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A Newsletter from The Institute of Chartered Accountants of India on GST



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President's Communication



Dear Professional Colleagues,

Greetings from the Institute of Chartered Accountants of India (ICAI)!

With immense pleasure, I extend my warm greetings to all the dedicated professionals, taxpayers, and stakeholders in the field of Goods and Services Tax (GST) and other indirect taxes.

GST was introduced as a part of the reforms in India's taxation system to simplify the indirect taxation regime and make it more certain and transparent. Since implementation, the Government has been making continuous changes to make GST simpler and more transparent. The GST Council meetings are convened to address the challenges encountered by the taxpayers. Hence, in line with the outcomes of the 52nd GST Council Meeting, various amendments have been made and clarifications issued to address the concerns of the taxpayers.

The GST & Indirect Taxes Committee of ICAI, a one point contact for GST knowledge sharing, is continually working towards the benefit of members by coming out with new publications, revising the existing ones, organising seminars, conferences, workshops etc. GST Newsletter is one of the sources which provide valuable insights to our members with latest updates, articles, notifications etc. I commend the efforts of the GST and Indirect Taxes Committee of ICAI in diligently publishing this Newsletter every month and keeping our community well informed.

I urge all the readers to fully utilize all the resources available on GST including this Newsletter and remain actively involved in ongoing learning. In the ever-evolving sphere of taxation, success is deeply rooted in knowledge.

I hope this Newsletter contributes to the enrichment of your professional knowledge and skills.

Yours sincerely,

CA. Aniket Sunil Talati

President

The Institute of Chartered Accountants of India

Chairman's Communication



Dear Members,

Warm Greetings!

I am thrilled to present the 41st edition of ICAI GST Newsletter brimming with valuable insights and updates that can help the readers navigate the ever-evolving landscape of GST.

The recent CBIC circular on taxability of corporate and personal guarantees has provided the much-needed clarity on the matter and put to rest the various doubts concerning the same. It has been clarified that while personal guarantee will not be subject to tax, corporate guarantee will be liable to 18% GST either on the consideration charged by the guarantor for that service, or 1% of the value of the guarantee, whichever is higher. Various other changes and clarifications have also been made in order to resolve the issues faced by the taxpayers. This edition of Newsletter covers updates relating to all such changes made in the month of October 2023.

I am delighted to inform you that batches of Certificate Course on GST are consistently organized at various locations. The Course aims to equip the members with the skills and knowledge required to thrive in the domain of GST. You can keep track of upcoming batches at the Committee's website <https://idtc.icai.org>.

Furthermore, the Committee has also been taking giant strides towards bridging the GST knowledge gap of every stakeholder and in every sector by developing new publications and revising the existing ones, sharing GST Updates, organising seminars, conferences, certificate courses etc. Recently, the October 2023 edition of the Committee's publication 'GST Act(s) and Rule(s)- Bare Law' was released by the Hon'ble Lieutenant Governor of Jammu & Kashmir, Shri Manoj Sinha. Further, three more publications namely, 'Technical Guide on GST Annual Return (FORM GSTR 9)', 'Guide to CA Certificates' and 'Handbook on TDS Provisions' have also been released by the Committee in October 2023. The soft copy of all the said publications can be accessed at <https://idtc.icai.org/> and the physical copy can be ordered through CDS portal of ICAI.

Yours sincerely,

CA. Sushil Kumar Goyal

Chairman

GST & Indirect Taxes Committee

The Institute of Chartered Accountants of India

“OVER THE COUNTER SALES” : SCOPE OF AMENDMENT TO SECTION 10(1)(CA) OF IGST ACT, 2017

Brief Background:

An agenda item 7(iii) was placed before the GST Council in the 37th GST Council Meeting held on 20.09.2019 for deliberation and approval of draft circular on the interpretation of section 10 of the Integrated Goods and Services Tax Act, 2017 (IGST Act). This was concerning the issue for determining the place of supply in cases where the goods are purchased by a recipient on ‘over the counter’ basis in one State and thereafter transported to another State by the recipient. It was decided in the meeting that the issue should be looked afresh by the Law committee.

In this context it is relevant to point out that there was a difference of opinion among the States with regard to supply made to an unregistered person where the recipient’s address was not available on record. One of the opinions was that in such cases the place of supply should be determined under section 10(1)(c) (i.e., where the supply does not involve movement of goods). This meant that the place of supply in such cases would be the location of goods at the time of delivery to the recipient. Consequently, the destination principle for consumption would not be followed even if such goods are transported later to another State by the recipient.

The Law Committee in this respect approved the insertion of a new clause (ca) after clause (c) of sub-section (1) of section 10 of the IGST Act. However, Law Committee decided that there was no need for any amendment in section 10 of IGST Act regarding supplies made to registered persons.

Relevant Amendment:

The amendment has been made to the provisions of the IGST Act by way of insertion of clause (ca) as approved by the Law Committee.

In this respect, the statement of objects and reasons to the IGST (Amendment) Bill 2023 provided as under:

“amend section 10 of the Act, to provide that where the supply of goods is made to a person other than a registered person, the place of supply shall be the location as per the address of the said person recorded in the invoice issued and be the location of the supplier where the address of the said person is not recorded in the invoice;”

Subsequently, the clause (ca) was inserted to section 10(1) vide the IGST (Amendment) Act, 2023. It reads as under:

“(ca) where the supply of goods is made to a person other than a registered person, the place of supply

shall, notwithstanding anything contrary contained in clause (a) or clause (c), be the location as per the address of the said person recorded in the invoice issued in respect of the said supply and the location of the supplier where the address of the said person is not recorded in the invoice”.

The IGST (Amendment) Act, 2023 was enacted on 18.08.2023 and the aforementioned amendment is effective from 01.10.2023 [effective date notified vide the *Notification No. 02/2023 - Integrated Tax, dated 29.09.2023*]

Issues Concerning Bill-to Ship-to Transactions:

In order to appreciate the possible issues that could arise it is necessary to look at section 10(1)(a) and section 10(1)(c) related to determination of the place of supply in specified circumstances. The place of supply determines the place of consumption of goods and eventually determines the State to which the revenue needs to be apportioned.

Section 10(1)(a) is attracted when the supply involves movement of goods by the supplier or the recipient or by any other person. In that case, the place of supply is the location of the goods at the time at which the movement of goods terminates for delivery to the recipient. Delivery may be physical, constructive, implied or in some other form.

Section 10(1)(c) is attracted when the supply does not involve movement of goods by the supplier or the recipient. In that case, the place of supply is the location of the goods at the time of the delivery to the recipient.

Section 10(1)(ca) has carved out an exception and employs the expression *“notwithstanding anything contrary contained in clause (a) or clause (c)”*.

A question arises in the case involving movement of goods to a person other than a registered person where it is a ‘bill-to’ ‘ship-to’ transaction as per the terms of the contract and as disclosed in the invoice. In such cases does the amended section 10(1)(ca) get attracted?

In order to appreciate the issue, it is necessary to examine the definitions of “address of delivery” and “address on record” as provided under sections 2(2) and 2(3) respectively of the CGST Act, which read as follows:

“address of delivery” means the address of the recipient of goods or services or both indicated on the tax invoice issued by a registered person for delivery of such goods or services or both;

“address on record” means the address of the recipient as available in the records of the supplier.

It should be noted that the newly inserted section 10(1)(ca) uses the expression “the address of the said person recorded in the invoice issued for the purpose of the said supply”. Thus, a mere mention of State where the recipient is located is sufficient in the case of over the counter sale for its coverage under section 10(1)(ca).

Therefore, it needs to be seen how the amendment would help determination of place of supply in the case of bill-to-ship-to transactions.

In this context, it is necessary to point out that section 10(1)(a) uses the words “movement... terminates for delivery”. Such movement could be effected by the supplier or recipient or any other person. On the contrary, section 10(1)(c) applies where the supply does not involve movement of goods.

The word “movement” has neither been defined in the CGST Act nor IGST Act. Similarly, the term “terminates for delivery” has also not been defined. Delivery for the purpose of the contract law and delivery in terms of the above provision may involve different connotations. Under GST law, a supply is effected on removal of goods for delivery. However, in terms of the contract it could be that delivery will stand completed only on acceptance of such goods by the recipient. Equally risks and rewards pertaining to the goods being supplied may pass at the factory gate and there could be a case where the risk is separated from ownership. Movement for delivery of such goods may stand terminated only at the premises of the recipient. This would be the case where the movement is undertaken by the recipient for transport to his own premises. Even in the case of ‘over the counter’ sales, there could be movement. In the case of over the counter sales, since the enjoyment of the goods supplied is on ‘as is where is’, this is also a supply that involves movement. Such sales will come within section 10(1)(a) unless they are effected under section 10(1)(b). The exception to this is now carved out under section 10(1)(ca).

