 6-Jan-2020 and in the case of ***Mannsarovar Motors (P) Ltd. v. Asstt. Commissioner of CGST***, *WP No. 4468 of 2020, decided on*

20-Sep-20, the Hon'ble Madras High Court held that amendment in section 50 is of clarificatory nature and interest should be levied only on the cash component.

The above question is to be clarified by the Board, through circular, or through necessary retrospective amendment wherever required through/ by Government.

Q391. If payment is not made by the recipient of inward supply to the supplier as provided under section 16(2)(d)(second Proviso) of the CGST Act within 180 days from the date of issue of invoice then from which date interest on delayed payment of tax claimed as ITC on such inward supply is to be calculated? How to reverse the credit?

Ans. As per rule 37(3) of the CGST Rules *'the registered person shall be liable to pay interest at the rate notified under sub-section (1) of section 50 for the period starting from the date of availing credit on such supplies till the date when the amount added to the output tax liability, as mentioned in sub-rule (2), is paid'.*

So, effectively interest is to be paid from the date of filing of return of the month in which the relevant ITC has been availed up to the date of filing of return of the month in which the relevant ITC is reversed.

The credit shall be reversed as per rule 37(2) of the CGST Rules which reads:

> *'The amount of input tax credit referred to in sub-rule (1) shall be added to the output tax liability' for the month in which details are furnished."*

The recipient needs to reverse such ITC in **Form GSTR-3B** Table 4.B under the column titled 'Others'.

Q392. Interest for not filing return should be considered as 'Nil' when there is no liability on the assessee for the particular month/quarter. Please clarify.

Ans. Section 50 (1) of the CGST Act says:

> "*Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which* ***the tax or any part thereof remains unpaid,*** *pay, on his own, interest at such*

rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council:"

In view of the above, there is no interest liability in the above case as tax payable is NIL. It is presumed that outward taxable turnover is NIL for the particular month / quarter. In case outward taxable liability is set off completely by ITC then the answer to question no. 390 may be referred.

Q393. If we paid GST through challan before due date but filed FORM GSTR 3B after due date, whether we have to pay interest?

Ans. Yes, in view of section 50 of the CGST Act, interest is payable from the due date to the date of payment. Rule 85(3) & (4) of the CGST Rules, further specifies that payment shall be made by debiting cash/credit ledger which happens on filing of **FORM GSTR-3B**. Hence interest is payable.

Example –

Outward tax liability – ₹ 5 Crore

ITC set off available – ₹ 2.7 Crore

Tax to be paid – ₹2.3 Crore

Due date of filing FORM GSTR-3B – 22nd April 2019

Tax paid – ₹ 1.2 crore on 21st April 2019

Tax paid – ₹1.1 crore on 29th April 2019

Form GSTR-3B filed on 30th April 2019

In this case, interest is payable on ₹ 2.3 crore from 23rd April to 30th April.

Q394. What is the rate of GST on interest paid by the recipient for delayed payment of consideration? Should we apply the rate applicable to concerned goods or services or 18%

Ans. The value of supply shall include as per section 15(2) (d) *'interest or late fee or penalty for delayed payment of any consideration for any supply'*

Hence the interest received will be taxed at the rate applicable to original supply. However, the time of supply shall be the date on which interest is received as per sections 12(6) and 13(6) of the CGST Act.

Q395. Bills raised during October, 2020 erroneously omitted in Form GSTR-1 and a Nil Return has been filed. During November, 2020 the bills raised during October 2020 were shown. In this scenario, whether interest is to be paid and if so, at the rate of 18% or 24%?

Ans. Interest is to be paid for outward tax liability according to section 50(1) of the CGST Act which is 18% for the period from the due date of filing **Form GSTR-3B** till the date when the liability is discharged. For payment of interest reporting in **Form GSTR-1** is not a criterion. Interest is required to be paid when the said transaction is not included in **Form GSTR-3B** and because of that tax has not been paid for the said transaction. If the above transaction is not included in **Form GSTR-3B** for the month of October, 2020 and included in **Form GSTR-3B** in any subsequent month, interest is to be paid for the period from the due date of filing **Form GSTR 3B** for the month of October, 2020 till the date when such transaction is reported.

Q396. Whether interest is payable on excess claim of ITC?

Ans. As per section 50(3) of the CGST Act a taxable person who makes an excess claim of ITC under section 42(10) thereof, shall pay interest on such excess claim at such rate not exceeding 24%. However, since **Form GSTR-2** and **Form GSTR-3** are deferred, section 50(3) may not be operational and therefore, interest may not be applicable on ITC claimed but not utilised. It is important to note that Section 50(3) refers to Sub-section (10) of Sections 42 and 43 which deal with matching, reversal and reclaim of ITC and output tax liability through Form GSTR-1, 2 and 3, and since the **Form GSTR-2 and 3** returns have been deferred, the matching system of **Form GSTR-1, 2 and 3** never saw the light of day.

Can we thus say that section 50(3) is majorly inapplicable? With that understanding it would be safe to interpret that the application of 24% rate of interest on any default is not in place. At the same time, the department and some experts are of the view that in cases like excess claim of credit, where the rectification has not been done within the due date, as stated in Section 39(9) of the Act, interest would be applicable @24%. This issue also needs some clarification or interpretation by Court, to settle.

Chapter 12
Refunds

Q397. Whether GST paid to Customs House Agent and RCM on transportation of extra neutral alcohol ("ENA") being VAT item in Punjab and Haryana States purchased against Form H and exported, eligible for refund?

Ans. ENA is a disputable item as to whether it is taxable under GST or not. For instance, it is considered to be taxable under GST in the State of Tamil Nadu.

Notwithstanding the above, as per Section 16(2) of IGST Act, input tax credit can be availed even for making exempt supplies as long as it can be considered a zero rated supply. Export of ENA is a zero-rated supply. Section 2 (47) of the CGST Act defines exempt supply as inclusive of non-taxable supply.

From the above it is clear that whether ENA is considered as non-taxable or as taxable under GST, if it is exported, it becomes zero rated supply. Thereby, it enables the right to avail ITC relevant to it and consequently refund can also be obtained, subject to fulfilment of the requirements of section 54 of the CGST Act and relevant rule of the CGST Rules.

Q398. What is the procedure for claiming refund of unutilized ITC on export of software services without payment of IGST?

Ans. A person claiming refund of any tax, interest, penalty, fees or any other amount paid by him, may file an application in, **Form GST RFD-01** electronically. It may be noted that refund claim for a tax period may be filed only after furnishing all the returns in **Form GSTR-1** and **Form GSTR-3B** which were due to be furnished on or before the date on which the refund application is being filed.

Such person can make an application in this regard to the proper officer of IGST/CGST/SGST/UTGST before the expiry of two years from the relevant date in the prescribed form and manner.

Relevant date in case of refund of unutilized input tax credit means, date of receipt of convertible foreign exchange or date of issuance of invoice which is later.

Procedure:

Standard guidelines have been issued for the purpose of claiming a refund.

i) An applicant has to file **Form GST RFD-01** online on the common portal along with following documents/statements/ undertaking and certificates:

   a) Statement containing Invoice no, date and amount and supported by copy of FIRC

   b) **Form GSTR- 2A** for relevant period of refund

   c) Statement of Invoices in Annexure-B

   d) Upload copies of BRC/FIRC, Import Bill of Entries, RCM Inward Self Invoices and ISD Invoices

ii) Such application will be forwarded to the proper officer for scrutiny and verification of the completeness of the application and if application is satisfactory, an acknowledgment in **Form GST RFD-02** will be issued and in case of any discrepancy observed then, the proper officer shall issue a deficiency memo ***in Form GST RFD-03*** to the applicant.

iii) Refund Amount = (Turnover of zero-rated supply of goods/ Services) x Net ITC ÷ Adjusted total turnover

   a) "*Refund*" means the maximum refund that is admissible;

   b) "*Net ITC"* means input tax credit availed on inputs, input services during the relevant period;

   c) "*Turnover of zero-rated supply of services*" means the value of zero-rated supply of services made without payment of tax under bond or LUT calculated in the following manner, namely:-

Zero-rated supply of services is the aggregate of the payments received during the relevant period for zero-rated supply of services

where supply has been completed for which payment had been received in advance in any period prior to the relevant period reduced by advances received for zero-rated supply of services for which the supply of services has not been completed during the relevant period.

a) "*Adjusted total turnover*" means the turnover excluding the value of exempt supplies other than zero-rated supplies, during the relevant period

b) Relevant period means the period for which the application for refund has been filed.

CBIC vide *Circular No. 135/05/2020 dated 31.03.2020* has decided that the refund of accumulated ITC shall be restricted to the ITC as per those invoices, the details of which are uploaded by the supplier in **FORM GSTR-1** and are reflected in the **FORM GSTR-2A** of the applicant.

CBIC *vide Circular No 139/09/2020-GST* dated 10.06.2020 has clarified that ITC relating to imports, ISD invoices and the inward supplies liable to reverse charge (RCM supplies) will continue to be same as it was before the issuance of *Circular No. 135/05/2020-GST dated 31.03.2020*.

Q399. In case of inverted tax refund for a unit in a garment industry, whether ITC on stock lying as on 31.07.18 would lapse or we can claim refund or utilise the same in subsequent period?

Ans. *Notification No. 20/2018-Central Tax (Rate), dated 26.07.2018* [***NN 20/2018-CTR***] is the concerned notification for this discussion. This notification amends the original Notification 5/2017- *Central Tax (Rate), dated* 28.06.2017 [***NN 5/2017-CTR***], which deals with the goods or services for which are ineligible for inverted duty structure refund. Garment and related products were covered under *NN 5/2017-CTR*, which have been removed from this notification by virtue of *NN 20/2018-CTR*. This had made these products eligible for claiming inverted duty structure refund under Section 54 (3) of the CGST Act.

As per *NN 20/2018-CTR*, "*in respect of said goods, the accumulated input tax credit lying unutilised in balance, after payment of tax for*

and upto the month of July, 2018, on the inward supplies received up to the 31st day of July 2018, shall lapse."

It can be construed from above, would indicate that any unutilized balance standing on 31st July 2018 shall have to be foregone (lapse).

Q400. Whether ITC is available on job charges in case of grey fabric. Whether excess ITC is refundable under the inverted tax structure?

Ans. Rule 89(5) of the CGST Rules, prescribes the formula for calculating refund on account of inverted duty structure. In that formula, the '*Net ITC'* to be considered for refund has been defined as the ITC pertaining only to 'Inputs'. Hence, ITC, arising out of any input service or capital goods are not eligible for refund. In this case, the job work charges are in the nature of input service and are not eligible for refund.

Q401. Whether RCM on freight is applicable to the dealer of exempt supplies? If paid by mistake, whether claim for refund on such wrongly paid RCM available?

Ans. Section 9(3) of the CGST Act, levies tax under RCM for notified goods and services. Accordingly, CBIC *vide NN 13/2017-CTR* has notified those services on which recipient of services is required to pay tax, which includes services of GTA received by the following persons:

(a) any factory registered under or governed by the Factories Act, 1948; or

(b) any society registered under the Societies Registration Act, 1860 or under any other law for the time being in force in any part of India; or

(c) any cooperative society established by or under any law;

(d) any person registered under CGST/IGST/SGST/UTGST Act; or

(e) any body corporate established, by or under any law; or

(f) any partnership firm whether registered or not under any law including association of persons; or

(g) any casual taxable person located in the taxable territory.

Section 23 of the CGST Act, exempts the person from taking registration if such person is engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt under the CGST Act or IGST Act.

However, as per section 24(iii) of the CGST Act, compulsory registration is required if a person is required to pay tax under reverse charge.

Thus even, if a person is engaged in providing exclusively exempt supplies (Goods/services), he will be required to take registration, if he is the recipient as per *NN 13/2017-CTR* i.e., recipient of GTA services in instant case.

An Exemption *Notification [NN 12/2017-CTR],* lists out situations under which the GTA services would be exempt. These are specified in Sl. No. 21, 21A & 21B of the Notification. viz.

"Sl. No 21: *Services provided by a goods transport agency, by way of transport in a goods carriage of –*

(a) agricultural produce;

(b) goods, where consideration charged for the transportation of goods on a consignment transported in a single carriage does not exceed one thousand five hundred rupees;

(c) goods, where consideration charged for transportation of all such goods for a single consignee does not exceed rupees seven hundred and fifty;

(d) milk, salt and food grain including flour, pulses and rice;

(e) organic manure;

(f) newspaper or magazines registered with the Registrar of Newspapers;

(g) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap; or

(h) defence or military equipments.

Sl.No. 21A: *Services provided by a goods transport agency to an unregistered person, including an unregistered casual taxable person, other than the following recipients, namely:—*

(a) any factory registered under or governed by the Factories Act, 1948 (63 of 1948); or

(b) any Society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India; or

(c) any Co-operative Society established by or under any law for the time being in force; or

(d) any body corporate established, by or under any law for the time being in force; or

(e) any partnership firm whether registered or not under any law including association of persons;

(f) *any casual taxable person registered under the Central Goods and Services Tax Act or the Integrated Goods and Services Tax Act or the State Goods and Services Tax Act or the Union T*erritory Goods and Services Tax Act.

Sl.No. 21B: *Services provided by a goods transport agency, by way of transport of goods in a goods carriage, to,—*

(a) a Department or Establishment of the Central Government or State Government or Union territory; or

(b) local authority; or

(c) Governmental agencies,

which has taken registration under the Central Goods and Services Tax Act, 2017 (12 of 2017) only for the purpose of deducting tax under section 51 and not for making a taxable supply of goods or services."

If any of the above exemptions are applicable, then such supplier of exempt supplies is not expected to pay GST under reverse charge on GTA services.

Thus, if GTA services are used for exempted supply of goods/services, other than the above exempted, RCM would be applicable and no refund can be claimed against such payment.

Q402. Whether GST paid at concessional rate of 0.10% for export of goods is eligible for refund? If yes, then under which category it should be claimed?

Ans. Refund of such tax can be claimed as per the provisions of section 54(3) of the CGST Act read with rule 89(2) (h) of the CGST Rules, electronically by submitting **Form GST RFD-01**.

CBIC *vide* Para no 59 of *Circular No.125/44/2019-GST dated 18.11.2019* has clarified that supply of export under concessional rate as per *Notification No. 40/2017 – Central Tax (Rate) and Notification No. 41/2017 – Integrated Tax (Rate) both dated 23.10.2017*, will also be eligible for refund on account of inverted tax structure as per the provisions of section 54(3) of the CGST Act.

Q403. Whether a dealer who has already paid late fees at the time of submission of Form GSTR-1 return, can claim refund of such late fees being waived *vide Notification No. 74/2019 – Central Tax, dated 26.12.2019* for the period of July 2017 to November 2019.

Ans. Section 47 of the CGST Act, levies a late fees on any registered person who fails to furnish return of outward supply (**Form GSTR -1**) within the specified due date.

As a one-time measures to clear the pendency, CBIC has notified that the amount of late fee payable shall stand waived for the taxpayers who failed to furnish the details of outward supplies in **Form GSTR-1** for the period from July-2017 to November-2019 by the due date but furnishes the said return between 19th December, 2019 to 10th January, 2020.

The said notification [*Notification No. 74/2019 – Central Tax, dated 26.12.2019*] specifies the temporary and conditional waiver of late fees so as to remove the difficulties faced by taxpayer and not a complete removal of late fees. Thus the tax payer who has already paid the late cannot claim refund of such payment.

