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THE CHAMBER OF TAX CONSULTANTS

PANEL DISCUSSION ON ISSUES AND CASE STUDIES

GST STUDY & REFRESHER COURSE – 04/11/2017

Important definitions and levy:

1. M/s. A Ltd. is a chemical manufacturer which generates a chemical waste (liquid chlorine). This waste requires treatment before disposing off. The cost of such disposal treatment is Rs.10,000/- per metric tonne.

M/s. B Ltd. (for whom such liquid chlorine is Raw material) enters into a contract with A Ltd. whereby it agrees to purchase from A Ltd. the liquid chlorine @ Rs. 10 per metric tonne *plus* GST. B Ltd. claims input tax credit of tax paid on liquid chlorine.

Since A Ltd. is saving its treatment cost of Rs.10,000/- per metric tonne, it pays to M/s. B Ltd. an incentive of Rs.5,000/- per metric tonne for each metric tonne of liquid Chlorine purchased by it from A Ltd.

Please advise what would be GST implications of such transactions?

2. ABC Manufacturers Ltd is public limited company having manufacturing unit at remote area. It is obliged under Factories Act to provide canteen facilities to its workers. It runs own canteen which provides free food to:
 - Own workers and employees
 - Workers of contractors
 - Visitors (vendors, customers, consultants, government officials, etc) to the factory

Relevant provisions:

- Employees are covered under definition of 'related persons' under explanation to section 15 of CGST Act.
- Clause 2 of Schedule I deems the supply of goods or services between related persons when made in course or furtherance of business as 'supply' even when made without consideration.
- 'Gifts' not exceeding Rs. 50,000 in a financial year by an employer to employee is neither treated as supply of goods nor as supply of service.

Queries:

- Whether free food provided to all above will be liable to GST?
 - Whether food provided to employee under contractual or legal obligation can be regarded as 'gift' and can be excluded from levy?
 - Whether manufacturing unit will be entitled to ITC of expenditure incurred on running of the canteen?
 - Will your answer differ in following cases:
 - Nominal amount charged to workers / employees for food provided
 - Free food is provided even though not mandated under Factories Act or employment contract.
3. A religious and charitable trust is registered u/s 12AA of Income Tax Act and owns a temple. It also runs dharamshala (accommodation), bhojanshala (mess) and Paathshala (religious teaching) in temple precincts.

The definition of 'business' u/s 2(17) of CGST Act is very wide and hence trustees intend to examine tax implications of following under GST regime:

- Donations:
 - Voluntary donations in cash – it could be corpus donation or normal donation
 - Donations in kind such as Jewellery
 - Donations entitling donor to perform religious rituals

- Donations against naming of hall or furniture etc. in the name of donor or his family member.
 - Regular sale of jewelry received as donations
 - Sale of religious texts, Idols of God / Goddess, Pooja Samagri and prasadam
 - Sale of scrap such as oil tins, jute bags, construction scrap, etc.
 - Charges received for accommodation at dharamshala
 - Charges received for food provided at bhojanshala
 - Fees received from students of Paathshala
4. 'Job Work' is defined u/s 2(68) of CGST Act to mean "any treatment or process undertaken by a person on goods belonging to another registered person" & the expression Job Worker shall be construed accordingly.

U/s 143 of CGST Act, goods can be sent to job-worker without payment of the tax.

Schedule I (Entry 2) provides that any transaction between related persons and / or distinct persons without consideration shall be deemed to be 'supply'.

In light of above provisions, whether following can be treated as 'job-work' and benefit of section 143 can be availed:

- Where job-worker uses its own material in the process, especially when volume and value of such material is reasonably high. Kindly consider decision of Honorable Supreme Court in case of Prestige Engineering vs CCE [(1994) 73 ELT 497].
 - Entity sends its goods to its other unit in different state (having separate registration) for job-work. Whether in such case view can be taken that section 143 prevails over section 7 r.w. section 9 and Schedule I of CGST Act?
5. Mr. Motilal owns a Jewellery shop and wants to understand GST implications of following transactions:

- Buying of old Jewellery from unregistered customer during the period July 2017 to 12/10/2017 when section 9(4) was applicable.

Motilal is aware of press release in this regard stating that such transaction will not be regarded as supply. However, he is concerned about very wide definition of 'business' which covers even one of transaction. Further, he is not sure about legal validity of press note.

- Exchange of old Jewellery against new Jewellery and settlement of difference in cash.
- Alteration of Jewellery wherein he charges for gold used in alteration and also for making charges.

6. Hardware solutions Ltd. a software developing company is engaged in the business of developing antivirus software. These antivirus software is sold by Hardware Solutions through its website. A customer who wants to buy this software visits the company's website, selects the software it requires and makes an electronic payment pursuant to which the software is downloaded into the customer's computer.

Hardware solutions has come across the following sectoral clarification (Flier) issued by the Government on IT/ ITES sector.

“Question 1: Whether software is regarded as goods or services in GST?”