Here it is useful to refer to the agenda of the 50th GST Council Meeting dealing with this aspect:

“The Law Committee agreed that GST is premised on the principle of destination-based consumption tax wherein tax should flow to the State or Union Territory where the goods or services are consumed. Even in the over the counter sales, where the goods are handed over to the customer, it does not imply that the goods are being consumed there. The address of customer which is on record should signify the place of destination as well as consumption of the said goods.”

Thus, the reasoning behind insertion of the clause (ca) was that even over the counter sales involves some form of movement and, therefore, the GST should be applied on the destination principle.

The question arises, what are the situations where section 10(1)(a) or section 10(1)(c) could still be applied regarding over the counter supplies (or for that matter ex-warehouse supplies).

Section 10(1)(ca) talks about “the address of the said person recorded in the invoice issued”. In case, State is recorded that would be the place of supply. It is to be noted that while the law defines “address of delivery” and “address on record”, section 10(1)(ca) can apply only to cases where there is only one address or State recorded in the invoice issued to the person other than a registered person. In other words going by the agenda of GST Council Meeting the “address of delivery” and “address on record” should be the same so as to attract section 10(1)(ca).

The agenda and minutes of the 37th and the 50th GST Council meetings suggest that the objective behind the amendment is to cover over the counter sales and serve the destination-based principle.

However, on a combined reading of the relevant provisions, where the invoice contains ‘bill to’ and ‘ship to’ addresses for the supplies made to an unregistered person, the place of supply should still be determined on the basis section 10(1)(a).

The above could be explained with a few examples:

(i) Mr. Abex of Mumbai, Maharashtra orders a mobile phone through a E-Commerce Operator (ECO) to be delivered to his sister at her address in Bangalore (Karnataka). M/s Perfect Mobiles (the online seller in this case registered in Karnataka) processes the order and forwards the mobile to the ship to address in Bangalore. The ECO bills Mr. Abex for the mobile phone and the invoice carries both the bill to address of Mr. Abex in Mumbai and the ship to address of his sister in Bangalore.

In this case Mr. Abex will be the buyer in Maharashtra and he has received the mobile even though it was actually delivered in Bangalore. The place of supply will be Mumbai, Maharashtra, which is the place of constructive delivery and the location of supplier will be Karnataka. This transaction will be subject to IGST.

(ii) Mr. Tamil Mani of Chennai goes to the warehouse of M/s Perfect Mobiles in Bangalore (Karnataka) and purchases a mobile phone across the counter at the warehouse in Kadubeesanahalli. The invoice issued by M/s Perfect Mobiles shows the address in Chennai of Mr. Tamil Mani. In this case the place of supply will be Chennai as that is the only address in the invoice. The transaction will be subject to IGST.

(iii) Continuing with example (ii) if Mr. Tamil Mani instead of providing his address in Chennai gives his friend’s place where is temporarily staying in Bangalore which is recorded as “Mr. Tamil Mani, Karnataka” in the invoice without any other address then in such a case the place of supply will be Karnataka and the transaction will be subject to CGST and KGST since this would be an intrastate transaction.

Contributed by CA. S. Thirumalai

JUDICIAL PRONOUNCEMENTS

1. Input Tax Credit (ITC) on performance target achieved by the dealer on achieving sales target in the form of white goods or gold coins [Orient Cement Limited – AAR Telangana – Order No. 20/2023, dated 30-09-2023]

Facts of the matter:

The applicant is into the manufacturing and sales of Portland Cements. The company in its regular course of business incurs various marketing and distribution expenses. Further, the company also offers various promotional schemes “Monthly/Quarterly Quantity Discount Scheme”, etc. known as “Dealers White Goods Scheme”. The said sales promotion scheme helps the company in achieving their sales and collection targets.

The Applicant hereby seeks an advance ruling in respect of the following questions:

- i. Whether the applicant’s obligation to issue gold coins and white goods to the dealers upon they achieving the stipulated lifting of the material/purchase target during the scheme period would be regarded as “goods disposed off by way of gift” and ITC on the same would be restricted as provided under the section 17(5)(h) of the CGST Act, 2017?
- ii. Whether the applicant’s obligation to issue gold coins and white goods to the dealers upon they achieving the stipulated lifting of the material/purchase target during the scheme period would be regarded as a “permanent transfer or disposal of business assets where ITC has been availed on such assets” and would be treated as a supply even if made without consideration and be subjected to GST under Serial No. 1 of the Schedule I to the CGST Act, 2017?
- iii. Whether the applicant’s obligation to issue gold coins and white goods to the dealers upon they achieving the stipulated lifting of the material/purchase target during the scheme period would be regarded as a supply under section 7 of the CGST Act, 2017?

Contention of the applicant:

The applicant opined that ITC should be allowed of the GST paid on procurement of promotional products which are given to dealers as part of promotional schemes and submitted the following reasons:

- a) Section 16(1) of the Act deals with the availability of ITC to a registered person and section 17(5) of the Act deals with blocked credits. Therefore, it is pertinent to analyze these two provisions in detail to conclude that the ITC shall be available in respect of gold coins and white goods issued to dealers as part of the promotional schemes.
- b) Section 17(5) of the Act covers gifts for the purpose of ineligible credit which is not the case of the applicant. To constitute a gift, the property should be transferred voluntarily and not as a result of a

contractual obligation. They submitted that ‘gift’ has not been defined under the Act. Hence, reference will have to be made to other Statutes and the jurisprudence available on the gift. As per the Gift Tax Act (18 of 1858) has been defined to mean transfer by one person to another of any existing movable or immovable property voluntarily and without consideration in money or money’s worth. A ‘gift’ is a gratuity and an act of generosity and does not require a consideration. If there is a consideration for the transaction, it is not a gift. In the same case, it was also held that gift is a transfer which does not contain any element of consideration in any shape and form love, affection, spiritual benefit and many other factors may enter in the intention of the donor to make a gift but these filial considerations cannot be called or held to be legal considerations as understood by law.

- c) That the Australian High Court in the case of *Commissioner of Taxation (Cth) Vs. McPhail [1968] 41 ALJR 346* held that to constitute a ‘gift’ the property should be transferred voluntarily and not as a resale of a contractual obligation. In this case a person agreed to give a donation to a school in return of school charging less fees for the education of the child of said person. Hence, the Court held that such donation cannot be termed as ‘gift’ as it was made under a contractual obligation wherein school was required to charge lower fees against the donation made.
- d) The applicant further contended that a contractual obligation is created between the applicant and the dealer which would enable either party to take recourse to a civil suit or action for specific performance of contract on failure to adhere to the terms and conditions.
- e) Gold coins and white goods distributed as part of the promotion schemes cannot be regarded as permanent transfer or disposal of business asset where ITC has been availed on such assets. It was further contended that the Serial No. 1 of the Schedule I of the Act states that “*Permanent transfer or disposal of business assets where input tax credit has been availed on such assets*” shall be regarded as supply even if made without a consideration. Thus, it is imperative to understand the term “business assets” in order to conclude whether the gold coins and white goods issued to dealers would fall under the said entry.

Assets mean the transactions which are recorded in the balance sheet of the organization, that in an accounting sense, the said term refers to items appearing in the balance sheet of an organization. Furthermore, in general understanding, items of the balance sheet are only considered as assets.

Various Courts have consistently held that the meaning of a term not defined under the Statute, can be derived from the meaning assigned to it in trade and industry. In this regard, reliance is placed on the following decisions:

- (a) *Dunlop India v. Uol*, 1983 (13) ELT 1566 (SC)
- (b) *Pharm Aromatic Chemicals*, 1997 (95) ELT 203 (Bom)
- (c) *Himani Ltd.*, 2011 (263) E.L.T. 335 (All)
- (d) *Vicco Laboratories*, 2005 (179) B.L.T. 17 (SC)
- (e) *Bella Premier Happy Hygiene Care Put. Ltd.*, 2018(17) G.S.T.L 603 (KAR)

Observations by the Authority:

Scheme induces the stockiest or dealers to achieve higher growth in their sales month on month, year over year so that they will be eligible to receive quantified incentives. The incentives are given not uniformly but according to the “Point Slabs” in which such a stockiest point. Therefore, the points achieved by the stockiest or the dealer will determine the type of incentive they are going to receive. Thus, the goods received as incentive are in proportion to the net points gained by the dealer relatable to the quantity of cement sold by them. Section 7 of the CGST Act covers transactions such as “transfer”, “barter” and “exchange” of goods or services or both under the expression “supply” if agreed to be made for a consideration by a person in the course or furtherance of business. Section 2(31)(b) states that “consideration” in relation to the supply of goods or services or both includes the monetary value of any act in respect of, in response to, or for the inducement of the supply of goods or services or both.