Q404. Whether tax wrongly paid under section 9(3) of the CGST Act can be claimed as refund, since it was not required to be paid or such wrongly paid tax should be used as ITC for adjusting future liability on outward supply?

Ans. Tax wrongly paid and shown in monthly return in **Form GSTR-3B** can be corrected. CBIC *vide Circular No. 26/26/2017-GST dated 29.12.2017* has prescribed the methodology for rectification of error in submission of **GSTR -3B** return. Accordingly, liability which was wrongly paid tax can be corrected in the return of subsequent month(s). This method will be useful in the excess payment of an earlier month being shown as payment relevant for the current month.

Alternatively such excess paid tax could be claimed as refund by following the process laid out in *Circular No.125/44/2019-GST dated 18.11.2019* with the submission of relevant declarations and certification that if the refund is granted it would not result in unjust enrichment.

Q405. Whether refund can be claimed for wrong payment of tax under forward charge, where tax has also been paid by the recipient under reverse charge?

Ans. There are two options available with the tax payer;

1. To adjust such excess payment in the subsequent period GSTR returns as detailed in *Circular No.26/26/2017-GST dated 29.12.2017*
2. Alternatively, when adjustment is not feasible, the wrongly paid tax (excess tax) shall be claimed as refund as per the provisions of rule 89 (2) (k) of the CGST Rules.

Chapter 13
E-way Bill

Q406. A Ltd. is engaged in the business of works contract service. It has registration in various States. For the purpose of execution of works contract, machines are carried from one State to another. Whether e-way bill is required to be raised and what other documents are required to be carried?

Ans.

- When machines are **transferred temporarily** not as stock transfers but merely for usage at the site of works contract and meant for return after work is completed then in terms of rule 138 of the CGST Rules, an e-way bill is to be raised using the category "*Others*". Also, delivery challan in terms of rule 55(1) of the CGST Rules is to be raised
- When machines are **transferred permanently** to other State offices or branches then it amounts to supply in terms of Schedule I to the CGST Act. Hence, tax invoice in terms of rule 46 of the CGST Rules and e-way bill in terms of rue 138 thereof need to be raised.

Q407. Is it necessary to have a place of business when the transaction is under "Bill to Ship to" model. (A case where the buyer does not want to disclose the original supplier about the third party)

Ans. Let us take the following example to resolve this query

- "A" is the person who has ordered "B" to send goods directly to "C".
- "B" is the person who is sending goods directly to "C" on behalf of "A".
- "C" is the recipient of goods.

In this above scenario two supplies are involved and accordingly two tax invoices are required to be issued:

- Invoice -1, which would be issued by "B" to "A".
- Invoice -2 which would be issued by "A" to "C"

In this case to hide the original invoice details from "C" e-Way Bill has to be generated by "A".

Following fields shall be filled in **Part A** of **FORM GST EWB-01**:

1. *Bill From*: In this field details of "A" are to be filled.
2. *Dispatch From:* This is the place from where goods are actually dispatched. It may be the principal or additional place of business of "B".
3. *Bill To:* In this field details of "C" are to be filled.
4. *Ship to*: In this field address of "C" is to be filled.
5. *Invoice Details*: Details of Invoice-2 are to be filled.

Therefore, it is not necessary to have a place of business when the transaction is under "Bill to Ship to" model.

Chapter 14
Penalties under GST

Q408. Is it necessary for a small registered tax payer having a turnover of ₹ 15 lakhs per annum to maintain stock register? Would your answer be different in case he has opted for composition scheme? He has opted for presumptive taxation under section 44AD of the Income Tax Act for the purpose of Income tax.

Ans.

- It is necessary to refer the provisions of section 35(1) of the CGST Act for answering the above query. It reads thus :

  "35. (1) Every registered person shall keep and maintain, at his principal place of business, as mentioned in the certificate of registration, a true and correct account of–

  (a) production or manufacture of goods;

  (b) inward and outward supply of goods or services or both;

  (c) stock of goods;

  (d) input tax credit availed;

  (e) output tax payable and paid; and

  (f) such other particulars as may be prescribed:"

- From the above provision, it is clear that every registered person irrespective of his aggregate turnover shall be required to maintain stock records. However, a person who has opted to pay tax under composition scheme under section 10, is exempt from maintaining stock records as per rule 56(2) of the CGST Rules. The same is reproduced hereunder:

  "(2) Every registered person, other than a person paying tax under section 10, shall maintain the accounts of stock in respect of goods received and supplied by him, and such accounts shall contain particulars of the opening balance, receipt, supply, goods lost, stolen, destroyed, written off or disposed of by way of gift or free sample and the balance of stock including raw materials, finished goods, scrap and wastage thereof."

In terms of the above provisions though a composition tax payer is not required to maintain stock records he is required to maintain other details as specified in section 35 viz., details of manufacture of goods, inward and outward supply of goods or services. In other words he has to maintain records of his

— sales of goods and provision of services

— purchases of goods and receipt of services

- Hence, a registered tax payer whose turnover is ₹ 15 lakhs per annum is required to maintain the records as specified in section 35 read with rule 56. Failure to maintain such accounts and records shall have the following consequences:

  - ***Determination of Tax payable on unaccounted goods or services***

    In case stock records and other specified records are not maintained as provided by the law, the proper officer may use the power provided in section 35(6) of the CGST Act. Said provision empowers the proper officer to determine the tax payable on unaccounted goods or services, as if such goods or services had been supplied by registered person and he will invoke demand and recovery provisions in terms of section 73 or 74 of the CGST Act.

  - ***Penalty under section 122 of the CGST Act***

    Section 122(1)(xvi) provides that *w*here a taxable person fails to keep, maintain or retain books of account and other documents in accordance with the provisions of this Act or the rules made thereunder, he shall be liable *to pay a penalty of ten thousand rupees or an amount equivalent to the tax evaded whichever is higher.*

    Hence, if specified records are not maintained a penalty of ₹ 10,000 or an amount equivalent to the tax evaded, whichever is higher shall be imposed in terms of above section.

Q409. Whether offences under section 132(1) (a) or (b) of the CGST Act, are cognizable and non-bailable?

Ans. Relevant extract of Section 132 of the CGST Act is reproduced hereunder:

"(1) Whoever commits, or causes to commit and retain the benefits arising out of, any of the following offences, namely:-

(a) supplies any goods or services or both without issue of any invoice, in violation of the provisions of this Act or the rules made thereunder, with the intention to evade tax;

(b) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilisation of input tax credit or refund of tax;

(c) …..

(l) …….

Shall be punishable –

(i) in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds five hundred lakh rupees, with imprisonment for a term which may extend to five years and with fine;

(ii) in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds two hundred lakh rupees but does not exceed five hundred lakh rupees, with imprisonment for a term which may extend to three years and with fine;

(iii) in the case of any other offence where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds one hundred lakh rupees but does not exceed two hundred lakh rupees, with imprisonment for a term which may extend to one year and with fine;

(iv) in cases where he commits or abets the commission of an offence specified in clause (f) or clause (g) or clause (j), he shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.

(2) ……..

……..

(5) The offences specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) and punishable under clause (i) of that sub-section shall be cognizable and non-bailable."

- From the above provisions it is clear that on account of offences specified under clause (a) or (b), if the amount of tax evaded or wrong availment of ITC or wrong receipt of refund exceeds rupees five hundred lakhs the offence shall be cognizable and non-bailable in terms of section 132(5). Also, as per section 69(2) of the CGST Act, where a person is arrested under section 69(1) for an offence specified under section 132(5), the officer authorised to arrest the person shall inform such person of the grounds of arrest and produce him before a Magistrate within 24 hours.

Q410. Whether balance of electronic cash ledger under any other head could be utilized for payment of penalty head wise?

Ans. As per rule 87(13) a registered person is allowed to transfer the amount in one head of electronic cash ledger to any other head of electronic cash ledger using **FORM GST PMT-09**. After transfer of excess balance in any other head to penalty head, the same may be used for payment of penalty. Rule 87(13) of the CGST Rules, referred above is reproduced hereunder:

*"A registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under the Act to the electronic cash ledger for integrated tax, central tax, State tax or Union territory tax or cess in **FORM GST PMT-09"**.*

Q411. If penalty imposed under CGST is ₹ 10,000, does it imply total penalty of ₹ 20,000/- is to be deposited, being an automatic penalty imposed under SGST also?

Ans. Generally, the quantum of penalty shall be clearly specified in the order demanding penalty. GST is a con-current levy as per Article 246A of the Constitution empowering both Centre and State, and wherever penalty is levied under CGST obviously penalty will be levied for SGST also.

However, exceptions exist to the above principle, like wrong availment of transitional credits, and wrong utilization of input tax credit against the provisions of section 49A or section 49B of the CGST Act read with rule 88A of the CGST Rules. In these cases, penalty shall be levied only on that portion of tax which is wrongly availed or utilized.

Q412. A product is subject to tax at a rate of 18%. However, a taxable person with a wrong understanding has classified it under 12% HSN and made short collection of the tax and duly paid it. Later on, during Departmental audit, it was found that the product is wrongly classified and the Department demanded differential tax. Can the taxable person claim that under bona fide belief he had classified the product wrongly and hence higher penalty should not be imposed?

Ans. If the assessee has *bona fide* belief that lower tax is applicable, then penalty equivalent to tax cannot be levied under section 74 of the CGST Act. Onus of proving *bona fide* belief of lower rate is on the assessee and not on the Department. In this regard, many decisions under the erstwhile indirect tax law are available. Some of these are listed below:

- An element of fraud is must to invoke extended period of limitation – When entire data is disclosed in ST-3 return the extended period cannot be invoked [***Scott Wilson Kirkopatrick P. Ltd v. Commissioner of Service Tax*** *[2007 8 ST 358] – CESTAT Bengaluru.* In the above case also, the assessee would have disclosed the HSN which he deems to be correct in **Form GSTR-1**, hence one may take above case as the defense. When service tax was introduced, some lapses and delays did

occur. Penalty had been reduced or waived in cases like *Shri Sajjan Kumar Kariwala v. CCE 2007 11 STT 479 – CCE v. Global Cargo Forwarders (2005) 1 STT 5 CESTAT – Taradevi Bafna v. CCE 2010 26 STT 228 SMB CESTAT – Sakthi Promoters v. CCE 2010 29 STT 161 CESTAT SMB.* These cases can be relied for GST too, since GST is also a new tax and many amendments were introduced, contradictory circulars issued and some withdrawn.

Chapter 15
Nature of Supply

Q413. A service contract is made with a foreign company to provide necessary manpower within the State where the service provider is registered. Whether CGST /SGST or IGST to be charged?

Ans. In the given case, there are two possibilities –

(a) the foreign company does not have a fixed establishment in India and

(b) the foreign company has a fixed establishment in India.

In case of (a), the service provider is a person in taxable territory whereas the service recipient is a person located in non-taxable territory and hence to determine the place of supply, section 13 of the IGST Act needs to be looked upon. Now, there is no specific provision covering supply of manpower under section 13(3) to section 13(12) of the IGST Act. Hence, the general principle under section 13(2) of the IGST Act would be applicable to determine the place of supply which is the location of the recipient. Also, location of the recipient of services is defined under section 2(14) of the IGST Act. Hence, in the given case, the place of supply is the location of recipient which is in non-taxable territory and hence the supply would be treated as an inter-State supply as per section 7(5) of the IGST Act.

In case of (b), since the service recipient is registered in India, the place of supply is to be determined under section 12 of the IGST Act and as per general principle of section 12(2) of the IGST Act, the place of supply would be the location of recipient in case of registered assessee. Hence, the place of supply will be India and assuming that the recipient and the supplier are registered in the same State, the same would be treated as intra-State supply under section 8(2) of the IGST Act and CGST and SGST have to be charged.

Q414. A dealer in Karnataka makes outward supply to a dealer registered in Maharashtra. However, the goods are delivered to a dealer within the State of Karnataka, who happens to be the customer of the Maharashtra dealer. Please clarify the nature of supply.

Ans. This is a 'Bill to Ship to' situation. Goods are delivered by dealer in Karnataka, on the direction of dealer registered in Maharashtra to his work place in Karnataka. In this case, it shall be deemed that the dealer registered in Maharashtra has received the goods and place of supply shall be the principal place of business of the dealer in Maharashtra.

Accordingly, this transaction shall be treated as inter-State supply and IGST shall be charged on the invoice. Refer section 10(1) (b) of the IGST Act.

Q415. I am silver wholesaler in Maharashtra and a trader from Karnataka purchased silver in Maharashtra. The supply is in Maharashtra only but the trader from Karnataka demands charging of IGST. Is his demand correct?

Ans. Section 10(1) (a) of the IGST Act says: *"where the supply involves movement of goods, whether by the supplier or the recipient or by any other person, the place of supply of such goods shall be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient."*

This implies that the place of supplier or receiver is of no consequence to determine the place of supply when it is related to transactions which involve movement of goods.

A person from Karnataka comes to Maharashtra and purchases goods. He declares his GSTIN, arranges transport himself and takes goods to Karnataka. The place of supply would be Karnataka in this case and therefore IGST can be charged by the supplier.

Q416. A is a service provider in India rendering services outside India. However he is not claiming these services as export of services. How will A charge GST on these services - as inter-State (IGST) or intra-State (CGST+SGST)?

Ans. Section 7(5) of the IGST Act provides: "*Supply of goods or services or both, -*

(a) when the supplier is located in India and the place of supply is outside India;

(b) to or by a Special Economic Zone developer or a Special Economic Zone unit; or

(c) in the taxable territory, not being an intra-State supply and not covered elsewhere in this section,

shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce."

Further as per section 5(1) of the IGST Act, there shall be levied a tax called the integrated goods and services tax on all inter-State supplies of goods or services or both.

Applying the above provisions of the Act to the instant case, the services are provided outside India which is in the nature of inter-State supply; IGST will be charged as per the above provisions. However, it is pertinent to note here that the assessee has to apply the provisions of IGST Act with respect to place of supply to decide whether this transaction falls under export of services or not and accordingly comply with the law.

Q417. A person registered in Maharashtra owns a hotel property in Gujarat, which is rented to a person registered in Maharashtra. Invoice is issued to the person registered in Maharashtra. Is it intra-State or inter-State transaction?

Ans. In the case of immovable property, the place of supply is the location of the immovable property. In the given situation, the property is located in the State of Gujarat. The State of Gujarat is entitled to levy and collect the tax. Accordingly, this will be an intra- State supply.

Q418. Rent a cab service is provided to a foreign national visiting India. Bill is submitted in the name of foreign company. Payment is also received in foreign currency. Is this an export of service?

Ans.

- In term of section 2(6) of the IGST Act, a service shall be considered as export of service only if, it satisfies the following parameters :-
  - the supplier of service is located in India;
  - the recipient of service is located outside India;
  - the place of supply of service is outside India;
  - the payment for such service has been received by the supplier of service in convertible foreign exchange [or in Indian rupees wherever permitted by the Reserve Bank of India]; and
  - the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8.
- In the above parameters, one of the conditions is that the place of supply shall be outside India. Hence, the applicable section for the given case is section 13(8) of IGST Act, which reads as follows:

  "*13(8) The place of supply of the following services shall be the location of the supplier of services, namely:-*

  (a) .services supplied by a banking company, or a financial institution, or a non-banking financial company, to account holders;

  (b) intermediary services;

  (c) services consisting of hiring of means of transport, including yachts but excluding aircrafts and vessels, up to a period of one month."
- In the given example, it is presumed that such rent a cab service is provided for a period less than one month. From the above, it is clarified that the supplier of service is located in India. Hence, the place of supply is said to be in India. Since, this condition is not satisfied the given service does not amount to export of service.

