

J B NAGAR CPE STUDY CIRCLE OF WIRC

PANEL DISCUSSION UNDER GST LAW

ON DECEMBER 2, 2018

AT HOTEL KOHINOOR CONTINENTAL, J B NAGAR

Issues for GST Panel Discussion

A) TAXABILITY

1. ABC Ltd is having presence in many states. HO is located in Mumbai and Branches all across India. All such interstate branches are also registered in GST. HO is providing HR Services to all its interstate branches. Ignorantly ABC Ltd has not cross charged its interstate branches for HR Services for FY 1718.

- Whether ABC Ltd is required to cross charge its branches for Common HR Services? ABC Ltd is of the view that since no consideration is involved there is no supply and therefore no GST Liability.
- If ABC has not cross charged to its other state branches and it has already filed GSTR-1 and GSTR 3B of September 2018, whether ABC Ltd can Cross charge its other state branches for HR Services rendered during FY 1718 vide Invoice dated 2nd December 2018?
- If ABC Ltd is choosing to cross charge by raising invoice dated 2nd December 2018 for Services rendered in FY 1718 whether recipient branch will be able to claim ITC in FY 1819?

2. Company A is specialised in certain specific food products and has its own brands. The company has appointed franchise to whom as per agreement Royalty is charged which is variable, based on quantum of sales. The company has introduced Promotional Scheme and instructed Franchise to give 10% discount to customers on the counter sales on specific product sales on each day. On all seven days discount is given to customer for one different product. The franchise is charging GST to customers on net amount (e.g. Product Price Rs.50/- Less Discount Rs.5/- hence GST is charged on Rs.45/-) and issues tax invoices. The company is reimbursing the discount to franchise based on monthly Sales Report. Question : Whether the Franchise is Required to charge GST to Company ? If yes, what is the nature of supply and what is the tax rate ?

3. XYZ Ltd and PQR Ltd are related person within the meaning of Explanation to Section 15. Both these entities are operating from Rented Office situated in Nariman Point. This premises is taken on Rent by XYZ Ltd at monthly Rent of Rs. 5 Lakhs. It has charged Rent of Rs. 10,000/- per month to PQR Ltd for using half of Rented Premises. Questions :

- a. Whether XYZ can legally defend issue of inadequate consideration for supply of service ?
- b. GST Auditor of XYZ Ltd has raised issue of inadequate consideration whether he can qualify his report.
- c. Whether PQR Ltd is eligible for full ITC credit on Rs.10000/- or on Rs.2.5 Lacs

B) GST ITC

4. Whether ITC needs to be reversed in case of pamphlet distributed free of cost for advertising brand or goods or services ?

5. Whether ITC need to be reversed for cake distributed on occasion of customer/member/dealer meet by cake shop (not restaurant canteen)

5A. Renovate Ltd has decided to abandon its manufacturing activity and use the factory premises as its corporate office for providing its output services. For this purpose it is required to carry out certain alterations/repairs/additions within the factory building viz.,

(i) Construction of partitioning walls so as to make cabins for its corporate personnel.

(ii) Installation of Centralised Air Conditioning System (compressor fixed to the floor by way of foundation) and carrying out incidental ducting and piping activities.

(iii) Putting up flexible cubicles within the rooms for providing seating space to its employees.

Renovate has examined Section 17(5) of the CGST Act, 2017 dealing with blocked credits but is unable to innovate any view regarding availability of ITC on the above expenditures. You are advised to innovate a view for Renovate.

C) GST ANNUAL RETURNS

6. M/s. ABC Ltd has ITC of Rs.10 Crores for July 2017 to March 2018 as per books of accounts and GSTR3B but the ITC reflected in GSTR2A is Rs.9.5 Crores. The Reconciliation for difference is as under

a. ITC Claimed in Books but vendors has not given credit, hence not reflected in GSTR2A = Rs.75 Lacs.

b. Credits reflected in GSTR2A but ITC not accounted in books = Rs.25 Lacs

Issues :-

1. As per Clause 8(D) of Annual Return in GSTR9 the figures are Negative then whether the company is required to report the details mentioned in clause 8(E) for ITC Available but not availed and clause 8(F) for ITC Available but ineligible.