Thus, the applicant is making supply of white goods and gold to his dealers or stockiest in return for the dealers or stockiest attaining a threshold of sales indicated in the scheme and therefore, the value of white goods and gold supplied by him are for the ‘act’ of achieving this threshold and therefore taxable in his hands. The value of the goods supply is determined under section 15 of the CGST Act read with rule 30 of the CGST Rules.

Ruling:

S. No.	Questions	Ruling
1	Whether the applicant’s obligation to issue gold coins and white goods to the dealers / customers upon they achieving the stipulated lifting of the material / purchase target during the scheme period would be regarded as “goods disposed of by way of gift” and ITC on the same would be restricted as provided under the section 17(5)(h) of the CGST Act, 2017?	The transaction is taxable as supply of goods therefore eligible for ITC.

2	Whether the applicant’s obligation to issue gold coins and white goods to the dealers/ customers upon they achieving the stipulated lifting of the material / purchase target during the scheme period would be regarded as a “permanent transfer or disposal of business assets where ITC has been availed on such assets” and would be treated as a supply even if made without consideration and be subjected to GST under Serial No. 1 of the Schedule I to the CGST Act, 2017?	The transaction is supply of goods and not permanent transfer or disposal of business assets.
3	Whether the applicant’s obligation to issue gold coins and white goods to the dealers/customers upon they achieving the stipulated lifting of the material / purchase target during the scheme period would be regarded as a supply under section 7 of the CGST Act, 2017?	Yes

2. High Court do not have power to condone the delay beyond statutory time limit [Isha Holidays (P) Ltd. – WP (C) No. 30666 of 2023 dated 25-09-2023]

Facts of the matter:

Assessment Order was passed against the Petitioner pursuant to Section 73(1) of the CGST Act amounting to INR 4,52,826/- for the period 2017-18. Petitioner, being aggrieved, had filed an appeal petition before the Appellate Authority (Respondent). Appellate Authority had dismissed the appeal petition as appeal petition was filed / submitted with a delay of 144 days i.e. beyond the prescribed period of 4 months pursuant to section 107(1) read with section 107(4) of the CGST Act.

Aggrieved by the decision of the Respondent, the Petitioner filed the writ petition before this Hon’ble Court under Article 226 of the Constitution of India.

Observations by the Court:

Petitioner could not enumerate upon any powers vested with the Respondent under which the delay could be condoned beyond the period of four months. Pursuant to Section 107(1), an appeal petition have to be filed within a period of 3 months from the date on which said decision or order is communicated to such person. The Respondent have power to condone the delay of further 1 month, if there exists reasonable and sufficient cause of delay.

It was further observed that there are no powers vested with the Respondent to condone the delay beyond the period of four months as per section 107(1) read with Section 107(4) of the CGST Act. Hence, dismissed the writ petition.

Ruling:

In view of the fact that there is no power vested with the Appellate Authority to condone the delay beyond three months, this Court finds no grounds to entertain this writ petition and it is hereby dismissed.

3. Printing of questions paper for educational institutions [Saraswaty Press Limited – GST AAR West Bengal – Order No. 20/WB/AAR/2023-24, dated 13-09-2023]

Facts of the matter:

The applicant is an entity engaged in the business of printing including question papers of educational institutions, which requires maintenance of secrecy, accuracy and timely delivery of the material. The applicant has been undertaking the job of printing of question papers for different Universities of various states and charging GST on invoices raised for such services. The applicant seeks ruling on whether the service of printing question papers for the conduct of examinations to educational institutions, supplied by the applicant will be covered by Serial No. 66 of the *Notification No. 12/2017 – CT(R) dated 28.06.2017* and whether such supply of services shall be treated as exempt supply.

Contention of the applicant:

- a. *Circular No. 151/07/2021-GST dated 17.06.2021* clarifies that supply of input services by way of printing of question papers, admit card to the university is not subject to tax and the university is not required to pay GST on such supply of input services to conduct such examination.
- b. In case of printing 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 being provided by 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. Accordingly, such services would classify under Serial No. 27 (i) of *Notification No. 11/2017 – CT(R) dated 28.06.2017* and applicable rate of tax would be 18%.
- c. However, as per Serial No. 66(b) (iv) of *Notification No. 12/2017 – CT(R) dated 28.06.2017*, services provided to an educational institution, by way of printing of question paper for conducting examination by such institution is exempted from

payment of Goods and Services Tax.

Observation by the Authority:

Pursuant to Explanation (iv) inserted in the *Notification No. 12/2017 – CT(R) dated 28.06.2017* and *Circular No. 151/07/2021-GST dated 17.06.2021* issued for the purpose of clarification regarding GST on supply of various services by Central and State Boards (such as National Board of Examination (NBE)) wherein it has been stated that “Central and State Educational Boards” are treated as ‘Educational Institutions’ for the limited purpose of providing services by way of conduct of examination to the students. Therefore, NBE is an ‘Educational Institution’ in so far as it provides services by way of conduct of examination, including any entrance examination, to the students. Para 2 of the said circular reads as follows:

Illustratively, NBE provides services of conducting entrance examinations for admission to courses including Diplomat National Board (DNB) and Fellow of National Board (FNB), prescribes courses and curricula for PG medical studies, holds examinations and grant degrees, diplomas and other academic distinctions. It carries out all functions as are normally carried out by Central or State Educational Boards and is thus a Central Educational Board.

Further, it has also been noticed that the applicant has been awarded agreement/work order by University namely Jharkhand University of Technology. There is no dispute that this University as referred above is regarded as ‘Educational Institution’.

Ruling:

Supply of services for printing of question papers being provided by the applicant to different universities for conducting examinations shall get covered under Serial No. 66 of the *Notification No. 12/2017- CT(R) dated 28.06.2017* and therefore, shall be treated as exempt supply.

4. ITC eligibility on purchase of Central Air-conditioning systems and other products in construction of new administrative office [The Varachha Co. Op. Bank Ltd. – GST AAAR Gujarat – Order No. GUJ/AAAR/ Appeal/2023/5, dated 04-10-2023]

Facts of the matter:

The applicant is constructing a new administrative building and incurring cost on various services. The appellant, further submitted that they were eligible for ITC on the below mentioned goods and services in view of the foregoing viz. –

Sr. No.	Nature of Cost/ Expenses	Head under which expense will be booked	Capitalized or not	Remark
1.	Central Air Conditioning Plant	Plant & Machinery	Yes	Being plant not covered under immovable property & hence ITC available.
2.	New Locker Cabinet	Locker Cabinets	Yes	Being furniture not covered under immovable property & hence ITC available.
3.	Lift	Plant & Machinery	Yes	Being plant not covered under immovable property & hence ITC available.
4.	Electrical fittings, such as cables, switches, NCB and other electrical consumables material	Electrical fittings	Yes	Being electrical fittings not covered under immovable property & hence ITC available.
5.	Roof Solar Plant	Plant & Machinery	Yes	Being plant not covered under immovable property & hence ITC available.
6.	Generator	Plant & Machinery	Yes	Being plant not covered under immovable property & hence ITC available.
7.	Fire Safety Extinguishers	Plant & Machinery	Yes	Being plant not covered under immovable property & hence ITC available.
8.	Architect Service Fees	Profit & Loss Account	No	Not being capitalized and charged to P&L A/c. No restriction on ITC.
9.	Interior Designing Fees	Profit & Loss Account	No	Not being capitalized and charged to P&L A/c. No restriction on ITC.

Applicant had seek the ruling before the Gujarat Authority for Advance Ruling (GAAR) on whether they were eligible to avail the ITC on the above mentioned items which are used in construction of their new administrative office.

Hon'ble Gujarat AAR upheld that ITC is blocked pursuant to Section 17(5)(c) of the CGST Act, 2017 in respect of air conditioning plant, lift, electrical fittings, fire safety extinguishers, roof solar plant. Further ITC is blocked pursuant to section 17(5)(d) in respect of architect services and interior decorator fees.

Being aggrieved with the ruling applicant had filed appeal petition before the Appellate Authority.