Answer:

In terms of Schedule II of the CGST Act 2017, development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software and temporary transfer or permitting the use or enjoyment of any intellectual property right are treated as services [work for hire].

But, if a pre-developed or pre-designed software is supplied in any medium/storage (commonly bought off-the-shelf) **or made**

available through the use of encryption keys, the same is treated as a supply of goods classifiable under heading 8523”.

Based on the above clarification given in the flier Hardware Solutions is of the view that under GST Law it can now be concluded that downloads of software would be considered as supply of goods.

It seeks your advise on its above understanding. The issue whether it is goods or service is relevant to determine the time of supply, place of supply – domestic/ cross border (import, exports) & Invoicing in respect of such downloads.

Works contracts, Composite supply and mixed supply

7. Whether following contracts in respect of new building are ‘works contract’ in terms of section 2(119) of CGST Act?

Plumbing contract	Electrical fitting	Supply and fixing of doors
Supply and installation of Lift / elevator	Supply and Installation of fire- fighting equipments	Supply and installation of gas pipelines

In most of above cases, material is taxed at 28%. If one takes the view that contract is works contract in such case even material is being taxed at 18%. In order to avoid any probable dispute, whether one split / bifurcate above contracts into separate contracts for supply of goods and supply of services?

8. Exotic Foods LLP is a multi-cuisine restaurant having the air-conditioning facility as well as license to serve liquor. A typical restaurant bill of Exotic Foods has the following charges:

- (i) Food
- (ii) Non-alcoholic beverages
- (iii) Alcoholic beverages
- (iv) Service charges on all of the above

In terms of section 9(1), alcoholic liquor for human consumption is not subject to GST levy. Exotic Foods is confused whether to include the value of alcoholic beverages in the value of the food and beverage bill and charge GST thereon. Examine the case in 3 scenarios:

- Singular invoice is issued by Exotic Foods but giving separate values for all the elements
- Separate invoice is issued for Food + Non-alcoholic beverages + service charges and a separate invoice for Alcoholic beverage + service charges thereon + VAT
- Rs. 1499/- is charged as a package for midnight buffet which includes food as well as alcoholic beverages.

Reverse charge mechanism:

9. In almost all companies there would be a substantial outstation travel. Thus when a company's employee based in Mumbai goes to Delhi for office work, the supply for hotel accommodation would be an intra-state supply [Location of Supplier and Place of Supply of Services fall in Delhi]. Thus, in such cases CGST and SGST of Delhi will be applicable. In such cases the hotel would bill the company with Delhi CGST & Delhi SGST.
- (i) However, if the hotel / inn is unregistered then is there a requirement for a company in Mumbai to pay under reverse charge? Similar would be the scenario in cases where services are availed from small restaurants in Delhi by a Mumbai based Employee.
- (ii) Kindly give your views as to whether reverse charge mechanism will be applicable in the above scenarios.

Valuation and rate:

10. Fly-wings Hotels Ltd owns a hotel in Goa. It has restaurants, spa, gym, conference and banqueting facilities etc.
- The GST rate is linked with 'declared tariff rate'.

Explanation in Sr. no. 7(vi) and 7(viii) of Notification 11/2017-Central tax (rate) dated 20/06/2017 defines 'declared tariff' to include charges for all amenities provided in the unit of accommodation (given on rent for stay) like furniture, air conditioner, refrigerators or any other amenities, but without excluding any discount offered on the published charges for such unit.

Fly-wing quotes different rates to customers as under:

- Normal accommodation charges without any meal
- CP inclusive of breakfast
- MAP – inclusive of breakfast and one meal and
- AP – inclusive of all 3 meals i.e. breakfast, lunch and dinner.

Fly-wing has following queries:

- Whether meal component can be excluded from total rate to determine the declared tariff?
- Whether it can have different declared tariffs for different seasons and also different class of customers?

11. Smart Financial Advisors Private Limited ('Smart') is a corporate agent of Insurance companies. It procures insurance business for insurance companies. Services supplied by an insurance agent to the Insurance Company is covered under reverse charge and hence insurance company discharges GST on commission due to Smart.

Smart has its Head office located at Mumbai and it has huge management team at Mumbai monitoring all India operations. Mumbai office does the commission billing for all India insurance business.

Smart has branch offices in Delhi, Bangalore and Ahmadabad. Smart is registered under GST laws in all the 4 states (as they have other taxable revenue as well). The branches does the leg work in respective branch for procuring insurance business.

The Company seeks your advice on the following:

- Whether Mumbai HO is required to discharge GST on support services provided by it to various branches? If yes, how to value such services and whether the salary cost is to be included while charging to the branch?
- Whether branch is providing any services to HO and whether branch is required to discharge GST liability on such services?

HO is having only insurance commission income which is covered under RCM. These services would be an exempt service in the hands of Mumbai HO and hence it is not entitled to input tax credit of tax, if any, charged by the branches.