2. If the ITC of Rs.25 Lacs is ineligible ITC which is already claimed and reversed by company in GSR3B. Whether the company is required to report figures of ineligible ITC in Caluse 8(F).

3. Since, the net figures in Clause 8(D) is negative hence, automatically whether the net difference between 75 Lacs and 25 Lacs is disallwed and the company is eligible for balance ITC.

7. In Table 8 of GST Annual Return about Other ITC Related Information the reconciliation details are asked for ITC Other than Import and RCM. There are specific clause No. 8(G) TO 8(K) for reconciliation of ITC on Imports but there is no clause of ITC Reconciliation for Liability under RCM.

Question

1. If there is difference in RCM Liability as per GSTR3B Returns and as per books, then where to report such figures.
2. If the Company pay the differential tax liability sue moto in December 2018 and the Return for Sept 2018 is already filed, whether the company is eligible for ITC if yes, in which period.
3. The mistake has happed unknowingly whether the company is required to pay any interest and penalty, if yes, under which provisions of GST Law.

8. M/s. A Ltd has imported goods in March 2018 and Paid IGST of Rs.10 Lac on 31.3.2018. The customs authorities has reflected the Credit on ICEGATE portal on 1st April 2018. Hence, the company has availed the credit in GSTR3B for April 2018. As the credit is available in books of accounts but not availed in GSTR3B for March 2018, Hence, whether the company is required to lapse the ITC is books as per clause 8(J) of Annual Return.

9. Whether a casual Taxable person is required to file GST Annual Return. Whether there is exemption to specific category of Registered persons from filing of GST Annual Return. If turnover of such dealer exceeds 2 cr, then whether audit required?

D) GST AUDIT

D-1 SCOPE OF GST AUDIT

Preamble

What is the scope of GST audit - some of the queries related to scope of GST audit is given below from 10.1 - 10.11

10.1. DEF Ltd has rendered deemed services (covered in Schedule I) to its related person ABC Ltd. Such supply / services is not declared in GSTR-1 Returns of July 17 to September 18. Whether GST Auditor should show value of such deemed services in Table 5D of GSTR-9C?

10.2. During GST Audit process of Kit Kart Ltd, GST Auditor has found out that Turnover disclosed in GSTR-1 is matching with Turnover as per 3B as well Financials, but erroneously Intra State supply of 5 Crore is shown as Inter State supply. GST Auditor is of the view that Kit Kart Ltd should first pay correct Tax (CGST+SGST) and then claim Refund of IGST. Kit Kart Ltd is of the view that though Tax is paid under wrong head but has been paid to government kitty and therefore do not want to pay CGST + SGST now and wait for IGST Refund. As a advisor to Kit Kart would you suggest Kit Kart Ltd to pay CGST + SGST?

10.3. What is Auditor's responsibility as to credits claimed in TRAN 1

10.4. Is it Auditor's responsibility to decide whether any transaction is a business transaction or non-business transaction?

10.5. Auditor's responsibility to verify savings accounts of proprietor or limited to business bank accounts.

10.6. What is Auditors responsibility about reconciliation between GSTR2A with ITC claimed by dealer?

10.7. Is it Auditors responsibility to verify each and every entry to determine RCM or materiality concept can be applied?

10.8. During the GST Audit process of Window Mart Ltd , the GST Auditor has found out that Turnover disclosed in GSTR-1 is matching with Turnover as per financials at Rs. 100 Crore whereas Turnover disclosed in GSTR-3B is Rs. 99 Crore. All supply of Window Mart Ltd is chargeable at single GST Rate of 12%. Presuming GSTR-1 and 3B of September 18 is already filed , Can such error be rectified in GST Audit Report?

10.9. URD invoice is dated upto 13.10.2017 but Invoice is accounted in books after 13.10.17, Whether RCM is payable. Is it Auditors responsibility to verify each voucher to certify true and correctness of annual return ?.

10.10. Whether auditor needs to verify product costing and compare it with selling price to evaluate profit margin ? Let's assume few products of 18% are sold at loss and few product of 0% are sold at very high profit margin (both product sold for the first time under gst regime and dealer is not manufacturer of any of the products) . Is their any issue under anti profiteering or any other provision of gst law? What is the auditors responsibility in such cases?