Contention of Applicant:

Applicant relied on the following –

Central Air Conditioning System:

The applicant had entered into a contract for 'supply & erection' of 'central air conditioning system'. Section 2(119) of the CGST Act, defines 'works contract'. The expression 'works contract' is limited to contracts to do with immovable property, which is defined in clause 3(26) of the General Clauses Act, 1897. Section 3 of the Transfer of Property Act, 1882 further defines the phrase 'attached to earth'. The supply received by the applicant does not involve assimilation with the property and the work carried out by the supplier is only to make the plant ready for a 'wobble free operation'. Thus, the activity undertaken by the supplier cannot be considered as an 'immovable property' by applying the permanency test. The applicant also relied upon the decision of AAAR of Maharashtra in the case of *Nikhil Comforts [2020 (41) GSTL 417 (AAAR-GST-Mah.)]* and the ruling in the case of *M/s. Bahl Paper Mills Ltd. [2018 (14) GSTL 306 (AAR-GST)]*.

Lift:

The supply of lift will be booked under the head of 'Plant & Machinery' in the books of accounts. The purpose behind attaching lift to a concrete base was to prevent wobbling of the lift, to secure maximum operational efficiency and also for safety. The lift as per the appellant, will be saleable if somebody wants to purchase it could be dismantled and sold. Thus, it would not be prudent to hold the lift, assembled and erected at the premises, to be an immovable property. Further, the Apex court in the case of *M/s. Sirpur Paper Mills [1998 (97) ELT 3 (SC)]* held that where Plant & Machinery are capable of being dismantled and sold without being destroyed and are only embedded to the earth because of operational efficiency, it is not an immovable property. Even by this analogy also, ITC is available in their case.

Electrical Fittings:

The applicant will install 'electrical fittings' both at the exterior and the interior. The applicant does not intend to avail ITC on electrical fittings used in civil construction as it is being blocked via section 17(5). However, for rest of the 'electrical fittings', there is no specific barring provisions. The applicant also wishes to rely on the ruling of *M/s. Nipro India Corporation P. Ltd. [2018 (18) GSTL 289 (AAR-GST)]*.

Roof Solar Plant:

The solar equipment can be qualified as 'Plant and Machinery' will be used for furtherance of business i.e. in its business of supplying taxable service. Even though generation of electricity is an exempt supply, the applicant will be using electricity solely & consuming it captively for the purpose of supplying taxable services. From the above, it is inferred that the 'roof solar plant'

will be attached to earth for operational efficiency. The whole purpose behind attaching it to a concrete base will be to secure maximum operational efficiency and for safety purpose. Further, it is also seen that the 'roof solar plant' is saleable and that if somebody wants to purchase, it can be dismantled and sold. Further, it would not be correct to hold that the 'roof solar plant' assembled and erected at the premises of the appellant is an immovable property.

Fire Safely Extinguishers:

Fire Safety Extinguishers is nothing but 'Plant and Machinery' attached to earth which is movable as well as marketable also. They further also relied on the case of *M/s. Sirpur Paper Mills*, supra. Further, as per the Gujarat Fire Prevention and Life Safety Measures Act, 2013, the appellant is duty bound to install fire safety instruments/system at their premises, Further credit restriction is only in so far as inputs/input services 'for construction of an immovable property' is concerned and does not apply to capital goods. The restriction provided under section 17(5)(c) & (d) does not apply to procurement of various inputs which are installed in their administrative building. Hence, ITC should be available to the appellant on these goods.

Architect Service Fees

The applicant appointed architect i.e. *Mr. Jignesh Moradiya* and *M/s. Keystone Consultants*, for structural design of building. The explanation under section 17(5) defines the expression 'construction'. In the instant case, the said expense is not capitalized and is charged to 'Profit & Loss A/c' and hence ITC is admissible.

Interior Designing Fees

The applicant has appointed the interior designer i.e. *M/s. Pankaj Dhakhar & Associates* for 'Interior Design Development' of building which will be ultimately used for provision of supply of service. In the instant case, the said expense is not capitalized and is charged to 'Profit & Loss A/c' and hence the ITC is admissible.

The appellant on the basis of above submissions requested to set aside the ruling issued by the GAAR (to the extent ITC is disallowed) and allow ITC on the inward supply of the goods/ services as mentioned in the appeal.

Observation by the Appellate Authority:

'Immovable property' is not defined under GST. However, its defined under section 3(26) of the General Clauses Act, 1897 to include land, benefits to arising out of land and things attached to the earth, or permanently fastened to anything attached to the earth. Likewise, section 3(36) of General Clauses Act, 1897, defines "movable property" to mean property of every description, except immovable property. Further, section 3 of the Transfer of Property Act, 1882 stipulates that unless there is something repugnant in the subject or context, "immovable property" does not include standing timber, growing crops or grass. Section 3, further, defines the term "attached to the earth" to mean (a) rooted in the earth, as in the case of trees and shrubs, (b) embedded to earth, as in the case of walls or buildings and (c) attached to what is so embedded for permanent beneficial enjoyment of

that to which it is attached. Thus, on a conjoint reading "immovable property", essentially means something which is attached to the earth, or permanently fastened to anything attached to the earth, or forming part of the land and not agreed to be severed before supply or under a contract of supply.

Central Air Conditioning System:

A conjoint reading of sections 16(1) and 17(5)(c), *ibid*, shows that ITC can be availed by a registered person subject to conditions and restrictions prescribed on any supply of goods or services or both, which are used or intended to be used in the course of furtherance of his business. The restrictions imposed is that ITC is not eligible for works contract services when supplied for construction of any immovable property except when it is an input service for further supply of works contract service. The only exception being when the works contract service is supplied for construction of plant and machinery. The section further goes on to define plant and machinery.

CBEC's [now CBIC] *Order No. 58/1/2002-CX dated 15.01.2002*, wherein under Para 5(iii), with regards to Refrigeration/ Air-Conditioning Plants, it is mentioned as follows:

"5(iii) Refrigeration/Air conditioning plants, These are basically systems comprising of compressors, ducting, pipings, insulators and sometimes cooling towers etc. They are in the nature of systems and are not machines as a whole. They come into existence only by assembly and connection of various components and parts. Though each component is dutiable, the refrigeration/air conditioning system as a whole cannot be considered to be excisable goods. Air conditioning units, however, would continue to remain dutiable as per the Central Excise Tariff."

Taking inference from the above Board's circular we find that the supply of central air conditioning plant falls under the category of works contract service supplied for construction of an immovable property. We would also like to rely on the judgement of the Hon'ble Supreme Court in the case of *Globus Stores P. Ltd.*, [2011 (267) ELT 435 (SC)] wherein it was held that air-conditioning plant is an immovable property.

Lift:

The appellant has entered into an agreement with *M/s. Schindler India Private Ltd.*, for supply and installation of lift/elevator. On examining the agreement for supply of lift, we find that the same falls under the category of 'works contract' service as defined under section 2(119) of CGST Act, 2017, as it fulfills the description of the works contract service.

We find that in the case of *M/s. Otis Elevator Company (India)* [2003 (151) ELT 499] the Hon'ble Bombay High Court, held that lift/elevator is an integral part of immovable property,

Electrical Fittings:

The electrical fittings are mostly concealed into the wall/floor of the building. They are concealed or fitted on to the building through pipes as it serves the dual purpose of safety and aesthetics. The supply of electrical fittings involves its installation also. The supply therefore falls

under the category of 'works contract service'. Further on installation of the electrical fittings it becomes part of the building and thereby an immovable property.

Roof Solar Plant:

Roof solar plant, affixed to foundation via nuts and bolts and which has the flexibility of 4 different angles is not an immovable property but a plant and machinery. The applicant has further stated that they have capitalized the roof solar plant in their books of accounts, the roof solar plant, as is evident is not permanently fastened to the building. Thus, it qualifies as a plant and machinery and is not an immovable property, hence, it is not covered under blocked credit as mentioned in section 17(5)(d) of the CGST Act, 2017.

Fire Safety Extinguishers:

The applicant has entered into agreement for supply and installation of 'fire safety extinguishers' in their building premises. Applicant submitted that in terms of sections 18, 19, 20 & 21 of The Gujarat Fire Prevention and Life Safety Measures Act, 2013, it is mandatory to install fire safety instruments/ systems at their premises. A building is only complete and can be occupied only when fire safety extinguishers are in place. Fire safety extinguishers, however, are permanently attached to the building and are in place during the entire life time of the building.