Q419. Whether hotel service provided to SEZ would be treated as inter-State or intra-State supply?

Ans. The CBIC *vide Circular No 48/22/2018-GST, dated 14.6.2018*, has aptly clarified / addressed the issue in question as under:

Sl. No.	***Issue***	***Clarification***
1.	*Whether services of short-term accommodation, conferencing, banqueting etc. provided to a Special Economic Zone (SEZ) developer or a SEZ unit should be treated as an inter-State supply (under section 7(5)(b) of the IGST Act) or an intra-State supply (under section 12(3)(c) of the IGST Act)?*	*1.1 As per section 7(5) (b) of the IGST Act, the supply of goods or services or both to a SEZ developer or a SEZ unit shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce. Whereas, as per section 12(3)(c) of the IGST Act, the place of supply of services by way of accommodation in any immovable property for organising any functions shall be the location at which the immovable property is located. Thus, in such cases, if the location of the supplier and the place of supply is in the same State/ Union territory, it would be treated as an intra-State supply.* *1.2 It is an established principle of interpretation of statutes that in case of an apparent conflict between two provisions, the specific provision shall prevail over the general provision.* *1.3 In the instant case, section 7(5)(b) of the IGST Act is a specific provision relating to supplies of goods or services or both made to a SEZ developer or a SEZ unit, which states that such supplies shall be treated as inter-State supplies.*

		1.4 It is therefore, clarified that services of short-term accommodation, conferencing, banqueting etc., provided to a SEZ developer or a SEZ unit shall be treated as an inter-State supply.

Moreover, the Hon'ble Supreme Court in the case of ***Commercial Tax Officer v. Binani Cement Ltd. & Anr*** *decided* on 19th February, 2014 *inter alia* held: *"It leaves no doubt that what is specific has to be seen in contradistinction with the other items/entries. The provision more specific than the other on the same subject would prevail"*

As inferred from above, the two provisions namely *section 7(5)(b) and section 12(3)(c) of the IGST Act, though* conflicting in nature with regard to supply of accommodation services in any immovable property to a SEZ Unit, specific [*section 7(5)(b)*] will prevail. Hence, hotel services provided to SEZ would be treated as inter-State supply.

Q420. A is a Consultant in Mumbai who has clients only in Mumbai. A travels to Delhi for some work and he gets a call in his mobile from a Client who seeks immediate advice. What will be the nature of supply, when A raises the bill for this transaction. Is this an inter-State or intra-State transaction?

Ans. A supply of service is an-

Inter-State supply when the *location of the supplier* and the *place of supply* are in two different States or Union Territory - Section 7(3) of the IGST Act subject to section 12 of The IGST Act; and

Intra-State supply when the *location of the supplier* and the *place of supply* are in same State or Union Territory - Section 8(2) of The IGST Act subject to section 12 of The IGST Act

The location of the supplier as per section 2(71) of the CGST Act will be-

(a) where a supply is made from a place of business for which the registration has been obtained, the location of such place of business;

(b) where a supply is made from a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;

(c) where a supply is made from more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the provisions of the supply; and

(d) in absence of such places, the location of the usual place of residence of the supplier;

In the instant case, the location of the supplier falls within the ambit of section 2(71) (d) of the CGST Act, in the absence of any fixed establishment and place of business in Delhi. *Therefore, the location of Supplier is in Mumbai.*

Further, as per section 12(2) of the IGST Act the *place of supply of services,* except the services specified in sub-sections 12 (3) to (14) of the IGST Act,

a) made to a registered person, shall be the location of such person;

b) made to any person other than a registered person, shall be,—

(i) the location of the recipient where the address on record exists; and

(ii) the location of the supplier of services in other cases.

the instant case the place of supply of service shall be Mumbai**.**

Since the Location of supplier and place of supply are in the same State the transaction will be an intra-State as per section 8(2) of the IGST Act and hence liable for CGST/SGST.

Q421. A supplier registered in the Chhattisgarh got a contract from a customer in Uttar Pradesh for hiring of earth moving equipment like boom placer, excavator etc. on hourly rental basis. All machines were purchased from Delhi by the supplier and directly sent to Uttar Pradesh for rendering service to the customer. Whether letting of these machines on hire by the supplier located in Chhattisgarh to the customer in Uttar Pradesh amounts to inter-State supply of service? If supplier

also is registered in the Uttar Pradesh, then what would be the situation?

Ans. All the machines like boom placer, excavator etc. are goods as per section 2(52) of the CGST Act owned by the supplier in Chhattisgarh which were given on hire to his customer in Uttar Pradesh. This transaction amounts to supply of service as it is an activity of transfer of right to use goods for any purpose (whether or not for a specific period) for cash, deferred payment or other valuable consideration, as per Entry No. 5(f) of Schedule II of the CGST Act. Once the activity is concluded as supply of services, the next step is to determine the nature of supply, whether it is inter-State supply as per section 7 of the IGST Act or intra-State supply as per section 8 of the IGST Act. For determining the nature of supply two aspects have to be determined, one is location of supplier of service and another one is place of supply of service.

Location of supplier of service as per section 2(15) (a) of the IGST Act means a place of business from where supply is made for which the registration has been obtained. In the given case, since the supplier holds a registration in Chhattisgarh it is construed as place of business from where the business is ordinarily carried on (i.e.) the location from where all decisions are taken and hence it is considered as the place where the 'seat of management and control is located. Further the location where the goods like concrete mixture, boom placer, excavator, etc. are placed for supplying service to the customer cannot be considered as fixed establishment as per section 2(7) of the IGST Act, as for being a fixed establishment, such place should be characterised by a sufficient degree of permanence and suitable structure in terms of human and technical resources for supply of services should be there. Hence the location of the supplier shall be concluded as Chhattisgarh.

As far as the place of supply of service is concerned, residuary provisions of section 12(2) of the IGST Act will apply for determining the nature of service provided by the suppler. If the customer in Uttar Pradesh is a registered person, then the place of supply of service shall be the location of the customer being the recipient of service**.** If the customer in Uttar Pradesh happens to be an unregistered person, then the place of supply shall be the location of

the customer where the address exists on record. Thus, in the given case, since the location of supplier of service is in Chhattisgarh and the place of supply of service is in Uttar Pradesh this is a clear case of inter-State supply as per section 7 of the IGST Act and IGST has to be levied on such letting of machines like boom placer, excavator, etc. on hire.

If the supplier already holds a registration in Uttar Pradesh, then this transaction will be an intra-State supply as per section 8 of the IGST Act, as both the location of supplier as per section 2(15) (a) of the IGST Act and the place of supply of service as per section 12(2) thereof are in the same State, namely Uttar Pradesh.

Q422. Tools are manufactured in India for the customer out of India and billed separately before starting production. The tools are to be used for manufacture of the goods to be exported to the same person out of India. In such case what will be nature of supply? Whether supply of tools is export of goods or not?

Ans. The above query can be resolved by analysing the provisions of sections 2(5), 8(1) and 10(1) (c) of the IGST Act

Section 2(5) of the IGST Act amongst other things states:

> *"export of goods" with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India;"*

Section 8(1) of the IGST Act amongst other things states:

> "*Subject to the provisions of section 10, supply of goods where the location of the supplier and the place of supply of goods are in the same State or same Union territory shall be treated as intra-State supply:…"*

Section 10 (1) (c) of the IGST Act amongst other things states:

> *"the place of supply of goods other than supply of goods imported into or exported from India shall be the place of supply shall be the location of such goods at the time of the delivery to the recipient where the supply does not involve movement of goods, whether by the supplier or the recipient"*

In the present case though the tools are separately billed to the customer out of India they are used to manufacture the goods in India and are not taken out of India.

Therefore, supply of tools will not be treated as export of goods as per section 2(5) of the IGST Act and will be taxed as a supply within India.

Further in the present case the supply does not involve movement of goods as the goods are consumed in the factory where it was manufactured and as such the place of supply is the factory and the location of supplier is also the factory itself.

Therefore, the supply of tools in the present scenario shall be treated as intra-State supply liable for CGST and SGST.

Q423. What will be the place of supply in case of ex-factory sales? For example, if we sell the goods from Mumbai on ex-factory basis to be taken to Chennai and risks are transferred to the customer at the factory in Mumbai?

Will it be inter-State or intra-State supply i.e., whether to charge IGST or CGST and SGST/UTGST for such supply?

What will be the answer if the purchaser is not registered?

Ans. The relevant legal provision which deals with the place of supply for goods is section 10(1) of the IGST Act. It provides for the following-

(a) where the supply involves movement of goods, whether by the supplier or the recipient or by any other person, the place of supply of such goods shall be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient;

(b) …

(c) where the supply does not involve movement of goods, whether by the supplier or the recipient, the place of supply shall be the location of such goods at the time of the delivery to the recipient;

Ex-factory supplies are transactions wherein normally the sale is completed at the factory gate itself, i.e., the risk and rewards are transferred from supplier to buyer at factory premises.

For the purpose of the present discussion, let's consider this example:

Example: X of Mumbai, Maharashtra gets an order of 100 TV sets from XYZ Ltd. of Chennai, Tamil Nadu. XYZ Ltd mentions that it will arrange its own transportation and take TV sets from. X on ex-factory basis.

Applying the provisions of section 10(1) (a) of IGST Act following are the possible scenarios:

1. There is movement of goods *by the supplier or the recipient or by any other person.* In this case by the recipient - from Mumbai to Chennai.

2. Where does the movement of goods for delivery to the recipient terminate in the case of ex-factory sales i.e., in Mumbai (Maharashtra) or Chennai (Tamil Nadu) in the present case?

There are two views possible in determining the place of supply in the case of ex-factory supplies, based on the interpretation of section 10 of the IGST Act:

- In case of ex-factory supply, goods are made available to the recipient at the factory gate itself. Therefore, the movement of goods terminates at the factory gate and consequently place of supply shall be the location of the factory. Thus, it shall be treated as an intra-State supply in Maharashtra as *movement of goods terminates* for delivery terminates at Mumbai factory.

- Another view is basing a strong emphasis on the words, ***"****whether by supplier or the recipient or by any other person"*. Since the movement in the above example terminates at Chennai, i.e., the place where the goods are destined to, the place of supply should be Tamil Nadu.

Similar issue was decided in the case of ***Lalitha Muraleedharan Versus. Range Forest Officer*** *[2020 (1) TMI 928]* by the Hon'ble Kerala High Court held as under:

- The petitioner upon completion of other sale conditions receives goods at the premises of the supplier, and acknowledgment of

goods at supplier's premises does not result in termination of movement of goods but results in further movement of goods at the hands of recipient to his location.

- The final destination, i.e., location of the recipient is supply point. The actual place of supply by plain interpretation of section 10(1) of the IGST Act is the location of recipient in the State of Tamil Nadu, not in State of Kerala, where the goods were handed over to the recipient.
- Therefore, the contention of respondents that supply of goods is completed at supplier's location and subject sets is an intra-State transaction is unsustainable.

Conclusion

- Based on the above provisions and the Court decision cited above, it can be said that the place of supply in case of ex-factory supplies in the present case shall be Tamil Nadu. Therefore, IGST should be charged.
- The answer will remain the same even if the buyer of the goods in Chennai is un-registered. However, there was a draft circular addressing the place of supply in case of "Over the Counter Sales" (Which is similar to ex-factory supplies) which provided the following:
    - *Where the supply is to an unregistered person and where the recipient's address is not available on record, the place of supply would be determined in accordance with the provisions contained in clause (c) of sub-section (1) of section 10 of the IGST Act.*
    - *The place of supply in such cases would be the location of goods at the time of delivery to the recipient. Accordingly, such supplies would be treated as intra-State supplies in accordance with the provisions contained in sub-section (1) of section 8 of the IGST Act.*
    - *It is further clarified that the supplier would be liable to pay Central tax and State tax / Union territory tax in such cases.*

- The above circular was placed before GST Council in its 37th meeting held on 20th of September 2019 but was not circulated or finalized on account of different views of Council Members of different States.
- In any event, the circular covered the scenario where the address of the recipient was not available. In case the address on record of the purchaser is available (i.e., Chennai), then such supplies would still be inter-State supplies in the present case.

Q424. A property is located at Dhanu, Maharashtra, while the contractor is in Gujarat. Repairs and maintenance contract (RMC) services would be provided by supplier in Maharashtra to the contractor in Gujarat for the property in Maharashtra. What would be the GST applicable?

Ans. In the case of any service relating to immovable property including works contract service, grant of rights to use immovable property, services for carrying out or co-ordination of construction work, including that of architects or interior decorators, the place of supply shall be the locations of such immovable property *vide* section 12(3) of the IGST Act.

In case the RMC services are being made available by a person in the State of Maharashtra to a contractor in Gujarat for the purpose of a works contract for a property situated in Maharashtra, the location of the supplier and place of supply would be within Maharashtra and accordingly CGST and Maharashtra SGST would be applicable.

Q425. If an architect staying in Mumbai provides architectural services for a property located in Dubai whose owner stays in Mumbai, what will be the nature of transaction; whether it will be an Intra- State or Inter-State supply of service?

Ans. To decide the nature of any transaction under GST, we have to first ascertain the *place of supply* and the *location of the supplier.*

Place of Supply - As per section 12(3) (a) of the IGST Act, the place of supply of services *directly in relation to an immovable property, including services provided by architects, interior decorators,*

surveyors, engineers and other related experts or estate agents, any service provided by way of grant of rights to use immovable property or for carrying out or co-ordination of construction work shall be the location at which the immovable property is located or intended to be located.

However, there is an exception to this provision as provided in the first proviso to section 12(3) of the IGST Act which provides: "*if the location of the immovable property or boat or vessel is located or intended to be located outside India, the place of supply shall be the location of the recipient.*"

Thus, the place of supply in the instant case shall be Mumbai in the State of Maharashtra.

Location of Supplier-The Architect in the instant case is in Mumbai and thus the location of the supplier is in the State of Maharashtra.

Since both location of supplier and place of supply are in the same State i.e. Maharashtra, the transaction will be an intra-State supply as per section 8(2) of the IGST Act, liable for CGST/SGST

Q426. X has undertaken a construction contract to build a College covering 40,000 Sq.Ft. The property is situated on the border of Tamil Nadu and Kerala. Place of supply of service spreads across two States. How the invoicing should be done by the service provider and which GST shall be charged in case the service recipient is registered or not in one of the States?

Ans. As per the explanation to section 12(3)(c) of the IGST Act, where the immovable property or boat or vessel is located in more than one State or Union territory, the supply of services shall be treated as made in each of the respective States or Union territories, in proportion to the value for services separately collected or determined *in terms of the contract or agreement entered* into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed. The same is also prescribed in Rule 4 of the IGST Rules, 2017 **["the IGST Rules"].**

Further as per Rule 4 of the IGST Rules, *in the absence of an agreement*, the supply of services shall be treated as made in each of the respective States or Union territories, in proportion to the area of the immovable property lying in each State or Union territory

Applying the above provisions the following propositions emerge:

1. X must get registered in both the States
2. He must raise two separate Invoices
    - *For supply made to State-A:* Invoice will be raised under the GSTN of State A either as per agreement or in proportion to the area of the immovable property lying in State A and CGST/SGST will be charged irrespective of where the recipient is registered
    - *For Supply made to State-B*: Invoice will be raised under the GSTN of State B either as per agreement or in proportion to the area of the immovable property lying in State B and CGST/SGST will be charged irrespective of where the recipient is registered
3. He should apportion the taxable value as per agreement if any and if not as per area covered in both the States.

