

ISSUES ON GST FOR PANEL DISCUSSION TO BE HELD ON 13th AUGUST, 2017

1. Developer has given work contract to construct the building to a work contractor in 2016. Developer had made the payment after deducting retention at 5%. Developer took the 100% Service Tax credit on receipt of invoice and reversed the Service Tax Credit due to nonpayment of Service amount on retention amount under Rule 4(7) of The Service Tax Rules, 1994. What will be the implications of Credit of Service Tax on Retention money in case of builders under GST?

2. I had booked a flat under construction on 31 May 2017. The payment is linked to the stage of construction. Up to 30 June 2017, I had paid 40% of the consideration value (CV) with service charges to the developer. Agreement for sale has been completed and registration done on 24 June 2017. I am required to pay 60% of the CV in installments, as per the stage of construction, to the builder from 01 July 2017 and the schedule may go up to May 2018. Till 30th June, 2017 the only 20% building was completed. I would like to know the implications of GST on the amount payable after 01 July (60% of CV).

3. A Dealer is registered in Maharashtra. If the dealer visits Rajasthan and incurs some Accommodation of Hotel Expenses, where the Hotelier is not registered.
(A) Whether RCM needs to be paid? Can it be considered as a URD to URD Transaction as the Dealer is unregistered in Rajasthan?
(B) As per the provisions of Place of Supply, as the same is Immovable property the place of supply shall be the location of immovable property. Therefore, SGST+CGST needs to be paid on RCM Basis.
How the RCM Liability is to be discharged as the dealer is registered only in Maharashtra.
(C) Can in the above case IGST be paid so that the tax is transferred to Rajasthan? However, by doing so, there is a change in the nature of transaction from intra state to inter state. Whether the same is valid?

4. Housing Society collects maintenance charges of above Rs. 20,00,000 during the year. The amount collected by society from per member per month is less than Rs. 5,000/-. Whether parking charges collected by the housing society will be covered under the exemption of Rs 5,000/- under Sr no 77 of notification 12/2017. (Since parking charges are not procured from third person). Total Collection of parking charges during the year is Rs. 80,000/-. Society, if not covered under the exemption, will the housing society be required to obtain GST registration?

5. ABC transporter is Goods Transport Agent who is supplying the services of transportation to Consignor registered under GST is covered under RCM. ABC transporter also give truck on hire to another GTA, which is exempt under Sr. No 22 of Notification No. 12/2017 – Central Tax (rate). His expected total revenue for the F.Y. 2017-18 from above 2 type of business is Rs. 10 Crore. There is no other revenue. Notification 5/2017- Central Tax, exempt from registration to persons who are only engaged in making supplies of taxable or services, the total tax on which is liable to be paid on reverse charge basis by the recipient of such goods or services or both under sub-section (3) of section 9 of the said Act. Section 23(1) (a) of CGST, Act provides exemption from registration to person exclusively supply exempted service. Whether ABC transporter require to register under GST?

Answer will change, if he has sold one truck for Rs. 2,00,000/- on or after July 2017?

6. Whether record of RCM invoices (in case of URD purchases) have to be maintained supplier wise and need to raise the invoice per supplier or can we prepare the self-invoice HSN-wise or rate-wise once a month and discharge the liability accordingly?

7. How to take ITC of service tax paid under RCMon or after 01/07/2017 for the Service received on or before Jun'17.

8. Whether unadjusted service tax benefit in case of service reversal {Rule 6(3) of STR} can be carried forward in the GST era due to no liability in June 17? If not, then whether to claim refund under Service Tax?

9. Whether advance service tax paid under Rule 6(1A) of the STR be carried forward and adjusted under GST era? If yes, what is the procedure?

10. In case a service provider is providing intermediary services to a foreign customer and its place of supply is falling in India as per Sec 13(8)(b) of IGST Act, then whether service provider has to charge IGST or CGST/SGST on the invoice ?
 - Sub Section (2) of section 8 of IGST Act, 2017 refers "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." It does not refer to Section 13 of IGST Act.
 - Clause(c) of sub section 5 of section 7 of IGST Act, 2017 says "Supply of Service 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."

11. Tax rate of my input service is higher than my output tax, Whether refund can be claimed for un-utilized input services? (Since refund provisions are available only for inputs under Clause (ii) of sub section (3) of section 54 of CGST Act,2017)

12. Whether supply of old gold by a customer in lieu of new gold to a jeweler will attract GST (barter transaction)? Although press release has been issued by the government clarifying the issue that supply made by customer to the jeweler won't be taxable. Whether the said press release has a legal validity?