The Hon'ble Supreme Court of India in the case of Commissioner of Central Excise, Ahmedabad Vs. Solid

& Correct Engineering Works [2010 (252) E.L.T. 481 (S.C.)] held at Para 33 that "once such a machine is fixed, embedded or assimilated in a permanent structure, the movable character of the machine becomes extinct". The supply and installation of fire safety extinguishers due to reasons stated above, makes it an immovable property, it ceases to be a plant and machinery.

Architect & Interior Designing Service Fees:

AS-10 issued in terms of section 133 of the Companies Act, 2013, prescribe the accounting treatment for property, plant and equipment. Para 17 & 18 (f) of AS-10, prescribes capitalization of professional fees, meaning thereby that in this case both these services viz. architect service fees and interior designer fees, should in terms of the accounting standards be capitalized. The averment therefore that since they are booking a capital expense under Profit and Loss A/c will make them eligible for ITC, is not a legally tenable argument.

Ruling:

ITC on (i) Central Air Conditioning Plant; (ii) Installation of Lift; (iii) Electrical Fittings such as cables, switches, NCB and other electrical consumable; (iv) Fire Safety Extinguishers; and (v) professional fees of Architect and Interior Designer fees would not be eligible. However, ITC on Roof Solar Plant would be eligible credit.

Contributed by CA. Ashit Shah

COMPLIANCE SCHEDULE

COMPLIANCES FOR THE MONTH OF NOVEMBER, 2023

Forms	Compliance Particulars	Due Dates
GSTR 7	Return to be furnished by the registered persons who are required to deduct tax at source.	10.12.2023
GSTR 8	Return to be furnished by the registered electronic commerce operators who are required to collect tax at source on the net value of taxable supplies made through it.	10.12.2023
GSTR 1	Statement of outward supplies by the taxpayers having an aggregate turnover of more than Rs. 5 crore or the taxpayers who have opted for monthly return filing.	11.12.2023
IFF	Statement of outward supplies by the taxpayers having an aggregate turnover up to Rs. 5 crore and who have opted for the QRMP scheme.	13.12.2023
GSTR 5	Return to be furnished by the non-resident taxable persons containing details of outward supplies and inward supplies.	13.12.2023
GSTR 6	Return to be furnished by every Input Service Distributor (ISD) containing details of the input tax credit received and its distribution.	13.12.2023
GSTR 3B	Return to be furnished by all the taxpayers other than who have opted for QRMP scheme comprising consolidated summary of outward and inward supplies.	20.12.2023
GSTR 5A	Return to be furnished by Online Information and Database Access or Retrieval (OIDAR) services provider for providing services from a place outside India to non-taxable online recipient (as defined in Integrated Goods and Services Tax Act, 2017) and to registered persons in India and details of supplies of online money gaming by a person outside India to a person in India.	20.12.2023
PMT-06	Payment of GST for a taxpayer with aggregate turnover up to Rs. 5 crores during the previous year and who has opted for quarterly filing of return under QRMP.	25.12.2023

GST UPDATES

1. Amendment in Notification No. 11/2017-CT(R) dt. 28.06.2017 - Rates for supply of services

- a) Another condition has been introduced for taking input tax credit on input services in the same line of business in case of Passenger Transport Services and Rental services of transport vehicles with operators, restricting it to 2.5%, where the supplier of input service in the same line of business charges central tax at a rate higher than 2.5%.
- b) In case of services provided by a race club, the word 'totalisator or a license to' a bookmaker has been replaced with 'licensing a' bookmaker.
- c) The entry related to 'Gambling' has been omitted. Consequently, entries related to 'Gambling and betting services including similar online services' and 'lottery services' in the scheme of classification of services has also been omitted.

Notification No. 12/2023-CT(R) dt. 19.10.2023

2. Amendment in Notification No. 12/2017-CT(R) dt. 28.06.2017 – Services exempt from levy of GST

Services provided to a Governmental Authority by way of water supply, public health, sanitation and conservancy, solid waste management and slum improvement and upgradation have been exempted from levy of GST.

Notification No. 13/2023-CT(R) dt. 19.10.2023

3. Amendment in Notification No. 12/2017-CT(R) dt. 28.06.2017 – Services exempt from levy of GST and Notification No. 13/2017-CT(R) dt. 28.06.2017 – Services leviable to reverse charge under GST

Supply of all goods and services by Indian Railways shall be taxed under Forward Charge Mechanism to enable them to avail ITC.

Notification No. 13/2023-CT(R) dt. 19.10.2023, Notification No. 14/2023-CT(R) dt. 19.10.2023

4. Amendment in Notification No. 15/2017-CT(R) dt. 28.06.2017 - No refund of unutilised input tax credit u/s 54(3) in case of supply of certain service

As per *Notification No. 15/2017-CT(R) dt. 28.06.2017*, no refund of unutilised input tax credit shall be allowed under sub-section (3) of section 54 in case of supply of services specified in sub-item (b) of item 5 of Schedule II. Now the said notification has been amended and the words 'specified in sub-item (b) of item 5 of Schedule II' has been substituted with the words 'of construction of a complex, building or a part thereof, intended for sale to a buyer, wholly or partly, where the amount charged from the recipient of service includes the value of land or undivided share of land, as the case may be, 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'.

Notification No.15/2023-CT(R) dt. 19.10.2023

5. Amendment in Notification No. 17/2017-CT(R) dt. 28.06.2023 – Services on which tax shall be paid by E-Commerce Operator (ECO)

Notification No. 17/2017-CT(R) dt. 28.06.2023 has been amended to provide that GST in case of services by way of transportation of passengers provided through Omnibus shall be paid by the ECO except where the supplier supplying such service through the ECO is a Company.

Further, 'Company' shall have the same meaning as assigned to it in section 2(20) of the Companies Act, 2013.

Notification No. 16/2023-CT(R) dt. 19.10.2023

6. Amendment in Notification No. 1/2017- CT (R) dt. 28.06.2017 - CGST rate schedule for goods

- a) GST rate on molasses has been reduced from 14% to 2.5%.
- b) Spirits for industrial use has been made taxable at the rate of 9%.

Notification No. 17/2023-CT (R) dt. 19.10.2023

7. Amendment in Notification No. 2/2017- CT (R) dt. 28.06.2017 - Power to grant exemption from tax and Notification No. 1/2017- CT (R) dt. 28.06.2017 - CGST rate schedule for goods.

Taxability of "Food preparation of millet flour in powder form, containing at least 70% millets by weight" has been amended as follows:

- a) other than pre-packaged and labelled form - 0% (*Notification No. 18/2023-CT (R) dt. 19.10.2023*)
- b) pre-packaged and labelled form – 2.5% (*Notification No. 17/2023-CT (R) dt. 19.10.2023*)

8. Amendment in Notification No. 4/2017-CT(R) dt. 28.06.2017 - Reverse charge on certain specified supplies of goods

As per the amended *Notification No. 4/2017-CT(R) dt. 28.06.2017*, tax shall be paid under forward charge when used vehicles, seized and confiscated goods, old and used goods, waste and scrap is supplied by Ministry of Railways (Indian Railways) to a registered person.

Notification No. 19/2023-CT (R) dt. 19.10.2023

9. Amendment in Notification No. 5/2017- CT(R) dt. 28.06.2017 - Supplies of goods in respect of which no refund of unutilised input tax credit shall be allowed where rate of tax on input is higher than rate of tax on output supplies of such goods

A new entry has been inserted in *Notification No. 5/2017- CT(R) dt. 28.06.2017* to provide that no refund of unutilised input tax credit under inverted duty structure shall be allowed in case of supply of imitation zari thread or yarn made out of metallised polyester film /plastic film. An explanation has also been inserted providing that this shall apply for refund of input tax credit only on polyester film /plastic film.

Notification No. 20/2023-CT (R) dt. 19.10.2023

All the above Notifications have come into effect from 20th October, 2023.

Similar notifications have been issued under IGST Act as well as UTGST Acts.