Q427. Suppose we provide service from Karnataka to a customer either outside Karnataka or within Karnataka, but the payment is received from their parent company abroad in USD, will this be treated as "export of service".

Ans. A transaction to be qualified as export of service must satisfy all the following conditions as per section 2(6) of IGST Act:

(*i*) the supplier of service is located in India;

(*ii*) the recipient of service is located outside India;

(*iii*) the place of supply of service is outside India;

(*iv*) the payment for such service has been received by the supplier of service in convertible foreign exchange; and

(*v*) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with *Explanation* 1 in section 8 of the IGST Act;

The instant transaction is not satisfying point No (iii). As the place of supply of service is in India it will not be treated as export of service and IGST in case of supply outside Karnataka and CGST/SGST in case of supply within Karnataka will be charged.

Q428. In the case of training services, we have seen many Institutes charge CGST/ SGST respectively even if the recipient is a registered person in another State. Ideally it should be IGST and payment is made online. What would be the consequences if incorrect tax is levied?

Ans. Section 12(5) of the IGST Act provides:

"*the place of supply of services in relation to training and performance appraisal to,—*

a) a registered person, shall be the location of such person;

b) a person other than a registered person shall be the location where the services are actually performed."

As such in the instant case the supply of service shall be inter-State [Section-7(3) of IGST Act] and IGST is leviable as per section 5 of the IGST Act. Since the supplier of service has paid tax under wrong head treating the inter-State sales as intra-State, the supplier is required to pay IGST and claim refund of CGST/SGST as per section 77(1) of The CGST Act. Further the supplier will not be required to pay interest while making payment under correct head (Section 77(2) of the CGST Act). As per recent amendments the amount can be transferred to the correct head by filing the prescribed form.

Q429. Transporter of Rajasthan bringing goods from Gujarat to Mumbai. If the transporter is registered RCM should be IGST and if he is not registered it will be SGST and CGST. Is it correct?

Ans. As per section 2(98) of the CGST Act "*reverse charge means the liability to pay tax by the recipient of supply of goods or services or both instead of the supplier of such goods or services or both under sub-section (3) or sub-section (4) of section 9, or under sub-section (3) or sub-section (4) of section 5 of the Integrated Goods and Services Tax Act"*

IGST is payable where the location of the supplier and the place of supply are in two different States. In case of intra-State transaction if location of supplier and place of supply are in same State, SGST/CGST is payable.

As per section 2(15) of the IGST Act "*location of the supplier of services*" is *place of registration* where supply is made from registered place of business. If supply is made from a *fixed establishment* elsewhere, the location of supplier is such fixed establishment. In absence of such places, the location of the *usual place of residence* of the supplier is location of supplier.

The *place of supply in case of transportation of goods,* to a registered person, shall be the location of registered person; [Section 12(8) of IGST Act].

In the given question, transporter of Rajasthan brings goods from Gujarat to Mumbai.

(i) *If the transporter is registered in Rajasthan:* - In this case the location of supplier i.e., the transporter is Rajasthan. Since the service receiver is registered in Mumbai, the place of supply shall be location of such service receiver, i.e. Mumbai. Since location of supplier and place of supply are in different States, IGST is payable under Reverse charge.

(ii) *If the transporter is not registered in Rajasthan*: - In this case the location of transporter will be usual place of residence of the transporter. The place of supply remains Mumbai. If transporter resides in Rajasthan, then location of supplier will be Rajasthan and place of supply will be Mumbai. In such case IGST is payable under reverse charge.

Q430. An authorised service station of a car maker is preparing a single invoice for spare parts and labour portion and charging separate rates of tax on each part and service portion. Where the invoice is raised on a registered recipient from another State, whether they are bound to charge CGST/ SGST on supply of goods and IGST on labour portion?

Ans. Supply by authorized service station of the car maker, is in fact, composite supply of goods and services both as defined in section 2(30) of the CGST Act, and is liable to tax as per the provisions of section 8 of the CGST Act. However, the Government has issued *Circular No. 47/21/2018 dated 08.06.2018* clarifying certain issues as under :

Sl. No	*Issue*	*Clarification*
2	*How is servicing of cars involving both supply of goods (spare parts) and services (labour), where the value of goods and services are shown separately, to be treated under GST?*	*2.1 The taxability of supply would have to be determined on a case to case basis looking at the facts and circumstances of each case.* *2.2 Where a supply involves supply of both goods and services and the value of such goods and services supplied are shown separately, the goods and services would be liable to tax at the rates as applicable to such goods and services separately.*

Therefore, the place of supply of goods and place of supply of services can be determined separately as per the provisions of sections 10 and 12 of the IGST Act respectively.

In case of supply of spare parts (supply of goods) by applying provisions of section 10(1) (a) of the IGST Act.

Two views are possible as per this clause:

(a) The delivery terminates when the spare part is fitted to the vehicle, in which case place of supply shall be the location of the service station.

(b) Delivery of spare parts is given to the recipient for further movement to other State; the place of supply shall be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient. In such case if the movement terminates in the other State, the transaction will be treated as Inter-State supply and IGST is payable.

In case of supply of labour charges (supply of services), one has to apply the provisions of section 12(2) of the IGST Act. Since recipient is registered in the other State, the place of supply shall only be the recipient's location, accordingly IGST is payable.

Q431. A diamond dealer supplies goods from Surat to Bhavanagar (both in Gujarat) but raises invoice from Mumbai office. Whether CGST and SGST or IGST should be levied?

Ans. CGST / IGST Act do not define the location of supplier of goods or location of recipient of goods. Hence, these are to be determined based on the inference from other provisions only. In the above question, there are two possibilities:

(i) The diamonds are supplied from his own place at Surat.

(ii) The diamonds are purchased from Surat dealer and supplied to Bhavnagar dealer.

In *first case,* where diamonds are supplied from his own place of business, then as per section 22(1) of the CGST Act, the supplier shall be liable to be registered, subject to the turnover limits, in the State of Gujarat from where he makes a taxable supply of goods. In such situation, he cannot issue invoice from Mumbai office, since this supply does not pertain to Maharashtra State.

In the second case, where the diamonds are purchased from Surat and sent to Bhavnagar, section 10(1) (b) of IGST Act will be applicable. That section reads:

> *"where the goods are delivered by the supplier to a recipient or any other person on the direction of a third person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to the goods or otherwise, it shall be deemed that the said third person has received the goods and the place of supply of such goods shall be the principal place of business of such person;"*

Hence, it will be deemed that the Surat dealer has supplied to Mumbai dealer and the Mumbai dealer has received the goods. Hence the Surat dealer will charge IGST to Mumbai dealer. Since it is deemed that the Mumbai dealer has received the goods, the subsequent sale by Mumbai dealer will also result in deemed movement from Mumbai to Bhavnagar and the Mumbai dealer will issue invoice and charge IGST to Bhavanagar dealer.

Q432. A company registered in Tamil Nadu is involved in giving its computers on hire to an Institute registered in Karnataka for

conducting exams. Is this an inter-State supply or intra-State supply?

Ans.

- In terms of Entry No. 5C of Schedule II of the CGST Act, giving the computers on hire by a company registered in Tamil Nadu to an Institute in Karnataka is a supply of service
- As per section 7 of the IGST Act, if the location of supplier and place of supply are in two different States or two different Union Territories or a State and a Union Territory, then it shall be regarded as inter-State supply.
- In the given example, location of supplier is in Tamil Nadu. Place of supply shall be determined as per the provisions of section 12 of IGST Act. The supply of services where they are not specifically covered by sub sections (3) to (14), the same shall be determined as per sub-section (2) of section 12 of the IGST Act.
- The service stated in the given example is not covered by any of the specific circumstances given in sub-section (3) to (14). Hence, the default provision of sub-section (2) will apply. As per sub-section (2) the place of supply of services except the services specified in sub-sections (3) to (14) made to a registered person shall be the location of such person. Hence, in the given example, location of recipient is Karnataka; and the same would be treated as place of supply.
- Since**,** *location of supplier i.e. Tamil Nadu and place of supply i.e. Karnataka are in two different States, this would be considered as an inter-State supply of service.*

Q433. If a service provider is in Chennai and recipient is in Pune, under RCM, whether IGST or CGST and SGST to be paid?

Ans. Section 2(98) of the CGST Act, defines the term 'reverse charge', which in turn refers to section 9(3) and section 9(4). Further, the provisions of section 9(3) and 9(4) mention that all provisions of the GST law shall apply on the recipient as if he is the person liable to pay tax in relation to such supply. Therefore, the recipient shall follow the provisions in relation to the place of supply under the

IGST Act, as amended. The applicability of CGST/SGST or IGST shall be decided accordingly based on the nature of services.

Q434. Whether all transactions by SEZ unit should be shown as inter-State transactions and IGST would be applicable to the unit?

Ans. SEZs are considered to be located in a foreign territory. Thus, the transactions with SEZ's can be classified as exports and imports. Any kind of transaction with SEZ will be considered as inter-State transactions and IGST will be charged on the same.

Chapter 16
Place of Supply

Q435. What are the services that can be covered under Online Information Database Access and Retrieval Service (OIDAR)? What is the place of supply in case of OIDAR Service?

Ans. OIDAR is a category of services provided through the medium of internet and received by the recipient online without having any physical interface with the supplier of such services. For example, downloading of an e-book online for a payment would amount to receipt of OIDAR services by the consumer downloading the e-book and making payment.

As per Section 2(17) of the IGST Act- **"***OIDAR means services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention and impossible to ensure in the absence of information technology and includes electronic services such as,-*

(i) advertising on the internet;

(ii) providing cloud services;

(iii) provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;

(iv) providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;

(v) online supplies of digital content (movies, television shows, music and the like);

(vi) digital data storage; and

(vii) online gaming;"

Place of supply in case of OIDAR Services.

- For any supply to be taxable under GST, the place of supply in respect of the subject supply should be in India.

- In case both the supplier of OIDAR service and the recipient of such service are in India, the place of supply would be the location of the recipient of service, i.e., it would be governed by the default place of supply under section 12 (2) of the IGST Act.
- In case either the service provider or the service recipient is located outside India, the place of supply of OIDAR services will be the location of the recipient of the services, under section 13 of the IGST Act. Thus, in cases where the supplier of service is located outside India and the recipient is located in India, the place of supply would be India and the transaction would be amenable to tax.

Q436. A, a jeweller is a registered person under GST, who attends a Jewellery exhibition in Dubai by paying a fee. Is it covered under RCM?

Ans. As per the provisions of section 13(5) of the IGST Act, the place of supply shall be the location where the exhibition is being held i.e., Dubai. Therefore, as per section 7(1) (b) of the CGST Act, the said transaction shall be outside the scope of supply, as the place of supply is outside India. Consequently, reverse charge shall not be applicable on the same.

Q437. X has a registered office in Mumbai and also has another office in Gujarat, which is not registered in GST. Bank Audit in Mumbai is done by my Gujarat Team and report is signed by X and billing is also done from Gujarat office. What will be the GST effect when the billing is done by Gujarat Office?

- This situation attracts section 24 of the CGST Act, which provides for compulsory registration in case of any inter-State supplies being made by a person. Thereby, the Gujarat office shall be liable to get registered in this case. Moreover, if at one premises registration is taken, it is compulsory to take registration at other premises since aggregate turnover limit prescribed under section 2(6) of the CGST Act is determined on PAN-India basis.
- The Place of supply of service in the given case shall be governed by section 12(2) (a) of the IGST Act, according to which where services are supplied to any registered person, the

place of supply shall be the location of the recipient of the services. In this case the place of supply shall be Maharashtra and the services being provided by Gujarat team, shall amount to inter-State supply of services that would be subject to applicable GST.

Q438. An advertising agency registered in the State of Telangana is dealing with advertisements on hoardings at Hyderabad. It received an order from a Mumbai party for display of advertisement at Hyderabad. What is the place of supply; whether IGST or CGST/SGST applicable?

Ans. As per section 7(3) of the IGST Act, supply of services, where the location of the supplier and the place of supply are in two different States, shall be treated as a supply of services in the course of inter-State trade or commerce.

Further, as per section 5(1) of the IGST Act, integrated goods and services tax (IGST) shall be levied on all inter-State supplies of goods or services or both.

Place of supply of services where location of supplier and recipient is in India is determined by applying the provisions of Section 12 of the IGST Act.

In the above example, location of the supplier of service is fixed i.e. State of Telangana. Now coming to the issue for deciding place of supply in case of hoarding depends on, whether the hoarding is moveable property or immoveable property.

a) *If the 'Hoarding' is treated as immovable property,* then the place of supply, by virtue of provisions of section 12(3) of the IGST Act, is where the immoveable property is located i.e. Hyderabad. In such case the Hyderabad dealer will charge SGST/CGST in the State of Telangana, being intra-state transaction.

b) *If the 'Hoarding" is treated as movable property,*: As per the Madras High Court decision in case of *Selvel Advertising Pvt.Ltd. 89 STC 1,* the hoardings are treated as moveable property due to change in technology. The printed hoardings are removable. The Court observed that hoardings fastened to structures erected on land acquired on lease are moveable.

> Hoardings are "goods", the definition in the Sale of Goods Act, 1930, could be considered for determining whether the hoardings in question were "goods"

If hoardings are moveable, then the place of supply will be governed by the provisions of section 12(2) of the IGST Act, where services made to a registered person shall be the location of such person. Location of registered recipient is location where registration is obtained. In such case, the place of supply will be location of Mumbai dealer, i.e., Mumbai. In this situation, IGST will be chargeable by the Hyderabad dealer, being an inter-State transaction.

Q439. Freight Forwarder (X) located in Delhi is currently raising debit note to its foreign agents in China for services provided and consideration is received in foreign exchange. What will be the place of supply in case of the above service

Ans. For the purpose of this query, it is assumed that the freight forwarder provides transportation services. Accordingly, the answer to the above question is given under the following two scenarios, i.e., where the service is provided by the freight forwarder on its:

A. "Own Account" or

B. An "Intermediary".

A. Own Account

Section 13 of the IGST Act, is the relevant section to determine the place of supply of services where the location of supplier or location of recipient is outside India

According to section 13(9) of the IGST Act, the place of supply of service of transportation of goods, other than by way of mail or courier, shall be the place of *destination* of such goods.

A freight forwarder could be providing domestic transportation within taxable territory (say, from the exporter's factory located in Pune to Mumbai port) as well as international freight service (say, from Mumbai port to the international destination), under a single contract, on his *own account* (i.e. he buys-in and sells freight transport as a principal), and charges a consolidated amount to the agents in India. In this situation, ideally the place of supply should be outside India. Therefore, the supply would be an inter-State

supply. It would be possible to claim the benefit of export of services, subject to fulfilment of the relevant conditions provided below.