13. Whether recovery of "cost of gold" along with "making charges" be considered to be a composite supply? (GST rate for gold-3% and GST rate for making charges-18%)

14. Whether TDR, Development rights, FSI, etc. are liable to be taxed under GST?

15. A person located in Maharashtra has a commercial property at Gujarat which is given on rent and the annual rent is Rs. 12,00,000/- and the said person has no other income. In this scenario whether the said transaction would be considered as inter-State supply or intra State supply?

16. Clearing and forwarding agents who do the clearing and forwarding of their customer's (Principal) goods or CHAs who provide the services of the customs clearance and other such services would be considered as agents as defined Sec 2(5) of the CGST Act and if yes then whether Entry 3 of Schedule I will be applicable and agent would be liable to pay GST on the value of goods also?
17. Schedule I Entry 2 provides that supply of goods or services or both between related persons or between distinct person as specified in sec 25, when made in the course or furtherance of business shall be deemed to be supply. Say, if HO sends some free samples to it's Branch on which no ITC is taken by HO (covered under blocked credit under ITC) then whether such transfer of free samples will be considered as deemed supply and liable to GST.
18. Whether credits disclosed in relevant VAT, Service Tax and Excise Returns as on 30th June, 2017 has to be disclosed in Form GSTR-3B and credits other than these also needs to be disclosed in Form GSTR-3B, if yes then under which relevant clause of said Form
19. A person is registered as Composition Dealer and dealing in MRP based products then whether he can opt for composition as MRP based products are inclusive of taxes. If he can opt then how to supply such products.
20. If a person from India is purchasing some goods from Italy and the same is directly supplied to USA (without the said goods entering into India) then whether there is applicability of GST on such transactions i.e. purchase and sale.

21. Job Work has been defined to mean “any treatment or process undertaken by a person on goods belonging to another registered person” & the expression Job Worker shall be construed accordingly.

ISSUE: Can the goods be sent to same person’s branch (i.e. from his one place of business to another in another State wherein the branch in another State is a Job worker) as job worker and follow the procedure laid down for Principal & not charge GST on goods transferred to its branch since the same been a job worker.

The problem involved here is Schedule I (Entry 2) provides that any transaction between related person & distinct person even without consideration shall be deemed to be supply.

So, there are 2 contradictory situations as under:

Principal sending goods to Job Worker for job work & if complying with the procedure then no GST payable on such transfer of goods to job worker.

Schedule I says any transaction between related & distinct person shall be deemed supply.

What should the Principal (or HO) do in such a scenario?

22. A dealer is registered in Maharashtra. He has employees all over India.

Employees of the dealer in other states are stationed for rendering AMC services wrt contracts made from Maharashtra for which tax is levied and discharged in the Maharashtra State. There is no fixed place of business / office in other states.

(A) Whether registration need to be taken there as well since TO limit is on all India basis?

(B) If yes any way out?

(C) If registration is not required how to dispatch Material to the Employees from Maharashtra to other State which are required for rendering such services.

The definition of Place of Business is as follows:

“place of business” 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;

(D) If the Employee in such other states purchases goods locally. How the same transaction is to be treated under GST Law and how to enter in to such transaction which does not make him liable to be registered in that state?

23. If such employee is in the state of Gujarat and he provided service to a client in Gujarat and Rajasthan as well (i.e. Inter State). Would the answer to any of the question mentioned above differ?

As per Section 18(6) of the CGST Act, "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"

(A) What if ITC was claimed in the Earlier Act and the capital goods are sold in August 2017, would the above provision be applicable or only transaction value would be relevant?

(B) What if 50% of the credit was claimed in Earlier Act and 50% was claimed under GST Era?

24. A dealer has purchased goods in the month of April 2017 and has claimed credit thereon while filing MVAT and Excise Returns of respective period. Whether any ITC would be required to be reversed if such goods are destroyed in August 2017?

25. A dealer purchases Oil from his suppliers, who dispatches for eg 25000 ltrs of oil in tanker and invoices accordingly. During transit there is some loss. The oil contained in the tanker when it reaches the factory of the dealer is 24500 ltrs. The dealer records 24500 ltrs received in his ERP system however books invoices for the entire amount as the supplier is not ready to reduce his sales consideration on account of loss during transit. Whether the dealer would be eligible to claim credit of GST on entire invoice i.e., 25000 ltrs or the same would be restricted to 24500 ltrs as he has received goods in his factory to the tune of 24500 ltrs only.