10. Amendment in CGST Rules

In order to give effect to the recommendations made in the 52nd GST Council Meeting, the following amendment in the CGST Rules have been notified:

a) Amendment in Rule 28 - Value of supply of goods or services or both between distinct or related persons, other than through an agent

Rule 28 has been divided into two sub-rules. The existing rule has been re-numbered as sub-rule (1) and the sub-rule (2) has been inserted to prescribe the manner of calculation of value of supply in case of corporate guarantee. Hence, as per the newly inserted sub-rule (2), the value of supply of services by a supplier to a recipient who is a related person, by way of providing corporate guarantee to any banking company or financial institution on behalf of the said recipient, shall be deemed to be-

- one per cent of the amount of such guarantee offered, or
- the actual consideration, whichever is higher.

b) Amendment in Rule 142 - Notice and Order for demand of amounts payable under the Act

As per the amended rule 142, where the person chargeable with tax makes payment of tax and interest under section 73(8) or 74(8) or where the person concerned makes payment of the amount referred to in section 129(1), within the time prescribed under the said rule, he shall intimate the proper officer of such payment in FORM GST DRC-03 and the proper officer shall issue an intimation (instead of an order) in FORM GST DRC-05 concluding the proceedings in respect of the said notice.

c) Amendment in Rule 159 – Provisional Attachment of Property

Rule 159(2) has been amended to provide that the Revenue Authority or Transport Authority or any such Authority who has placed encumbrance on the movable or immovable property on the order of the Commissioner, shall remove such encumbrance on the written instructions from the Commissioner to that effect or on expiry of a period of one year from the date of issuance of order under sub-rule (1), whichever is earlier. Consequent amendment have been made in FORM GST DRC-22.

d) Amendment in FORM REG-01 – Application for Registration

“One Person Company” has been added in the constitution of business in the Registration application FORM REG-01.

e) Substitution of FORM REG-08 - Order of Cancellation of Registration as Tax Deductor at source or Tax Collector at source

FORM REG-08 has been classified into two categories viz.,

- Where the order has been issued on an application by the tax deductor or tax collector, or
- Where the order has been issued by the department after serving of show cause notice to the tax deductor or tax collector

f) Amendments in FORM GSTR-8 - Statement for Tax Collection at source

- S. No. 5 asking the details of interest has been omitted.
- S. No. 7 asking the details of interest payable and paid has been amended. The amended row asks for interest as well as late fee details.
- S. No. 9 has also been amended on similar grounds by including late fee along with interest. The amended entry now asks for debit entries in cash ledger for TCS, interest and late fee payment (to be populated after filing of statement).

g) Amendment in FORM PCT-01 - Application for Enrolment as Goods and Services Tax Practitioner

The eligibility criteria for enrolment as GST Practitioner has been revised as follows:

S. No.	Old Criteria	Revised Criteria
1.	Chartered Accountant holding COP	Chartered Accountant
2.	Company Secretary holding COP	Company Secretary
3.	Cost and Management Accountant holding COP	Cost and Management Accountant
4.	Advocate	Graduate or Post-graduate or its equivalent degree in Law
5.	Graduate or Post-graduate degree in Commerce	Graduate or Post-graduate or its equivalent degree in Commerce
6.	Graduate or Post-graduate degree in Banking	Graduate or Post-graduate or its equivalent degree in Banking including Higher Auditing
7.	Graduate or Post-graduate degree in Business Administration	Graduate or Post-graduate or its equivalent degree in Business Administration

S. No.	Old Criteria	Revised Criteria
8.	Graduate or Post-graduate degree in Business Management	Graduate or Post-graduate or its equivalent degree in Business Management
9.	Degree examination of any recognized Foreign University	Degree examination of any Foreign University recognized by any Indian University
10.	Retired Government Officials	Retired Government Officials
11.	Sales Tax practitioner under existing law for a period of not less than five years	Sales Tax practitioner under existing law for a period of not less than five years
12.	Tax return preparer under existing law for a period of not less than five years	Tax return preparer under existing law for a period of not less than five years
13.	-	Any other examination notified by Government

Sr. No. (4) to (8) of the table should be from an Indian University established by any law for the time being in force.

Notification No. 52/2023-CT dt. 26.10.2023

11. Amendment in Notification No. 01/2023-IT dt. 31.07.2023 - Supplies and class of registered person eligible for refund under IGST Route

As per the amendment in Notification No. 01/2023-IT dt. 31.07.2023,

- all classes of goods or services (except goods like pan-masala and tobacco) have been notified as the class of goods or services which may be exported on payment of integrated tax and on which the supplier of such goods or services may claim the refund of tax so paid, and
- all suppliers to a Developer or a unit in Special Economic Zone undertaking authorised operations have been notified as the class of persons who may make supply of goods or services (except goods like pan-masala and tobacco) to such Developer or a unit in Special Economic Zone for authorised operations on payment of integrated tax and on which the said suppliers may claim the refund of tax so paid.

Further, as per the explanation provided in the Notification:

- the term “authorized operations” shall have the same meaning as defined in clause (c) of Section 2 of the Special Economic Zone Act, 2005 (28 of 2005),
- the term “Developer” shall have the same meaning as defined in clause (g) of Section 2 of the Special Economic Zone Act, 2005 (28 of 2005),
- the term “Special Economic Zone” shall have

the same meaning as defined in clause (za) of section 2 of the Special Economic Zone Act, 2005 (28 of 2005),

- the term “unit” shall have the same meaning as defined in clause (zc) of Section 2 of the Special Economic Zone Act, 2005 (28 of 2005)

Notification No. 05/2023-IT dt. 26.10.2023

12. Goods and Services Tax Appellate Tribunal (Appointment and Conditions of Service of President and Members) Rules, 2023.

The Ministry of Finance through its Department of Revenue has notified the following rules for Appointment and Conditions of Service of President and Members of GSTAT:

- Chapter I–Preliminary
- Chapter II - Appointment of President and Member
- Chapter III–Removal of President or Member
- Chapter IV–Salary and Allowances
- Chapter V–Pension, Provident Fund, Gratuity and Leave
- Chapter VI–Powers of President and Vice-President
- Chapter VII–Miscellaneous

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CIRCULARS

1. Clarification relating to export of services – Section 2(6)(iv) of the IGST Act, 2017

Export of service is defined in section 2(6) of the IGST Act, 2017. As per clause (iv) of the said definition, the payment for the exported service must have been received by the supplier of service in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India. For this purpose, a clarification has been issued regarding admissibility of export remittances received in Special INR Vostro account, as permitted by RBI, for the purpose of consideration of supply of services to qualify as export of services.

In view of the above, it has been clarified that when the Indian exporters, undertaking export of services are paid the export proceeds in INR from the Special Rupee Vostro Accounts of correspondent bank(s) of the partner trading country opened by AD banks, the same shall be considered to be fulfilling the conditions of sub-clause (iv) of clause (6) of section 2 of IGST Act, 2017, subject to the conditions/ restrictions mentioned in Foreign Trade Policy, 2023 & extant RBI Circulars and without prejudice to the permissions / approvals, if any, required.

Circular No. 202/14/2023-GST dt. 27.10.2023

2. Clarification regarding determination of place of supply in various cases

A. Place of supply in case of supply of service of transportation of goods, including through mail and courier

Section 13(9) of the IGST Act, 2017 which provided that the place of supply in case of service of transportation of goods, other than by

way of mail and courier, in cases where location of supplier of services or location of recipient of services is outside India shall be the destination of such goods, has been omitted vide Finance Act, 2023, w.e.f. 01.10.2023. Consequently, after the amendment comes into force, the place of supply in such case shall be determined by the default rule under section 13(2) of the IGST Act. Accordingly, in cases where location of recipient of services is available, the place of supply of such services shall be the location of recipient of services and in cases where location of recipient of services is not available in the ordinary course of business, the place of supply shall be the location of supplier of services.

Further, the place of supply in case of service of transportation of goods by mail or courier will continue to be determined by the default rule under section 13(2) of IGST Act.

B. Place of supply in case of supply of services in respect of advertising sector

- (i) Place of supply where there is supply (sale) of space or supply (sale) of rights to use the space on the hoarding/ structure (immovable property) belonging to vendor to the client/ advertising company for display of their advertisement on the said hoarding/ structure:

The hoarding/structure erected on the land should be considered as immovable structure or fixture as it has been embedded in earth. Further, place of supply of any service provided by way of supply (sale) of space on an immovable property or grant of rights to use an immovable property shall be governed by the provisions of section 12(3)(a) of IGST Act. As per section 12(3)(a), 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.

Hence, place of supply in such case shall be location where such hoarding/ structure is located.

- (ii) Place of supply where the vendor himself owns the structure or takes it on rent or rights to use from another person and is responsible for display of the advertisement of the advertisement company at the said location. During this entire time of display of the advertisement, the vendor is in possession of the hoarding/structure at the said location on which advertisement is displayed and the advertising company is not occupying the space or the structure.

The said service does not amount to sale of

advertising space or supply by way of grant of rights to use immovable property. Accordingly, the place of supply of the same shall not be covered under section 12(3)(a) of IGST Act. The vendor is in fact providing advertisement services by providing visibility to an advertising company's advertisement for a specific period of time on his structure possessed/taken on rent by him at the specified location. Therefore, such services provided by the vendor to advertising company are purely in the nature of advertisement services in respect of which place of supply shall be determined in terms of section 12(2) of IGST Act.