Qualification of Export of services

Section 2(6) of the IGST Act, defines "export of services as follows:

"(6) "export of services" means the supply of any service when,––

(i) the supplier of service is located in India;

(ii) the recipient of service is located outside India;

(iii) the place of supply of service is outside India;

(iv) the payment for such service has been received by the supplier of service in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India; and

(v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8"

B. An Intermediary

Section 2(13) of the IGST Act, defines Intermediary services as follows:

"intermediary means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account"

The place of supply in case of *"Intermediary"* service is provided in section 13(8) of the IGST Act, as *"Location of supplier of service"*.

If the freight forwarder carries the service as *agent* or facilitates the service of freight forwarding between two or more persons and doesn't supply on its own account, the transaction would be subject to CGST & SGST as the place of supply is the location of service provider which is India in this scenario.

Q440. What is the place of supply for bank guarantee established by parent company overseas and facilitation fee paid to overseas vendor for the bank guarantee utilised by subsidiary in India. Whether this is liable to tax under GST?

Ans.

- In order to fall within the chargeability of GST, the activity performed shall fall within the definition of "supply" in terms of section 7 of the CGST Act. An activity shall qualify as a "supply" in terms of section 7 of CGST Act only if all the conditions specified therein are satisfied.
- In terms of Explanation (a) to section 15 of the CGST Act, *persons shall be deemed to be "related persons" if—*
  - *(i) such persons are officers or directors of one another's businesses;*
  - *(ii) such persons are legally recognised partners in business;*
  - *(iii) such persons are employer and employee;*
  - *(iv) any person directly or indirectly owns, controls or holds twenty-five per cent. or more of the outstanding voting stock or shares of both of them;*
  - *(v) one of them directly or indirectly controls the other;*
  - *(vi) both of them are directly or indirectly controlled by a third person;*
  - *(vii) together they directly or indirectly control a third person; or;*
  - *(viii) they are members of the same family;*

  In accordance with the above, parent company and subsidiary company shall be considered as related persons.
- Entry No. 2 of Schedule I of the CGST Act, provides that supply of goods or services or both between related persons, when made in the course or furtherance of business shall be treated as a supply even if made without consideration.
- In case of ***Olam Agro India Limited v. Commissioner of Service Tax, Delhi – I*** *[2014(33) S.T.R. 251 (Tri.-Del.)]***,** the Delhi Tribunal held: *"Prima facie, such corporate guarantee*

constitutes a service provided by the Singapore entity to the petitioner for facilitating its business for procurement of indigenous agricultural produce, etc. for the purpose of its export. Ld. Counsel for the petitioner has contended, a contention that did not find favour with the adjudicating authority, that extending of corporate guarantee by the Singapore corporate entity to Indian bank is akin to providing bank guarantee, a service falling within Banking and other Financial Services defined in section 65(12) of the Act (business auxiliary service)."

- Further, *Circular No.34/8/2018-CGST dated 01.03.2018* issued by the Central Government provides the following:

Sl. No.	***Issue***	***Clarification***
4	*(2) Whether the guarantee provided by State Government to State owned companies against guarantee commission, is taxable under GST?*	(2) The service provided by Central Government/ State Government to any business entity including PSUs by way of guaranteeing the loans taken by them from financial institutions against consideration in any form including Guarantee Commission is taxable.

- In the present case, the parent company has provided a guarantee to subsidiary company and the facilitation fee is paid by subsidiary company to parent company for provision of said service. Given the present fact pattern and drawing parallel view from the above judicial precedent, it may be inferred that Bank guarantee extended by parent company to a vendor in favour of subsidiary company, is being considered as supply of service by parent company to subsidiary company by virtue of guaranteeing, the repayment of the loans/borrowings to the vendors abroad in case of default by subsidiary company. The entities involved in the said transaction are related persons as explained above and thus by virtue of Entry No. 2 of Schedule I

of the CGST Act, extending the bank guarantee will constitute a supply even if there is no consideration charged. Hence, GST shall be applicable.

- Further, in terms of Entry No. 4 of Schedule I of the CGST Act, Import of services by a person from a related person or from any of his other establishments outside India, in the course or furtherance of business shall be considered as a supply even if made without consideration. In the instant case, the subsidiary company is availing the service of bank guarantee from parent company overseas and the same shall be considered as import of services and GST shall be payable under RCM.
- In terms of section 13(2) of IGST Act, the place of supply of services shall be the location of the recipient of services where the location of the supplier of services or the location of the recipient of services is outside India. Therefore, the place of supply shall be the location of subsidiary company in India.

Q441. X. located in Mumbai places a purchase order for procurement of material from Y of China and directs Y to supply goods directly to Z of South Africa; the bill is raised by X to Z.

What will be the place of supply in the above case?

Ans.

- Transactions taking place before filing of bill of entry are termed as *"high sea sale"* transactions under common trade practice where the original importer sells the goods to a third person before the goods are entered for customs clearance.

  In the present case, the goods would never be imported into India (i.e., are directly supplied from China to South Africa). This situation is covered under Entry No. 7 of Schedule III *ACTIVITIES OR TRANSACTIONS WHICH SHALL BE TREATED NEITHER AS SUPPLY OF GOODS NOR A SUPPLY OF SERVICES* of the CGST Act which inter *alia stated "Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India."*

- The above transaction is not even a "supply" as per GST Law. Thus, the question of place of supply will not arise. As stated, the transaction would not be subject to GST.

Q442. Commission invoice is raised by an Indian subsidiary company in Gurgaon, Haryana on parent company outside India for goods purchased from outside India and sent directly from outside India to the parent company outside India. What will be the place of supply in this case?

Ans.

- The Indian subsidiary company in the present case acts as an "*Intermediary*" between the parent company and the seller of the goods.
- Section 2(13) of IGST Act defines *Intermediary services* as follows:

  "intermediary means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account."

- The place of supply in case of "*Intermediary*" service is provided in section 13(8) of the IGST Act is *"Location of supplier of service"*.
- Since the Indian subsidiary would qualify as an "*intermediary*", the transaction would be subject to CGST and SGST as the place of supply in such cases is the location of service provider (i.e., the Indian subsidiary).

Q443. What are the consequences of wrong payment of tax due to mistake in identifying the correct place of supply?

Ans. As per section 77 of the CGST Act, where a registered taxable person who has paid the CGST & SGST/UTGST considering a transaction to be an Intra- State supply but subsequently such transaction is held to be an Inter-State supply, then IGST shall be payable (with no interest) and refund of CGST & SGST/UTGST could be claimed under the provisions of the respective Act..

In the same line, section 19 of the IGST Act, provides for refund of IGST and payment of correct tax i.e. CGST & SGST/UTGST.

1. Correct tax would be required to be paid.

2. Proof of correct tax to be submitted to PTO.

3. On the weightage of the proof of correct tax having been paid, application for refund of the wrongly paid tax shall be made.

Therefore, it becomes most important and critical to correctly determine the nature of supply.

Note: If amount has been deposited in the electronic cash ledger under a wrong head, before set off - there is an option to transfer the amount to the correct head by filing **FORM GST PMT-09**.

Q444. X is in retail business; customers from other State come to X's Store and purchase the goods and ask X to send it to their home State. In that case what will be place of supply?

Ans. Where the supply involves movement of goods, the place of supply of such goods shall be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient. In this case the place of supply will be the place where goods are delivered.

Q445. A, registered seller in Delhi sold goods to B, unregistered buyer of Uttarakhand, but the goods have been delivered in Assam (AS). What will be the place of supply?

Ans. If the goods are supplied by the supplier to the recipient on the direction of a third person, it will be deemed that the third person has received the goods, and the place of supply will be the principal place of business of such third person.

Place of supply for *"Bill to Ship to"* transactions have been defined under GST under Section 10(1) (b) of the IGST Act:

> *"(b) where the goods are delivered by the supplier to a recipient or any other person on the direction of a third person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to the goods or otherwise, it shall be deemed that the said third person has received the goods and the place of supply of such goods shall be the principal place of business of such person;"*

In this case the place of supply will be Uttarakhand.

Q446. A person is engaged in identifying students for enrolling to the course conducted by Foreign University. Whether it will fall within the limb of section 13(8) (b) of the IGST Act and be determined as the place of supply in India?

Ans.

- In terms of section 2(13) of IGST Act – ""*intermediary*" *means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account;"*
- Further, in terms of section 13(8) (b) of IGST Act the place of supply of the intermediary services shall be the location of the supplier of services.
- In the instant case, the person is providing the services of identifying and enrolling the students to the course conducted by Foreign University.
- If the person is providing such services on his own account, then place of supply of such services shall not fall under section 13(8) (b) of the IGST Act and the place of supply shall be the location of recipient of services as per section 13(2) thereof. However, if the person is providing the said services on behalf of Foreign University, then the place of supply shall be determined as per Section 13(8) (b) of the IGST Act.

Q447. A Ltd., a delivery company having registered office in Bengaluru, collect all the goods from Clipkart in their Hubs and deliver to final customers. What will be the place of supply?

Ans. (a) Where a service is provided to a registered person, the place of supply shall be the location of such recipient; [Section 12(2)(a) of the IGST Act]

(b) Where service is provided to an unregistered person, then place of supply shall be the:

(i) Location of the service recipient if the address is available on record;

(ii) Otherwise location of service provider – [Section 12(2)(b) of the IGST Act].

Since in this case the service is provided to a registered person i.e., Clipkart, the place of supply will be the registered address of Clipkart.

Q448. X., a resident of Noida, U.P., went to Himachal Pradesh for a family vacation *via* Delhi-Chandigarh-Himachal Pradesh in his own car. After entering Chandigarh, his car broke down due to some technical issue. He called ˜CROSSROARDS" - an emergency roadside car assistance company (registered under GST in Delhi) to repair the car. The car was repaired by the staff of "CROSSROADS". The value of supply amounted to ₹ 50,000 (being labour charges ₹ 40,000 and spares ₹ 10,000). The bill was supposed to be generated online though the server, but due to some technical issue, it was not so generated. What will be the place of supply in the given case?

Ans. Services supplied to an individual, represented either as the recipient of services or a person acting on behalf of the recipient, which require the physical presence of the recipient or a person acting on his behalf, with the supplier for the supply of services.

In this case place of supply will be Chandigarh as this is performance based services.

Q449. X, a Director of ABC Ltd. which is registered in Delhi goes to Mumbai and stayed in a Five Star hotel. What will be the place of supply of service to X?

Ans. The place of supply of services by way of lodging accommodation by a hotel, shall be the location at which the immovable property (hotel) is located or intended to be located, as per section 12(3) (b) of the IGST Act. In this case the place of supply will be Mumbai and CGST and SGST will be charged.

Q450. What is the relevance of address of delivery? What will be the place of supply in case of vehicle, if it is sold in Karnataka by a dealer in Maharashtra and the vehicle is supposed to be registered with Karnataka RTO?

Ans. As per section 2(2) of the CGST Act, address of delivery means the address of the recipient of goods or services indicated on the tax invoice issued by a registered person for delivery of such goods or services or both. If a dealer in Maharashtra, supplies a vehicle to a recipient in Karnataka and the vehicle is to be registered in Karnataka, the goods are transported by the dealer to the location of recipient, the place where the movement terminates for delivery, shall be the place of supply as per section 10(1) (a) of the IGST Act. Hence in this case the place of supply will be Karnataka.

Q451. A photographer in Karnataka had rendered wedding photography services to a NRI (native of Tamil Nadu) in Chennai as well as in Australia. What will be the place of supply?

Ans. As per section 13(5) of the IGST Act, *the place of supply of services supplied by way of admission to, or organisation of a cultural, artistic, sporting, scientific, educational or entertainment event, or a celebration, conference, fair, exhibition or similar events, and of services ancillary to such admission or organisation, shall be the place where the event is actually held.*

Photography service to wedding is ancillary to an event or celebration.

Further, as per section 13(6) of the IGST Act, *where any services referred to in sub-section (3) or sub-section (4) or sub-section (5) is supplied at more than one location, including a location in the taxable territory, its place of supply shall be the location in the taxable territory.*

In this case, the service has been rendered in Chennai (a location in taxable territory). Hence, place of supply shall be Chennai, Tamil Nadu.

Q452. A transporter is providing Good Transport Agency (GTA) services for supply of goods to Emazon (registered and situated in Karnataka). The GTA supplies goods to customers, who are located within the city of Andhra Pradesh. What will be the place of supply?

Ans. In the case of any services provided by a supplier, where the supplier and recipient of supply are located in India, in relation to

transportation of goods the place of supply for such services will be determined as per section 12(8) of the IGST Act. As per sub-clause (a) to the said section, in case of transportation of goods, if the supply of transportation services is made to a registered person, the place of supply is the location of such recipient. Hence, the GTA who transports goods within the State of Andhra Pradesh, supplies services for and on behalf of a recipient located in Karnataka, who is a registered person and the place of supply will be the place where the recipient is located i.e. Karnataka. As the location of supplier and place of supply are in different States, the nature of supply will be inter-State supply and the supplier is liable to pay IGST.

Q453. In case of GTA services where the liability is on RCM basis, how the place of supply will be determined?

Ans. The provisions relating to e place of supply remain the same whether the GST liability is covered under the forward charge or RCM, Hence, the provisions of section 12(8) (a) of the IGST Act would be applicable in this case. In relation to transportation of goods, any services provided by a supplier, where the supplier and recipient of supply are located in India, the place of supply for such services will be determined as per section 12(8)(a) of IGST Act. i.e., if the supply of transportation of goods is made to a registered person, place of supply is the location of such recipient. Hence, in case of RCM, the place of supply will be the location of the recipient, who is generally registered as a person liable to pay tax under RCM as per section 24 of the CGST Act.

Q454. What is the place of supply in case of intangibles classified as services under GST?

Ans. Where intangible assets are being given for temporary transfer or permitted use, then it will be treated as services. Once it is determined that intangible assets as service, then provisions of sections 12 and 13 of the IGST Act will apply for determining the place of supply of the Services.

The Rules applicable for supply of intangible assets would mainly fall in the residuary category. Hence, as per rule 12(2) of the IGST Rules, place of supply of services, where both, location of supplier & location of Recipient are in India will be as under:

Sl. No.	*Type of Supply*	*Place of Supply*
1.	Services are provided to a registered recipient	Location of the registered recipient
2.	If the service provided to other than registered person:	
(a)	If location of the recipient of service is available on record of the supplier	Location of the recipient
(b)	Otherwise	Location of supplier of service.

However, if either the location of supplier or the location of recipient fall outside India the provision of rule 13(2) of the IGST Act, will prevail where:

- Place of supply of services shall be the location of the recipient of services
- Where the location of the recipient of services is not available in the ordinary course of business then, the place of supply of services - shall be the location of the supplier of services.

Q455. Installation services provided on goods by a service provider in Delhi, who installs some cameras at a site in Delhi, for and on behalf of a service recipient who has a place of business in Andhra Pradesh. Whether the place of supply will be Delhi or Andhra Pradesh. The supplier invoice is only for installation charges as goods belong to service recipient as there is no sale of goods here.

Ans. In case of any services provided by a supplier, where the supplier and recipient of supply are located in India, in relation to installation services provided on goods, the place of supply will be determined as per section 12(2) of the IGST Act. As the specified service is not covered by any other sub-section of the said section, the location of recipient is place of supply. In case of installation services provided on goods supplied by the recipient, the place of supply will be location of the recipient, irrespective of the place where the goods are been installed. Therefore, in this case, the place of supply will be Andhra Pradesh.

Q456. A supplier is a real estate agent in Sikkim; the recipient is also in Sikkim, but the property is located in Odisha, which is the property intended to be purchased by the recipient what would be the place of supply?