10.11. Whether auditor can decide chargeability based on Advance Rulings issued in case of other dealers ? If yes, which AR to be followed in case of converse rullings ?.

D-2 GST Audit - Turnover

11.1 How to arrive at GST Audits turnover limits considering that one entity has taxable as well as non taxable turnover and has operations in more than one state? Whether turnover is to be considered PAN India or GSTIN wise ?

11.2. Whether turnover for GST Audit should be considered for entire Financial Year or for the period from 01-04-2017 to 31-03-2017 ?

11.3. GST Audit & relevant reconciliation has to be filed State-wise. In case where the company has multiple registrations in different States, then whether the Auditor has to rely on the Management Representation Letter for State-wise turnover or should get the same from the Statutory Auditors duly certified by them?

11.4. Company is having different registrations in different States and for each State turnover is identified by the company and given to the GST Auditor for audit, however there are few incomes like dividend income, interest income of FDs, sale of company's assets, sale of securities and foreign exchange fluctuations. Though on many of such incomes there wouldn't be GST liability but under which registration (State) these incomes should be reported for GST audit purposes?

D-3 GST Audit - Other Issues

12. Rent paid @ Rs. 1,00,000/- per month in advance for the period October 2017 to September 2018, Assessee has booked the expenses in P & L for the period upto March 2018 and for the period April 2018 to September 2018 has been shown as Prepaid Expenses in Balance Sheet. Invoice for the same is also received. The assessee wants to know whether the ITC of the GST paid to the supplier can to be taken or not for the period October 2017 to September 2018 and if it can be taken then whether any specific disclosure is required in the Audit Reconciliation Statement in Form 9C.

13. Odha Builders is real estate player and has launched one project on 15th June 2017. No Agreement was executed in FY 1718. It has collected advance of Rs. 30 Crores till 30th June 2017 , whereas actual construction work started only from November 2017. CFO of Odha Builders is of the view since on 30 Crore advance was collected till 30th June 2017 and Service Tax as well as VAT is paid in old regime, such turnover will qualify as pre GST Turnover and therefore will appear as deductible adjustment in Table 5G of GST Audit Report . Whether view of CFO is correct ?if no, reason therefor?.

14. Dipro Ltd has ITC credit of Rs. 10 Crores in its CGST and SGST Electronic Credit Ledger respectively. During GST Audit it was discovered that Outward Intra State supply of 20 Lakhs (Subject to 5% GST) is not disclosed in GSTR-1 and GSTR-3B. Management of Dipro Ltd is of the view that GST payable on undeclared supply of Rs 20 Lakhs can be paid out of ITC credit. Whether management view is correct?

15. During GST Audit process of Sinfosys Ltd GST Auditor has found out that Turnover disclosed in GSTR-1 is matching with Turnover declared in GSTR-3B as well financials. However management has wrongly charged GST @ 5% whereas correct GST Rate was 18%. Management has accepted its mistake and want to rectify this error. Presuming GSTR-1 and 3B of September 18 is already filed ,How such error will be rectified in GST Audit Report ?

16. SASA Limited has imported Services worth Rs. 200 Crore in FY 1718 and due to lack of knowledge have not paid IGST on Reverse Charge basis. On pointing out by GST auditors SASA Limited has agreed to pay IGST on Reverse Charge basis of Rs. 36 Crore with Interest. GST auditor is of the view that ITC claim in respect of GST paid on RCM basis will be hit by limitation period prescribed u/s 16(4) of the CGST Act and therefore post 25th October 18 ITC is not permissible. Management is of the view that the time limit u/s 16(4) of the CGST Act will be counted from date of payment of RCM liability and not from date of Import Invoice. Considering above facts please advise management of SASA Ltd about eligibility of claim ITC of Rs. 36 Crores.

17. If common inputs and input services are used partly for business and partly for non-business purposes then proportionate ITC is require to be reversed as per Rule 42. If such ITC is not reversed in 3B Return of July 17 to September 18 then how such reversal can be shown by Auditors in in GSTR-9C?