C. Place of supply in case of supply of the "co-location services"

Co-location is a data center facility in which a business/company can rent space for its own servers and other computing hardware along with various other bundled services related to hosting and information technology (IT) infrastructure.

It has been clarified that the Co-location services are in the nature of "Hosting and information technology (IT) infrastructure provisioning services. (S.No. 3 of Explanatory notes of SAC-998315)". Such services do not appear to be limited to the passive activity of making immovable property available to a customer as the arrangement of the supply of co-location services not only involve providing of a physical space for server/network hardware along with air conditioning, security service, fire protection system and power supply but it also involves the supply of various services by the supplier related to hosting and information technology infrastructure services like network connectivity, backup facility, firewall services, and monitoring and surveillance service for ensuring continuous operations of the servers and related hardware, etc. which are essential for the recipient business/company to interact with the system through a web based interface relating to the hosting and operation of the servers.

Hence, in such cases, supply of co-location services cannot be considered as the service of renting immovable property. Therefore, the place of supply of the co-location services shall not be determined by the provisions of section 12(3)(a) of the IGST Act but shall be determined by the default provision under section 12(2) of the IGST Act i.e., location of recipient of co-location service.

However, in cases where the agreement between the supplier and the recipient is restricted to providing physical space on rent along with basic infrastructure, without components of hosting and IT infrastructure provisioning services and the further responsibility of upkeep, running, monitoring and surveillance, etc. of the servers and related hardware is of recipient of services only, then the said supply of services shall be

considered as the supply of the service of renting of immovable property. Accordingly, the place of supply of these services shall be determined by the provisions of section 12(3)(a) of the IGST Act which is the location where the immovable property is located.

Circular No. 203/15/2023-GST dt. 27.10.2023

3. Clarification on issues pertaining to taxability of personal guarantee and corporate guarantee in GST.

(a) Whether the activity of providing personal guarantee by the Director of a company to the bank/ financial institutions for sanctioning of credit facilities to the said company without any consideration will be treated as a supply of service or not and whether the same will attract GST or not?

As per Explanation (a) to section 15, the director and the company are to be treated as related persons. As per section 7(1)(c) read with S. No. 2 of Schedule I of 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. Accordingly, the activity of providing personal guarantee by the Director to the banks/ financial institutions for securing credit facilities for their companies is to be treated as a supply of service, even when made without consideration.

In terms of rule 28 of the CGST Rules, the taxable value of such supply of service shall be the open market value of such supply. However, as per para 2.2.9 of RBI *Circular No. RBI/2021-22/121 dated 9th November, 2021*, no consideration by way of commission, brokerage, fees or any other form, can be paid to the director by the company, directly or indirectly, in lieu of providing personal guarantee to the bank for borrowing credit limits. Hence, when no consideration can be paid for the said transaction by the company to the director in any form, directly or indirectly, as per RBI mandate, there is no question of such supply/ transaction having any open market value. Accordingly, the open market value of the said transaction/ supply may be treated as zero and therefore, the taxable value of such supply may be treated as zero. In such a scenario, no tax is payable on such supply of service by the director to the company.

However, in cases, where the director, who had provided the guarantee, is no longer connected with the management but continuance of his guarantee is considered essential because the new management's guarantee is either not available or is found inadequate, or there may be other exceptional cases where the promoters, existing directors, other managerial personnel, and shareholders of borrowing concerns are paid remuneration/ consideration in any manner, directly or indirectly, the taxable value of such supply of service shall be the remuneration/ consideration

provided to such a person/ guarantor by the company, directly or indirectly.

(b) Whether the activity of providing corporate guarantee by a person on behalf of another related person, or by the holding company for sanction of credit facilities to its subsidiary company, to the bank/ financial institutions, even when made without any consideration will be treated as a taxable supply of service or not, and if taxable, what would be the valuation of such supply of services?

Where the corporate guarantee is provided by a holding company, for its subsidiary company, those two entities also fall under the category of 'related persons'. Hence the activity of providing corporate guarantee by a holding company to the bank/financial institutions for securing credit facilities for its subsidiary company, even when made without any consideration, is also to be treated as a supply of service by holding company to the subsidiary company, being a related person, as per the provisions of Schedule I of CGST Act.

Hence, in such a case, the taxable value will be determined as per rule 28 of CGST Rules. Consequently, sub-rule (2) has been inserted in rule 28 vide *Notification No. 52/2023 dated 26.10.2023*, for determining the taxable value of such supply of services between related persons in respect of providing corporate guarantee, irrespective of whether full ITC is available to the recipient of services or not.

Further, it has been clarified that rule 28(2) shall not apply in respect of the activity of providing personal guarantee by the Director to the banks/ financial institutions for securing credit facilities for their companies and the same shall be valued in the manner provided in S. No. (a) above.

Circular No.204/16/2023-GST dt. 27.10.2023

4. Clarification regarding GST rate on imitation zari thread or yarn based on the recommendation of the GST Council in its 52nd meeting

It has been clarified that imitation zari thread or yarn made from metallised polyester film/ plastic film falling under HS 5605 are covered by Sl. No. 218AA of Schedule I of *Notification No. 1/2017-Central Tax (Rate) dated 28.6.2017* attracting 5% GST. Further, no refund will be permitted on polyester film (metallised)/ plastic film on account of inversion of tax rate. Requisite changes have been made in *Notification No. 5/2017-Central Tax (Rate) vide Notification no. 20/2023-Central Tax (Rate) dt. 19.10.2023*.

Circular No. 205/17/2023-GST dt. 31.10.2023

5. Clarifications regarding the applicability of GST on certain services

A. Whether 'same line of business' in case of passenger transport service and renting of motor vehicles includes leasing of motor vehicles without operators?

Input services in the same line of business as

stated in the *Notification No. 11/2017-Central Tax (Rate)* include transport of passengers (SAC 9964) or renting of motor vehicle with operator (SAC 9966) and not leasing of motor vehicles without operator (SAC 9973) which attracts GST and/or compensation cess at the same rate as supply of motor vehicles by way of sale.

B. Whether GST is applicable on reimbursement of electricity charges received by real estate companies, malls, airport operators etc. from their lessees/occupants?

Whenever electricity is being supplied bundled with renting of immovable property and/or maintenance of premises, as the case may be, it forms a part of composite supply and shall be taxed accordingly. The principal supply is renting of immovable property and/or maintenance of premise, as the case may be, and the supply of electricity is an ancillary supply as the case may be.

Even if electricity is billed separately, the supplies will constitute a composite supply and therefore, the rate of the principal supply shall be applicable.

However, where the electricity is supplied by the Real Estate Owners, Resident Welfare Associations (RWAs), Real Estate Developers etc., as a pure agent, it will not form part of the value of their supply. Further, where they charge for electricity on actual basis that is, they charge the same amount for electricity from their lessees or occupants as charged by the State Electricity Boards or DISCOMs from them, they will be deemed to be acting as pure agent for this supply.

C. Whether job work for processing of “Barley” into “Malted Barley” attracts GST@ 5% as applicable to “job work in relation to food and food products” or 18% as applicable on “job work in relation to manufacture of alcoholic liquor for human consumption”?

Malt being a food product, can be directly consumed as part of food preparations or can be used as an ingredient in food products and also used for manufacture of beer and alcoholic liquor for human consumption. However, irrespective of end-use, conversion of barley into malt amounts to job work in relation to food products.

Hence, it has been clarified that job work services in relation to manufacture of malt are covered by the entry at Sl. No. 26 (i) (f) which covers “job work in relation to all food and food products falling under Chapters 1 to 22 of the customs tariff” irrespective of the end use of that malt and attracts 5% GST.

D. Whether District Mineral Foundations Trusts (DMFTs) set up by the State Governments are Governmental Authorities and thus eligible for the same exemptions from GST as available to any other Governmental Authority?

DMFTs work for the interest and benefit of persons and areas affected by mining-related operations by regulating receipt and expenditure from the respective Mineral Development Funds created in the concerned district. They provide services related to drinking water supply, environment protection, health care facilities, education, welfare of women and children, supply of medical equipment etc.

These activities are similar to activities that are enlisted in Eleventh and Twelfth Schedule of the Constitution. The ultimate users of the various schemes under DMF are individuals, families, women and children, farmers/producer groups, SHGs of the mining-affected areas etc. The services/supplies out of DMF fund are provided free of charge and no consideration is realized from the beneficiaries by DMF against such services.