Ans. In case of any services provided by a supplier, where both the supplier and the recipient of supply are located in India, in relation to immovable property based service, the place of supply will be determined as per section 12(3) (a) of IGST Act. The place of supply of services directly in relation to an immovable property, including services provided by experts or estate agents, shall be the location at which the immovable property is located or intended to be located. In the given case as the services provided by the supplier is by way of real estate agent service and the property which is intended to be purchased is located in Odisha, the place of supply for the said services will be location of immovable property which is Odisha.

Q457. A Ltd., located in India enters into an agreement with B Inc., in USA to provide scientific testing in India. B Inc., in turn sub-contracts the service to C Inc., in USA. C Inc., sends an employee to India to provide the service in India. What would be the place of supply for the service provided by C to B? Is B or C are required to obtain registration in India?

Ans. To understand, the query better let us re-draft the query as under-

(a) C Inc. of USA, a non-resident is providing testing services on goods situated in India to B. Inc. of USA, a non-resident.

(b) B Inc. of USA, a non-resident is providing testing services on goods situated in India to A Ltd. of India.

Registration Issue

In terms of Section 2(77) of the CGST Act, "non-resident person" requires registration in case he undertakes occasional transactions involving supply of goods or services. As such, both C Inc. and B Inc. require registration in India.

Place of Supply Issue

Situation (a):

In this case, the place of supply is in India in terms of section 13(3)(a)

of the IGST Act. However, since the recipient of service is outside India, in spite of the fact that the place of supply is in India, IGST will be chargeable in terms of the provisions of section 7(5)(c) of the IGST Act.

Situation (b):

In this case, the place of supply is in India in terms of section 13(3)(a) of the IGST Act and the recipient is also located in India; therefore, CGST/ SGST would be applicable.

Q458. A tax consultant has made the income tax computation and determined the tax payable by an individual and supports the individual in filing his income tax return. The PAN jurisdiction of such individual is different from the location of recipient as per records available with the supplier of service. Whether CGST/ SGST would be charged or IGST if PAN has jurisdiction in other State?

Ans. In case of any services provided by a supplier, where the supplier and recipient of supply are located in India, and the service is not covered by sub-sections (3) to (14) of section 12 of the IGST Act, the place of supply will be determined as per section 12(2) of IGST Act, which will be the location of the recipient. In respect of the services by the tax consultant to an individual who is registered with GST, the place of supply of service will be location of such registered person. In case the recipient is not registered, the location of recipient as per address on record with the supplier will be place of supply. In case of any dispute between address on record of supplier and the actual jurisdiction of PAN, the place of supply will be determined as per address on records of the recipient, with the supplier.

Q459. What is the place of supply of conference event held in say Mumbai and delegates attending from all over India? Also, what is the place of supply of stall rentals received from various companies putting up stalls in the said event to exhibit or sell their products?

Ans. Let us assume that both the supplier of services as well as recipient of services are situated in Mumbai. The delegates and the companies who wish to put up stalls in the conference are from all

over India. Both the supplier and recipient of service are registered in Mumbai. Various companies who wish to put up stalls are also registered across India. In this case, in terms of the provisions of section 12(7) of the IGST Act, the place of supply in relation to organisation of a conference would be Mumbai. In respect of organization of an event in immovable property, the service of booking the location will be determined in terms of section 12(3) of the IGST Act, but the organization of the event will fall under section 12(7) of the IGST Act. Services by way of admission to an event will fall under section 12(6) of the IGST Act, and the services of organization of an event, will be covered by section 12(7) of the IGST Act. Similarly, the place of supply in relation to booking of stalls will fall under section 12(3) of the IGST Act.

Q460. D Ltd, is a PAN India maintenance service provider located in Tamil Nadu and sends spare parts to his authorised service providers across India based on delivery challan, upon payment of necessary GST. He has some stock at service location in Maharashtra valued at ` 10 Lacs. D Ltd decides to sell his PAN India stock to E Ltd, in Karnataka who also will continue to take the service from same authorised service provider in Maharashtra. No movement of spare parts is required and only transfer of title is needed. The stock is based out in Maharashtra, the seller is in Tamil Nadu and the buyer is in Karnataka.

(i) What will be the place of supply for spare parts?

(ii) Can IGST invoice for `10 lacs be issued, without generation of e-way bill?

Ans. 1. In case of supply of goods, where the goods do not involve movement either by the supplier, recipient or any other person the place of supply will be determined as per section 10(1) (c) of the IGST Act, which will be the place where the goods are located at the time of delivery.

2. In the above case, the goods of D Ltd. are located in Maharashtra and the goods do not involve movement, when such goods are sold to a buyer in Karnataka. The place of

supply for this transaction will be the place where the goods are located, which is Maharashtra. Since the location of supplier and place of supply are in different States, the said supply will be an inter-State supply and as the goods do not involve movement through a motorised conveyance, generation of e-way bill is not mandatory.

Q461. A company paid membership fee related to their business, to an association located outside India, say in USA. Whether the place of supply is in India and the Indian company has to pay RCM for subscription of membership.

Ans. In case of any services where the supplier or recipient of such service is located outside India, the place of supply will be determined as per section 13 of the IGST Act. Generally the place of supply of services as per section 13(2) of the IGST Act shall be the location of recipient, when the said services are not covered by sub-clause (3) to (13) of section 13 of the IGST Act. In the instant case, the services provided by the association located outside India, are not covered by the specified services and hence the place of supply will be the location of recipient which is India. Therefore the Indian company is liable to pay tax under RCM.

Q462. A who is a non-resident Indian, owns an immovable property in India. How to determine the location of supplier? If such immovable property is tied-up with an aggregator like LOYO, who is facilitating a room service in Mumbai and how will the place of supply will be determined?

Ans. As per section 2(15) of the CGST Act, the location of supplier means the place which a registered person uses for supply of his service, when the services are provided from a fixed establishment, other than the registered place of business, then one which is most directly connected with business, if all the above places is not available, the usual place of residence, will be location of supplier. In the give case, the immovable property in India will be a fixed establishment and the location of supplier will be in India. In case of any services in connection with immovable property the place of supply as per section 12(3) of the CGST Act, will be the location of the immovable property, irrespective of the fact whether the services are provided to e-commerce operator or customers.

Q463. What shall be place of supply in case equipments are given on hire by a person (located in State A) to a contractor (located in State B) for construction of immovable property situated in State A?

Ans. In case of any services provided by a supplier, where the supplier and recipient of supply are located in India, and the service is not covered by sub-sections (3) to (14) of section 12 of the IGST Act, the place of supply will be determined as per section 12(2) of the IGST Act, which will be the location of recipient. In respect of the services by the supplier to the recipient who is registered with GST, the place of supply will be the location of such registered person. In case the recipient is not registered, the location of recipient as per address on record with the supplier will be place of supply.

Q464. A hospital in India enters into a contract with a hospital in Singapore to provide opportunities to foreign doctors, to observe various kinds of eye surgeries conducted in the Indian hospital and also to train them in this regard. The consideration is paid in convertible foreign exchange. The foreign doctors visit India and get trained in eye surgery. The said contract is also approved by the Governments of both the countries. Can this activity be treated as export of service? As the training is taking place in India, will it be regarded as a taxable supply in India?

Ans. In case of any services, where the supplier or recipient of such service are located outside India, the place of supply will be determined as per section 13 of the IGST Act. Generally, the place of supply of services as per section 13(2) of the IGST Act shall be the location of recipient, when the said services are not covered by sub-clause (3) to (13) of section 13 thereof.

In the instant case, the services provided by the Indian hospital, will permit the foreign doctors to be present in the operation theatre and observe the eye surgeries. Such training services are covered by the specified services [Section 13(3) of the IGST Act]. Hence the place of supply will be the location where the services are provided to the representative of recipient which is India and it will not be considered as an export of service.

Q465. A registered person providing web development/software development activities for a USA based Company in USA from India. Whether it qualifies as export of service?

Ans. In the given case, the supplier of service is located in taxable territory and is engaged in web development and software development. The recipient of service is located outside India and hence the Place of supply will be determined by section 13 of the IGST Act. As per section 13(2) of the IGST Act, the place of supply of service is the location of the recipient of services i.e. outside the taxable territory provided the conditions as prescribed in section 2(6) of the IGST Act are satisfied.

Q466. What will be the place of supply where the transportation of goods is to a place outside India? From which date this proviso to section 12 (8) of the IGST Act was made effective?

Ans. In relation to place of supply for transportation of goods to a place outside India, a proviso to section 12(8) of the IGST Act has been inserted *vide* IGST (Amendment) Act, 2018, which came into effect from 01-02-2019 onwards, affirming that the place of supply shall be the place of destination of such goods.

Q467. What will be the place of supply where flight tickets are booked for return journey also?

Ans. Section 12(9) of the IGST Act, deals with the place of supply of passenger transportation, where it is provided that the place of supply of passenger transportation service to a registered person, shall be the location of such person and for other than registered person shall be the place where the passenger embarks on the conveyance for a continuous journey.

If flight tickets are booked for return journey also the place of supply will be the location of registered person if such person is registered and for other than registered person it shall be the place where the passenger embarks on the conveyance the journey.

Q468. Whether samples sent outside India by a registered person will be liable to GST? No AWB had been issued. What is the place of supply?

Ans. In case any goods are sent outside India, the proof of export (usually a shipping bill or AWB) is a must to establish the same. In the

absence of the same, the establishment of export shall not be possible and in such cases, section 17(5) (h) would require reversal of input tax credit availed earlier on such goods as disposal of goods as samples. However, in any case, since there is no consideration, there cannot be a supply and in the absence of a supply, there is no requirement of identifying place of supply.

Q469. The service provider in India [Customs House Agent (CHA)] performs clearing activity on behalf of a recipient who is another CHA in Dubai. The consideration was received in convertible foreign exchange. What will be the place of supply for the activity performed by Indian CHA and whether this will be an export of service?

Ans. In case of any services where the supplier or recipient of such service is located outside India, the place of supply will be determined as per section 13 of the IGST Act. Generally, the place of supply of services as per section 13(2) of the IGST Act shall be the location of recipient, when the said services are not covered by sub-clauses (3) to (13) of Section 13 of the IGST Act. In the instant case, the services provided by CHA in India, is in relation to handling of goods as a CHA, which is a specified service as per section 13(3) of the IGST Act. The place of supply shall be the place where the goods are located and hence the place of supply of service will be India. The said supply of service will not be considered as an export of service, as the place of supply is in India.

Q470. The place of both supplier and recipient is in Tamil Nadu and location of goods which are covered under this supply is at Karnataka. What is the nature of supply and what tax will have to be charged by the supplier if there is no movement of goods?

Ans. In case of supply of goods, where the goods do not involve movement either by the supplier, recipient or any other person the place of supply will be determined as per section 10(1) (c) of the IGST Act, which will be the place where the goods are located. In the above case, the place of supply will be the place where the goods are located, which is Karnataka. As per section 7 of the IGST Act, if location of supplier and place of supply is in different state, the said supply will be an inter-State supply.

Q471. What is the place of supply in a scenario where the repair and renovation work, involving transfer of goods is executed at a State (say Punjab) different from the State of the service provider and recipient (say Mumbai)?

Ans. Since, Entry 6 (a) to Schedule II of the CGST Act treats *works contract as defined in clause (119) of Section 2* as a supply of service, there is a clear demarcation of works contract from other services. Works contract as defined in the Act is restricted to immovable property.

Section 12(3) of the IGST Act reads:

"*The place of supply of services, –*

(a) directly in relation to an immovable property, including services provided by architects, interior decorators, surveyors, engineers and other related experts or estate agents, any service provided by way of grant of rights to use immovable property or for carrying out or co-ordination of construction work; or

(b) by way of lodging accommodation by a hotel, inn, guest house, home stay, club or campsite, by whatever name called, and including a house boat or any other vessel; or

(c) by way of accommodation in any immovable property for organising any marriage or reception or matters related thereto, official, social, cultural, religious or business function including services provided in relation to such function at such property; or

(d) any services ancillary to the services referred to in clauses (a), (b) and (c),

Provided that if the location of the immovable property or boat or vessel is located or intended to be located outside India, the place of supply shall be the location of the recipient.

Explanation. - Where the immovable property or boat or vessel is located in more than one State or Union territory, the supply of services shall be treated as made in each of the respective States or

Union territories, in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed."

In accordance with (a) and (d), repair and renovation work is a service provided by the contractor in relation to immovable property and hence the place of supply for the repairs and renovation work shall be the location of the immovable property, i.e. Punjab.

Q472. What is the place of supply when pre-marketing services have been rendered to an overseas client?

Ans. As per section 13(2) of IGST Act, the place of supply of services except the services specified in sub- sections (3) to (13) shall be the location of the recipient of services and the Place of Supply is location of the recipient.

Supply of pre-marketing services to overseas client does not fall under sub-sections (3) to (13) of section 13, provided the services provided is not in the nature of an intermediary service.

In the instant case, location of recipient and place of supply being outside India, it is an inter-State supply and hence IGST is applicable. If the said service qualifies the conditions of section 2(6) of the IGST Act, which defines "*Export of Service"*, then it will be qualified as zero-rated supply.

Q473. If an insolvency professional service is rendered by a resolution professional to a corporate debtor registered at Haryana and its financial creditors are located at different States, what will be the place of supply?

Ans. As per section 12(2) of the IGST Act, the place of supply of services except the services specified in sub- sections (3) to (14) made to a registered person, shall be the location of such person.

Since the services are rendered to the corporate debtor registered at Haryana, the place of supply shall be Haryana - location of service recipient (i.e.) corporate debtor's registered place.

Q474. What should be the place of supply in case of tour operator – would the place of supply be one single place or place of

supply would be different in respect of each service that has been offered in a package tour?

Ans. Section 12(2) of the IGST Act, provides that

"The place of supply of services, except the services specified in sub-sections (3) to (14),––

(a) made to a registered person shall be the location of such person;

(b) made to any person other than a registered person shall be,—

(i) the location of the recipient where the address on record exists; and

(ii) the location of the supplier of services in other cases."

The Place of supply shall be location of recipient. If not traceable, the place of supply will be location of supplier. In the instant case, the place of supply in respect of tour operator service would be one single place depending on the location of the recipient. It would not be different depending on the package tour offered.

Q475. If a Thailand based subsidiary company is supplying goods in India through an Indian company for which the Indian company raises a debit note for the commission portion, what will be regarded as the place of supply?

Ans. The Indian company facilitates the supply of goods between the Thailand based subsidiary company and the customer in India and hence satisfies the definition of intermediary as per section 2(13) of the IGST Act.

As per section 13(8) (b) of the IGST Act, where the location of supplier or location of recipient is outside India, the place of supply for intermediary services is location of the supplier of services.

Hence the place of supply for the commission charged by the Indian company from its Thailand subsidiary is India, as the said service fall under the category of intermediary services under section 13(8).

Q476. What is the place of supply in case e-auctioning services for immovable property provided to a customer?

Ans. Irrespective of whether the auctioned goods are movable or immovable, for the transaction between the auctioneer and the buyer of such auctioned items the place of supply is determined under section 12(2) of the IGST Act, since the services specified are not covered by sub-sections (3) to (14). The place of supply in case of e-auctioning services if-

a) made to a registered person shall be the location of such person;

b) made to any person other than a registered person shall be,–

i) the location of the recipient where the address on record exists; and

ii) the location of the supplier of services in other cases

Place of supply shall be location of recipient, if the location of supplier is not traceable.

Q477. X, a registered person in the State of Madhya Pradesh, appoints clearing and forwarding agent Y, a registered person in the State of Delhi, for the purpose of import of goods from outside India. Whether, the supply of service made by a Y to be treated as inter-State supply or to be treated as import of service?

Ans. Since the said service is not covered under any of the sub-sections (3) to (14) of section 12 of the IGST Act, the same shall be covered under section 12(2) thereof.

As per section 12(2) of the IGST Act, the place of supply of service shall be the location of the recipient of service (i.e. Madhya Pradesh). Since the location of the supplier (i.e. Delhi) and place of supply (i.e. Madhya Pradesh) are in two different States, it shall be treated as an inter-State supply. The said service shall not be treated as import of service.

Q478. If a truck is purchased from Africa and is sold directly to Germany by "X", what will be the place of supply if the billing for the above transaction is done at Surat (Registered Place of Business of X) and will the transaction be subject to IGST levy?

Ans. As per Entry No. 7 of Schedule III of the CGST Act [Inserted *vide* the Central Goods and Services Tax (Amendment) Act, 2018 w.e.f. 1-02-2019], the following activity or transaction shall be treated neither as a supply of good nor a supply of service*:*

> *"Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India".*

Considering the above provision, since the truck is supplied directly from Africa to Germany, the supply of goods is made without such goods entering into India. *This transaction can neither be considered as supply of goods nor supply of services.*

Q479. If a buyer (registered in Karnataka) pays transport charges to a GTA (registered in both Karnataka and Gujarat) for transportation of goods from the registered premises of the seller at Gujarat, what would be regarded as the place of supply?

Would the answer differ if the payment was made by the seller?

Ans. As per section 12(8) of the IGST Act, the place of supply of services by way of transportation of goods, including by mail or courier, etc. provided to a registered person, shall be the location of such person.

As the transportation service is provided to the buyer registered at Karnataka, the place of supply shall be Karnataka. However, if the payment was made by supplier who is registered at Gujarat, the Place of Supply would have been Gujarat.

Q480. What is the place of supply if goods are sold by a Mumbai registered diamond dealer at an exhibition at Delhi (where he is not having any place of business) to a customer located in Gujarat?

Ans. Section 10(1) (c) of the IGST Act provides:

> *"Where the supply does not involve movement of goods, whether by the supplier or the recipient, the place of supply shall be the location of such goods at the time of the delivery to the recipient;"*

Applying the above provisions. The place of supply would be Delhi in the given case.

NOTE: Section 2(20) of the CGST Act defines casual taxable person as under:

> *"casual taxable person" means a person who occasionally undertakes transactions involving supply of goods or services or both in the course or furtherance of business, whether as principal, agent or in any other capacity, in a State or a Union territory where he has no fixed place of business;"*

In case of supply of goods, the location of the supplier is not defined in the CGST Act. Applying the basic understanding, the location of the supplier shall be understood as the place from where the goods are supplied to the recipient. Hence, if the movement of goods is undertaken to a State, different from the State in which supplier is having normal registration, and consequently goods are supplied from there, then such supply can be said to be made in the said State. If the person does not have a fixed place of business in such a State and undertakes supply from there occasionally, casual taxable person registration has to be obtained in such a State. The diamond supplier would be compulsorily required to register as casual taxable person effecting taxable supplies. A casual taxable person has to apply for registration at least 5 days prior to the commencement of business.

Q481. Service provider "P" is registered in Andhra Pradesh and the registered service receiver "Q" is located in Gujarat. P provided earth-work services in Gujarat to Q. In the above case, whether IGST is to be charged by P to Q?

Ans. As per Para 6 (a) of Schedule II to the CGST Act, works contracts as defined in section 2(119) of the CGST Act shall be treated as a supply of services.

There is a clear demarcation of a works contract as a supply of service under GST.

As per section 12(3) of IGST Act -The place of supply of services, directly in relation to an immovable property, including services provided by architects, interior decorators, surveyors, engineers and other related experts or estate agents, any service provided by way of grant of rights to use immovable property or for carrying out or co-

ordination of construction work; [Clause a] or any services ancillary to the services referred to in clauses (a), (b) and (c) [Clause d] shall be the location at which the immovable property or boat or vessel, as the case may be, is located or intended to be located.

The basic meaning attached to earthwork is *"engineering works carried through the processing of parts of earth surface involving quantities of soil or unformed rocks."*

As per section 7(3) of the IGST Act, the transaction is considered as supply of service in the course of inter-State trade/commerce and is subject to IGST levy since the service provider **P** is registered in Andhra Pradesh and place of supply being at Gujarat.

The place of supply in the above case would be Gujarat since the earthwork services are rendered in Gujarat.

Q482. What will be the place of supply in case of POS Machine fees charged by bank?

Ans. Services provided by bank for facilitating a transaction through Point of Sale Machine are covered under banking and other financial services. According to section 12(12) of the IGST Act, place of supply for banking and other financial services shall be the location of the recipient of services as per the records of the supplier of services.

In case the location of recipient is not available as per the supplier records, the place of supply will be the location of supplier of services.

Q483. What will be the place of supply in case of online training services to citizens and non-citizens of India?

Ans. ***Online Training Services to Citizens***

Section 12(5) of the IGST Act reads:

> *"The place of supply of services in relation to training and performance appraisal to, -*
>
> *(a) a registered person, shall be the location of such person;*
>
> *(b) a person other than a registered person, shall be the location where the services are actually performed."*

Hence, the place of supply for online training services provided to a person in India is covered under section 12(5) (b) of the IGST Act.

Online Training Services to Non-Citizens (Foreigners):

- *Live Class* – As per section 13(2) of the IGST Act, place of supply shall be the location of the recipient of services. If location of the recipient not available, location of the supplier of services.
- *Recorded Class* – As per explanation to section 13(2) of the IGST Act, the place of supply of online information and database access or retrieval services shall be the location of the recipient of services. Hence, the person receiving such services shall be deemed to be located in the taxable territory, if any two of the following non- contradictory conditions are satisfied, namely:
  - (i) The location of address presented by the recipient of services through internet is in the taxable territory.
  - (ii) The credit card or debit card or store value card or charge card or smart card or any other card by which the recipient of services settles payment has been issued in the taxable territory.
  - (iii) The billing address of the recipient of services is in the taxable territory.
  - (iv) The internet protocol address of the device used by the recipient of services is in the taxable territory.
  - (v) The bank of the recipient of services in which the account used for payment is maintained is in the taxable territory.
  - (vi) The country code of the subscriber identity module card used by the recipient of services is of taxable territory.
  - (vii) The location of the fixed land line through which the service is received by the recipient is in the taxable territory

Q484. What will be the place of supply in case the services are rendered on" bill to ship to" basis?

Ans. In case services are rendered by the supplier to a person, based on

the direction of a third person, then it is a scenario of "Bill to Ship to" transaction**.**

The *CGST Amendment Act, 2018* read with *NN 2/2019-CT* w.e.f. 1-2-2019 has amended section 16 of the CGST Act whereby, the following Explanation has been substituted in clause (b) of sub-section (2):

"*Explanation.—For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services––*

(i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person.";

In the light of the above Explanation, in case of services, the registered person (original recipient) shall be deemed to have received the services where the services are delivered by the supplier to any other person on the direction or instruction of the said registered person (Recipient).

Hence, the place of supply is the location of the person on whose direction the service has been rendered.

Q485. A landowner is located and registered in Delhi and owns an immovable commercial property in Gurugram, Haryana. What will be place of supply and is he required to obtain registration in Haryana?

Ans. As per section 2(50)*; "fixed establishment" means a place (other than the registered place of business) which is characterised by a sufficient degree of permanence and suitable structure in terms of human and technical resources to supply services, or to receive and use services for its own needs."*

GST is applicable in case of renting of commercial property. To determine the taxability, the following cases may arise:

In case 1: *A has a fixed establishment is in Gurugram* and therefore the location of the supplier will be Gurugram. The place of supply will be Gurugram (being services related to an Immovable property – Place of supply is the location of an immovable property). The supply will be an intra-State supply and A has to obtain the registration in Haryana.

In case 2: *A does not have fixed establishment in Gurugram*-according to Clause (d) of section 2(15) of the IGST Act - residual clause which says that in the absence of clause (a), (b), (c) being applicable, the location of usual place of residence shall be the location of the supplier of services within the meaning of clause (d) of sec 2(15) thereof.

In case 3: *A is located in Delhi,* while the place of supply will be Gurugram (being services related to an Immovable property – Place of supply of is the location of the immovable property).This supply will be an intra-State supply of services. The location of the immovable property is in the State of Haryana and hence this State assumes jurisdiction to levy and collect the tax. Hence, A has to take registration in the State of Haryana and charge CGST and SGST.

Q486. A Company in Gujarat has entered into a contract with Sirtel for supplying bandwidth from Mumbai. The delivery will be at Hyderabad for our customer and this is a continuous service. What will be the place of supply?

Ans. In the instant case, though the delivery is at Hyderabad, the location where the telecommunication line, leased circuit or cable connection or dish antenna are installed is pertinent to determine the place of supply.

Section 12(11) of the IGST Act, provides that the place of supply in case of services by way of fixed telecommunication line, leased circuits, internet leased circuit, cable or dish antenna, shall be the location where the telecommunication line, leased circuit or cable connection or dish antenna is installed for receipt of services.

If the leased circuit is installed in more than one State/Union territory and a consolidated amount is charged for supply of services, the place of supply shall be deemed to be in each of the respective

States/Union territories in proportion to the value for services determined in terms of the contract or agreement entered into in this regard.

In the absence of a contract or agreement between the supplier and recipient of services, the value of services supplied in different States/Union territories (where the leased circuit is installed) shall have to be determined in accordance with rule 6 of the IGST Rules in proportion to the number of points lying in each such State/ Union territory.

The number of points in a circuit is determined in the following manner-

(i) In the case of a circuit between two points or places, the starting point or place of the circuit and the end point or place of the circuit will invariably constitute two points.

(ii) Any intermediate point or place in the circuit will also constitute a point provided that the benefit of the leased circuit is also available at that intermediate point.

Therefore, the place of supply is deemed to be in each of the respective States/Union territories in proportion to the value for services determined in terms of the contract or agreement entered into in this regard, if no agreement then place of supply is determined under Rule 6 of the IGST Rules.

Chapter 17
Miscellaneous

Q487. Explain the meaning of the term works contract and whether it is a goods or service?

Ans. Section 2(119) of the CGST Act defines works contract to mean a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract.

Only composite contract relating to immovable property are covered under works contract. It shall be treated as supply of service as per Entry No. 6(a) of Schedule II of the CGST Act.

Q488. Definition of supply *per se* does not envisage two persons. Service definition under service tax envisaged provision of service by one person to another. So whether two persons are required for supply.

Whether activities vis-ã -vis club and members is a supply leviable to GST?

Ans. Supply definition has not emphasized the need for the presence of two persons as was under the earlier Service Tax Law. However, it is pertinent to note two things in this respect

(a) Supply cannot be made to oneself (hence captive consumption is not taxable under GST as was under Central Excise law)

(b) Entire GST Law has reference to supplier & recipient in various provisions thereby highlighting the requirement of two persons.

Thus it can be concluded that two separate persons are required under GST Law for supply to materialise.

Further vis-a-vis services between a Club and its members, it is to be noted that section 2(17) (e) of the CGST Act, defines business to include "*provision by a club, association, society, or any such body*

(for a subscription or any other consideration) of the facilities or benefits to its members".

Hence, business encompasses services of clubs to its members

As per the above discussion GST is applicable to the services between club and its members.

Q489. Activities undertaken by a charitable organization are not in the course of business. In the light of the specific provision in Section 7 of the CGST Act, how tax can be levied on the income like rent etc. earned by such Institutions?

Ans. The term *"business"* is defined in Section 2(17) of the CGST Act, includes -

(a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;

(b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);

(c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction

…….."

As seen above, the term "business" includes any trade, commerce or any similar activity and the same need not be for any benefit. Charitable organisations providing certain notified services are exempted from the levy of GST. However, any business activity carried out by any charitable organisation(s) such as renting of property etc., though not in the course of any business in the strict sense, would be taxable as the said activity etc., would fall under the purview of the term "business" defined under GST law and thus chargeable to tax.

Q490. A Pvt. Ltd Company is a kind of an intermediary between doctors and the patients using its web based portal and has an app developed for the above services. Whether the service will qualify as "e-commerce"?

Ans.

- 'Electronic commerce' has been defined in section 2(44) of the CGST Act to mean the supply of goods or services or both, including digital products over digital or electronic network.

- 'Electronic commerce operator' has been defined in section 2(45) of the CGST Act, to mean any person who owns, operates or manages digital or electronic facility or platform for electronic commerce.
- As per section 24(x) of the CGST Act, the benefit of threshold exemption is not available to e-commerce operators and they are liable to be registered irrespective of the value of supply made by them.
- In the light of the definitions in sections 2(44) and 2(45) of the CGST Act, The private limited company which has its own web-based services and specialized App developed to perform services which will enable a customer to interact with doctor for consideration act will come under the definition of an "*electronic commerce operator*".
- However, the applicability of GST in the hands of such company would depend on other factors. Accordingly, no comment is made on the applicability of GST on the transaction to be undertaken by the company.

Q491. What is the difference between exempted supply, Nil rated supply and non-GST supply as per Form GSTR-9 and Form GSTR-9C?

Ans. Exempted supply is defined in Section 2(47) of the CGST Act, to mean 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 IGST Act, and includes non-taxable supply.

Thus exempt supply covers three things:

(i) Supply which is taxable i.e. leviable to tax under the Act but attracts Nil rate of tax.

(ii) Supply which is taxable i.e. leviable to tax under the Act but has been made exempt from tax via notification of Government under section 11 of CGST Act or under section 6 of IGST Act.

(iii) A non-taxable supply:

According to Section 2(78) of the CGST Act,

> "*non-taxable supply*" means a supply of goods or services or both which is not leviable to tax under this Act or under the IGST Act

A non-taxable supply is a supply of goods or services or both as per section 7 of the CGST Act but is not taxable under the CGST or IGST Act. The following transactions are covered under the scope of non-taxable supply:

i. Alcoholic liquor for human consumption

ii. Petroleum crude

iii. High speed diesel

iv. Motor spirit (commonly known as petrol)

v. Natural gas

vi. Aviation turbine fuel

Nil rated supply is not defined in the GST law. Nil rated supplies are those which feature in the GST Tariff Notifications but carry a "nil" rate of tax against the goods or services. There are no nil rated goods under the GST law as on date. However, there are two nil-rated services under Headings 9972 and 9986.

Non-GST supply is also not defined in the GST law. Thus, the general understanding is that transactions which are not covered by the definition of supply under section 7 of the CGST Act will be considered as non-GST supplies. Thus, Schedule III transactions will be considered as non-GST supplies. Further, money and securities are not covered by the definition of goods or services and thus, the transactions in money and securities will be treated as non-GST supplies.