Accordingly, it is clarified that DMFT set up by the State Governments are Governmental Authorities and thus eligible for the same exemptions from GST as available to any other Governmental Authority.

E. Whether supply of pure services and composite supplies by way of horticulture/horticulture works (where the value of goods constitutes not more than 25% of the total value of supply) made to CPWD are eligible for exemption from GST under Sr. No. 3 and 3A of Notification No. 12/2017-CTR dated 28.06.2017?

Public parks in government residential colonies, government offices and other public areas are developed and maintained by CPWD. Maintenance of community assets, urban forestry, protection of the environment and promotion of ecological aspects are functions entrusted to Panchayats and Municipalities under Article 243G and 243W read with Sr. No. 29 of 11th Schedule and Sr. No. 8 of 12th Schedule of the Constitution.

Sr. No. 3 and 3A of *Notification No. 12/2017-CTR* exempt pure services and composite supply of goods and services in which value of goods does not constitute more than 25%, that are provided to the Central Government, State Government or Union territory or local authority by way of any activity in relation to any function entrusted to a Panchayat under Article 243G of the Constitution or in relation to any function entrusted to a Municipality under Article 243W of the Constitution.

Accordingly, it has been clarified that supply of pure services and composite supplies by way of horticulture/horticulture works (where the value of goods constitutes not more than 25% of the total value of supply) made to CPWD are eligible for exemption from GST under Sr. No. 3 and 3A of *Notification No. 12/2017-CT(R) dated 28.06.2017*.

Circular No.206/18/2023-GST dt.31.10.2023

GST QUIZ

- Mr. A is registered in Delhi and is paying tax in accordance with the provisions of section 10. He has also taken registration in Haryana, but he does not want to pay tax in accordance of provisions of section 10. Whether he can do so?
 - Yes
 - No
 - Either (a) or (b)
 - He can do so if the Proper Officer authorises him.
- The Input Service Distributor can distribute the credit of central tax to the recipient of credits as
 - CGST
 - IGST
 - SGST
 - Either (a) or (b)
- Mr. X has provided taxable services of Rs. 2,25,000 to Department of Central Government and charged tax at the rate of 18%. Mr. X raised an invoice for Rs. 2,65,500/-. Whether department is liable to deduct tax at source?
 - Yes, as the total value of supply exceeds Rs. 2,50,000/-.
 - No, as the total value of supply does not exceed Rs. 5,00,000/-.
 - No, as the total value of supply excluding CGST, SGST/UTGST, IGST and cess, does not exceed Rs. 2,50,000.
 - It is at the discretion of department to deduct the tax at source.
- Mr. X, an architect registered in the State of Haryana has provided the interior decorator services on immovable property located in Singapore to Mr. Z, registered in the State of Uttar Pradesh. What is the place of supply for services provided by Mr. X to Mr. Z?
 - Haryana
 - Singapore
 - Uttar Pradesh
 - Either (a) or (c)
- Any person having multiple places of business within a State or a Union territory, requiring a separate registration for any such place of business under sub-section (2) of section 25 shall be granted separate registration in respect of each such place of business subject to conditions namely-
 - such person has more than one place of business as defined in section 2(85).
 - such person shall not pay tax under section 10 for any of his places of business if he is paying tax under section 9 for any other place of business.
 - all separately registered places of business of such person shall pay tax under the GST Act on supply of goods or services or both made to another registered place of business of such person and issue a tax invoice or a bill of supply, as the case may be, for such supply.
 - All of the above
- The fees under the CGST Act for late filing of Annual Return under section 44 for FY 2022-23 for a registered person having aggregate turnover of Rs. 4 crores is -
 - Rs. 25 per day, subject to maximum of an amount calculated at 0.02 per cent. of turnover in State or Union Territory.
 - Rs. 50 per day, subject to maximum of an amount calculated at 0.02 per cent. of turnover in State or Union Territory.
 - Rs. 100 per day, subject to maximum of an amount calculated at 0.25 per cent. of turnover in State or Union Territory.
 - Rs. 100 per day, subject to maximum of Rs. 10,000.
- Specify the reasons on the basis of which Commissioner or any other person authorised can block the input tax credit in the electronic credit ledger of the registered person.
 - Taxpayer who is (claiming credit) is non-existent.
 - Tax invoice (on the basis of which credit is being claimed) is non-existent.
 - Supplier is non-existent.
 - All of the above
- A notice under section 46 has been issued to Mr. A as he fails to furnish return under section 39. Mr. A is required to furnish all the due returns within from the date of notice.
 - 15 days
 - 30 days
 - 45 days
 - 60 days
- The time of supply in case of supply of specified actionable claims as referred to in section 2(102A) by a registered person shall be -
 - the date of issue of invoice by the supplier or the last date up to which the supplier is required to issue invoice under section 31.
 - the date on which the supplier receives the payment.
 - earlier of (a) or (b)
 - date of delivery of goods.
- What is the time limit for issue of order in case of fraud, wilful misstatement or suppression of facts?
 - 30 months from the due date for furnishing of annual return of the financial year in which such fraud, misstatement or suppression has occurred.
 - 18 months from the due date for furnishing of annual return of the financial year in which such fraud, misstatement or suppression has occurred.
 - 3 years from the due date for furnishing of annual return of the financial year in which such fraud, misstatement or suppression has occurred.
 - 5 years from the due date for furnishing of annual return of the financial year in which such fraud, misstatement or suppression has occurred.

The names of first five members who were the top scorers in the last Quiz are as under:

Name	Membership No.
CA. Chinay Solanki	420955
CA. Rohith Kumar D V	273203
CA. Amit Kumar	572011
CA. Anant Prakash Kumat	113877
CA. Sunny Sharma	574396

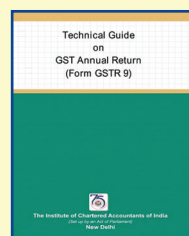
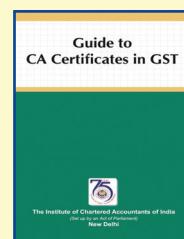
Please provide reply of the above MCQs in the link given below. The names of the first 5 members who will secure highest marks would be published in the next edition.

Link to reply: <https://forms.gle/SpAxNYPLUafSFpu3A>

REVISED PUBLICATIONS

Guide to CA Certificates in GST

The publication "Guide to CA Certificates in GST" will assist members and other stakeholders in understanding the necessary content of certificates and the supporting documents required to diligently fulfil their duties and responsibilities. It covers every aspect of GST law that mandates the issuance of a CA certificate. Further, check points have also been included for each Certificate which may be referred by the members before certifying the credential provided by the taxpayers.

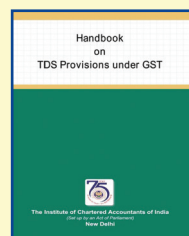
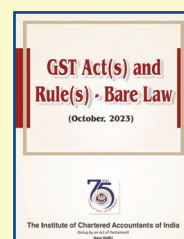


Technical Guide on GST Annual Return (Form GSTR 9)

The publication "Technical Guide on GST Annual Return" containing clause-by-clause analysis of Annual Return Form under GST law including notifications, circulars or orders issued by the Government up to 30th September, 2023.

GST Act(s) and Rule(s) - Bare Law

The publication "GST Act(s) and Rule(s) – Bare Law" is a compilation of seven Act(s) and two sets of Rule(s) pertaining to GST, namely the Constitution (101st Amendment) Act, the Central Goods & Services Tax Act, 2017, the Integrated Goods & Services Tax Act, 2017, the Union Territory Goods & Services Tax Act, 2017, the GST (Compensation to States) Act, 2017, the Central Goods & Services Tax (Amendment) Act, 2023, the Integrated Goods & Services Tax (Amendment) Act, 2023, the Central Goods & Services Tax Rules, 2017 and the Integrated Goods & Services Tax Rules, 2017. The publication is amended for the changes taken place up to 30th September, 2023.



Handbook on TDS Provision under GST

The publication "Handbook on TDS Provision under GST" covers all TDS provisions under GST law at one place. The publication is amended for the changes taken place up to 30th September, 2023.



GST & INDIRECT TAXES COMMITTEE OF ICAI

A ONE STOP DESTINATION FOR ALL INDIRECT TAXES

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- ❖ E-learning on GST
- ❖ Upcoming events
- ❖ Details of Certificate Courses, Programme, Seminars etc. on GST/Indirect Taxes
- ❖ Links of related important website

Your suggestions
on the website
are welcome
at gst@icai.in

Secretary

GST & Indirect Taxes Committee

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