This issue has been dealt in detail in the press release issued by the CBIC on 3rd July 2019. Para (f) of the said press release states as follows:

> *"It has been represented by various trade bodies/associations that there appears to be some confusion over what values are to be entered in Tables 5D, 5E and 5F of* ***FORM GSTR-9****. Since,*

there is some overlap between supplies that are classifiable as exempted and nil rated and since there is no tax payable on such supplies, if there is a reasonable/explainable overlap of information reported across these tables, such overlap will not be viewed adversely. The other concern raised by taxpayers is the inclusion of 'no supply' in the category of non-GST supplies in Table 5F. For the purposes of reporting, non-GST supplies include supply of alcoholic liquor for human consumption, motor spirit (commonly known as petrol), high speed diesel, aviation turbine fuel, petroleum crude and natural gas and transactions specified in Schedule III of the CGST Act."

In this connection, it will be worthwhile to carefully note the provisions of section 2(47) read with section 2(78) of the CGST Act.

Q492. Explain "Bill to Ship to" model (of supply and its leviablity) under GST

Ans. Normally in any transaction related to supply of goods and services or both there are two persons involved, first the supplier and second the recipient. Goods / Services along with the Bill is supplied / issued by supplier to recipient.

In "Bill To, Ship To" concept three person are involved; first the supplier, second the recipient (on whom bill is raised – "Bill To") and third the consignee (to whom goods / services are delivered – "Ship To"). Levy of GST in "Bill To Ship To" transaction is based on the place of supply of the recipient.

Eg: Ram & Co, Chennai - Supplier, Lakshman & Co., Chennai - Recipient (Bill To), Sita & Co, Bangalore - Consignee (Ship To)

In the above example it will be an intra-State supply and the place of supply will be Chennai even though it is delivered at Bangalore. Ram & Co will raise intra-State supply invoice charging CGST + SGST to Lakshman & Co. and Lakshman & Co will raise inter-State supply invoice on Sita & Co.

The invoicing shall be in triplicate for the supply of goods and the same shall be issued to satisfy both the legs of transactions.

In a nutshell in any Bill To and Ship To transaction there will be three persons involved and two sets of Invoices will be issued and levy will be based on the place of recipient for the supplier.

Q493. Can a Chartered Accountant registered as composition taxpayer in Kerala undertake audit assignment of bank branch in Kerala, when head office of the bank is situated outside Kerala?

Ans. Composition Scheme for a Chartered Accountant who has opted for it will be governed by the provisions and conditions of section 10(2A) of the CGST Act. The said scheme is applicable for intra-State supply only and one of the conditions is that the supplies to be eligible for the scheme should be made by a registered person *who is not engaged in making any* inter-*State outward supply.* Accordingly, the Chartered Accountant cannot accept any assignment that would be inter-State supply if he wants to continue to be under the composition scheme.

The audit assignments of bank branches are usually arrangement between Head Office of the bank who engages selected CA Firms for auditing branches and scope of work, terms, remuneration etc. are decided between the Head Office and CA Firm. The Head Office is also responsible for paying consideration, that is, agreed remuneration to the CA Firm, although work is physically carried out at branch - in the instant case located in Kerala. As per section 2(93) of the CGST Act, the Head Office being the person liable to pay consideration will be *"recipient*" of Chartered Accountant's service and not the branch. The Head Office, recipient of services in this case, is situated in a State other than Kerala, and for GST purposes would obviously be a different registered person than the branch in Kerala.

The provisions under the IGST Act determine the nature of supply – whether intra-State or inter-State. As per provisions of section 12(2) read with provisions of section 7(3) thereof, the transaction in question is supply of service during inter -State trade or commerce. This is because the places of supply – recipient (Head Office) location, out of Kerala, and the place of supplier – Chartered Accountant in Kerala, are in two different States.

As mentioned earlier, one of the conditions for being eligible for the composition scheme is that the supplier should not be engaged in making any inter- State outward supplies. By accepting branch audit

work of a branch in Kerala of a bank whose head office is located outside Kerala, which would be inter- State supply, the Chartered Accountant would lose his eligibility for the composition scheme.

However, in case any assignment including for audit has been agreed upon with the bank branch itself, where the remuneration would also be agreed and payable by the branch, the branch would be recipient of service and it would be a case where recipient is located in Kerala where the supplier Chartered Accountant is also located. In terms of section 8 (2) of the IGST Act, it would be case of intra – State supply of service and such service would be covered under the scope of composition scheme.

Q494. An entity is manufacturing exempted goods and has multi-State operations. Since, there is no taxable supply (outward supply) / entities where setoff is ultimately blocked, cross charge lead to cascading of tax. How to deal with such situations.

Ans.

- The necessity for "*cross-charge*" arises from the deeming of each registration of a person as "distinct entities" (Section 25 of the CGST Act,) and hence supplies between them become taxable. GST being a destination/consumption-based tax, the intent of this deeming fiction is to ensure a seamless chain of Input Tax Credits so that they accrue to the State where the goods or services are finally consumed.

- Where ITC is blocked / restricted for an entity, the tax paid on the "*cross-charge*" supplies received by a branch can become a cost included in the pricing of the final supply of goods or services. In Industries where the final outward supplies are taxable, but with restriction of ITC availment, such cross-charge can lead to cascading effect of tax.

  Example: Delicious Foods Private Limited is into business of operating restaurants in Chennai (Head office) and Delhi (Branch office) where the outward supplies are taxed at 5% with restriction on availment of ITC. Now when Chennai – HO cross charges for common services to Delhi BO, Delhi BO shall pay GST on such cross charges and claim ITC. Such ITC as restricted shall be added to the cost of outward supplies made

in the restaurants to final consumers who will pay tax on such added costs and hence leading to cascading of taxes.

- However, in an industry where the final outward supplies are exempt, the question of cascading effect (tax on tax) does not arise as there is no fresh tax getting levied on the tax cost included in the pricing due to ITC restrictions.

  Example: Delicious Milks Private Limited is into business of fresh milk in Chennai (Head office) and Delhi (Branch office) where the outward supplies are exempted and hence no availment of ITC. Now when Chennai – HO cross charges for common services to Delhi BO, Delhi BO shall pay GST on such cross charges and shall not claim ITC of the same as outward supplies are exempted. Such non-availability of ITC shall be added to the cost of outward supplies of fresh milk to final consumers and hence there is no cascading of taxes as the supplies are exempt.

Q495. Is HUF a recognized entity under GST law?

Ans. As per section 22 of the CGST Act (*persons liable for registration*), every **supplier** shall be liable to be registered under this Act in the State or Union Territory, from where he makes a taxable supply of goods or services or both……..

As per section 2(105) of the CGST Act, supplier in relation to any goods or services or both, shall mean the **person** supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied.

As per section 2(84) of the CGST Act-

"person" includes —

(a) an individual;

*(b) **a Hindu Undivided Family**;*

(c) a company;

(d) a firm;

(e) a Limited Liability Partnership;

(f) an association of persons or a body of individuals, whether incorporated or not, in India or outside India;

(g) any corporation established by or under any Central Act, State Act or Provincial Act or a Government company as defined in clause (45) of section 2 of the Companies Act, 2013 (18 of 2013);

(h) any body corporate incorporated by or under the laws of a country outside India;

(i) a co-operative society registered under any law relating to co-operative societies;

(j) a local authority;

(k) Central Government or a State Government;

(l) society as defined under the Societies Registration Act, 1860 (21 of 1860);

(m) trust; and

(n) every artificial juridical person, not falling within any of the above;

Thus, from above sections, it is clear that an HUF is a recognized entity under the GST law.

Q496. Explain GST on services by a Del Credere Agent ("DCA") under *Circular No. 73/47/2018-GST, dated 5.11.2018*.

Ans. Who is a DCA?

DCA is a selling agent who is engaged by a principal to assist in the supply of goods or services by contacting potential buyers on behalf of the principal. The factor that differentiates a DCA from other agents is that the DCA guarantees the payment to the supplier. In such scenarios where the buyer fails to make payment to the principal by the due date, DCA makes the payment to the principal on behalf of the buyer (effectively providing an insurance against default by the buyer), and for this reason, the commission paid to the DCA may be relatively higher than that paid to a normal agent. In order to guarantee timely payment to the supplier, the DCA can resort to various methods including extending short-term

transaction-based loans to the buyer or paying the supplier himself and recovering the amount from the buyer with some interest at a later date

When will a DCA fall within the ambit of "Agent"?

In the case where the invoice for the supply of goods is issued by the supplier to the customer, either himself or through DCA (invoice is raised in the name of supplier), the DCA does not fall under the ambit of the agent. However, where the invoice for supply of goods is issued by the DCA in his name, the DCA would fall under the ambit of agent

What are the activities connected to the DCA are there in a transaction involving the Principal and customer/recipient?

- Supply of goods by the supplier (principal) to the DCA;
- A further supply of goods by the DCA to the recipient;
- Supply of agency services by the DCA to the supplier or the recipient or both;
- Extension of credit by the DCA to the recipient.

What is the taxability of transactions performed by a DCA:

- When DCA issues the invoice for the supply of goods in his name, the DCA would fall under the ambit of the agent and his supply will be liable to GST and therefore, he will be responsible to discharge the GST liability on the supply of goods made by him.
- If DCA provides the temporary short-term transaction-based credit to the buyer and also collects interest for such facility, then the service of offering such facility is subsumed in the supply of the goods by the DCA to the recipient.
- It is emphasised that the activity of extension of credit by the DCA to the recipient would not be considered as a separate supply as it is in the context of the supply of goods made by the DCA to the recipient.
- Hence, it was clarified vide the said circular that, the value of the interest charged for such credit would be required to be included in the value of supply of goods by DCA to the recipient

as per clause (d) of sub-section (2) of section 15 of the CGST Act. This will have to be executed by the DCA by raising of debit note referring to the actual invoice and applying the same rate of tax as was applicable for the goods supplied.

Note:

- This is not to be seen as charging penal interest for the delay in payment of consideration. It has to be viewed as extending of a credit facility similar to what Credit Card agencies do.
- If the DCA does not fall within the ambit of "Agent", then interest charged by him will be exempted *vide* Sl. No. 27 of *NN 12/2017-CTR*.

Q497. Who is liable to pay tax on the rental income from a commercial property, which is deposited with the Court Receiver; where Tax is deducted on such income and entry appears in Form 26 AS of the landlord?

Ans. The similar issue has been discussed and concluded by the Hon'ble Bombay High Court in the case of ***Bai Mamubai Trust v. Suchitra*** *(Order date: 13 Sep 2019)* wherein it was held that "*where Section 92 of the CGST Act may apply, the agent of the Court Receiver, wherever one is appointed, may be directed to pay GST after obtaining registration on behalf of the Court Receiver or (if permissible) under a pre-existing registration. In such a situation, such payment will be made on behalf of the Court Receiver and would discharge the Court Receiver's statutory obligations under Section 92 of the Act".*

Q498. What are the records to be maintained under GST in respect of goods lost, stolen, etc.?

Ans. Section 35 of the CGST Act provides that every registered person shall keep and maintain, at his principal place of business, as mentioned in the certificate of registration, a true and correct account of various documents/records specified thereunder.

Rule 56 of the CGST Rules provides that every registered person, other than a person paying tax under section 10, shall maintain the accounts of stock in respect of goods received and supplied by him, and such accounts shall contain particulars of the opening balance,

receipt, supply, goods lost, stolen, destroyed, written off or disposed of by way of gift or free sample and the balance of stock including raw materials, finished goods, scrap and wastage thereof.

Q499. What is the provision in case the recipient makes a delayed payment of consideration for the supply of goods/services rendered by the supplier? Are there any additional provisions for late fee charged on delayed settlement?

Ans. As per second proviso to section 16(2) of CGST Act, where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of 180 days from the date of issue of invoice by the supplier, an amount equal to the ITC availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed under rule 37 of the CGST Rules.

Also that the recipient shall be entitled to avail credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.

The recipient will be entitled to avail the credit again without any time limit. In case part-payment has been made, proportionate credit would be allowed.

Note: The supplier would not be subjected to additional burden because of the late receipt of consideration for the supply made.

In case any additional fees or penalty is charged for late payment, then as per section 12(6) of the CGST Act, the time of supply will be the date on which the supplier receives the addition in value and as per section 15(2) thereof, the additional fees is to be included in the value of supply and hence, GST shall be charged at applicable rates.

Q500. How can an auditor check whether payment is made within 180 days, if payments made are not linked with invoices? Should this be done on FIFO basis and reported?

Ans. Compliance of payment to supplier within 180 days basically is on the recipient. Also, he must furnish evidence to the auditor for such

compliance. GST Auditor should check the evidence provided by the recipient based on cross verification with payments and GST returns. If payments are not linked with the Invoices, the auditor shall raise the same with the recipient to provide the basis for such compliance. Also, reconciliation of creditors account outstanding on the year end and movement of such creditor balances through ledger scrutiny can be a method to identify such non-compliances.

Q501. A private limited company is organising a conference and charging fees from the participants. Whether it will be considered as organisation of event or admission to event?

Ans. HSN 9996 on "Recreational, cultural and sporting services" deals with admission to events; organising of events do not get covered under this heading. HSN 998596 deals with "Events, Exhibitions, Conventions and trade shows organisation and assistance services".

The private limited company in question is organizing a conference itself and admitting the participants. The company is not providing services of organizing an event.

The difference between the two services are arranging the event for self and collecting the amount from attendees and providing service of arranging event for others. Therefore, looking at the provisions of law and facts of the case it will be considered as admission to an event.

Q502. Whether refund of tax paid on intra-State supply which is subsequently held to be inter-State supply and *vice versa* can be claimed? Whether such transaction can be rectified in GST return?

Ans. CBIC *vide Circular No 26/26/2017-GST dated 29.12.2017* has prescribed the methodology for rectification of error in submission of **Form GSTR-3** and **Form GSTR-1** return. Accordingly, liability which was wrongly paid can be corrected in the return of the subsequent month(s).

In the case of ***Bharti Airtel Ltd v. Union of India And Others*** *WP.(C) 6345/2018*, CM Appl. 45505/2019, it was held that since Government could not operationalize the statutory forms envisaged under the Act, the benefit of rectification of errors must be allowed.

Alternatively, refund of such tax can be claimed as per the provisions of section 77 of the CGST Act read with rule 89(2) (j) of the CGST Rules.

CBIC *vide Circular No 125/44/2019-GST dated 18.11.2019* has specified the procedure for claiming refund of tax paid under intra-State instead of inter-State transaction or *vice versa*.

Q503. One business entity is registered in Gujarat and intends to buy land to set up another factory in Maharashtra. Can the business entity offer registration number of Gujarat for initial processing charges?

Ans. GST is a consumption based tax in India. The ultimate benefit of tax should flow to the State which is consuming the goods or services or both. In case a business entity registered in Gujarat wants to offer registration number of Gujarat for any initial charges to be incurred in Maharashtra, it can do so, but, the actual consumption will be done by Maharashtra State. Thus, the benefit of tax should flow back to Maharashtra. Gujarat should bill for the initial processing charges to Maharashtra.

But, in this specific case, initial processing charges relate to buying of land (immovable property). As per section 12(3) (a) of the IGST Act, *the place of supply of services directly in relation to an immovable property, including services provided by architects, interior decorators, surveyors, engineers and other related experts or estate agents, any service provided by way of grant of rights to use immovable property or for carrying out or co-ordination of construction work shall be the location at which immovable property is located.*

Thus, GST charged for initial processing charges to buy land by the service provider located in Maharashtra will be CGST and Maharashtra SGST. ITC of same will not be available even though Gujarat GST registration is offered as tax charged is CGST and Maharashtra SGST. Hence, no apparent benefit of giving the GST number of the Gujarat State shall be allowed.

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