Smart, therefore, intends to put very nominal value for services provided by branch to HO and charge it to HO. Is this legally tenable?

Exemptions:

12. Cry Corporation is providing services of supply of manpower for data processing to Directorate of Marketing & Inspection, Ministry of Agriculture and Farmers Welfare, Department of Agriculture Co-operation & Farmers Welfare, Government of India. Under Entry No.3 of Notification No.12/2017-Central Tax (Rate), exemption is granted to Pure Services rendered to Government / Local Authority / Governmental Authority by way of any activity in relation to any function entrusted to Panchayats / Municipality. Is Cry Corporation eligible for exemption for Services of manpower supply for Data processing rendered to Department of Marketing & Inspection, Ministry of Agriculture & Farmers Welfare. The term used in exemption notification is “in relation to”. Can we say that manpower supply services are in relation to functions entrusted to government vide constitution of India. How far can we stretch the term “in relation to” for claiming exemption? Relevant entry of the exemption is given below :

Sr. no.	Chapter	Description of services	Rate (percent)	Condition
3	Chapter 99	Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central government, State government or Union territory or local authority or a Governmental 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.	Nil	Nil

Place of Supply:

13. Sunil Warehousing is owner of storage tanks at Mumbai. These storage tanks are erected specifically for storing liquids, chemicals etc. for various clients. It provides services of warehousing/storage of chemicals to their client Kismet Enterprise located in Delhi. What is place of supply of warehousing services in such case? [Section 12(3)(a) or Section 12(2) of IGST Act, 2017 is relevant]
14. Mr. A, a proprietor based in Baroda comes to Masjid Bunder in Mumbai and purchases hardware worth Rs.1,00,000/- from M/s. M & Co., a hardware shop in Masjid Bunder. Mr.A has furnished his Baroda GST number to M/s. M & Co. and has requested them to mention it in the invoice and also charge IT on the supply on the grounds that since the destination of goods is Baroda it would be considered as inter-state supply as per Section 10(1)(a). M/s. M & Co. is of the view that since delivery of goods to M/s. M & Co. is happening at its shop in Masjid

Bunder the place of supply is in Maharashtra and it is required to charge CT + ST on this supply. Both the parties are unable to reach a conclusion as to the nature of tax to be levied on such supply. They seek your advice for the same. Please advice.

Input Tax credit:

15. Arch Craft Private Limited of Mumbai is in business of furnishing offices. They are having GST registration in Maharashtra. Currently their project/site is in Hyderabad. Usually such projects run for 3-4 months.

Arch Craft procure goods from Hyderabad locally on bill to ship Model basis on which IGST is charged by vendors. They avail services of various painting, civil, electrical contractors locally on pure labour basis for their fit out contract in Hyderabad. The local contractors levy CGST & SGST to Arch Craft Private Limited.

Whether Arch Craft is entitled to take input tax credit of GST charged by such contractor?

Whether Arch Craft is required to obtain registration in the State of Andhra Pradesh since their project site is in that State?

Cross border transactions:

16. A transaction without consideration between non-related parties is not a 'supply' u/s 7 of CGST Act. The levy u/s 9 of CGST Act and 5 of IGST Act does not trigger on such transaction.

Proviso to section 5 of IGST Act provides that IGST on goods imported into India shall be levied and collected in accordance with provisions of section 3 of Customs Tariff Act, 1975 on the value as determined under the said Act at the point when duties of Customs are levied on said goods u/s 12 of the Customs Act, 1962.

On import of following goods, Custom duty is payable. Whether Customs can levy and collect IGST on following goods imported from non-related parties?

- Samples sent by foreign company to its Indian indenting agent for distributing it in the market.
- A fan located outside India gifting a costly car to a celebrity in India

17. Maruti Traders is a merchant exporter of Chemicals. They purchase chemicals from vendors located in CHINA and directly sell it to the customers located in USA, without bringing the said goods in India. In such transactions they instruct shipping lines to load chemicals in CHINA & directly deliver it to customer located in USA. The freight to shipping lines is paid by Maruti Traders in foreign currency.
- (i) Whether Maruti Traders is liable to pay GST under reverse charge mechanism on purchase of chemicals from CHINA, even when goods are not brought in Indian Territory [assuming that section 9(4) is applicable]?
 - (ii) Whether the sale of such chemicals by Maruti Traders to customers located in USA will be treated as export of goods?
18. Mink Film is registered under GST, producing Advertisements, which are aired on Television. Mink Film is awarded contract by Chilly International Inc. a company located in USA, for shooting and making the advertisement in India. The said USA Co. is into the business of running online portal for job placement world over. Chilly International Inc. paid consideration to Mink Film in dollars. The said advertisement will be aired in USA. Whether the service rendered by Mink Film will be treated as export of services under GST? Is GST payable on such service charges?
19. Bombay Port Trust purchased crane from Shanghai Port Machinery Ltd-China. Time was the essence of the contract. The Machinery was received after the specified scheduled date and hence Liquidated Damages are to be deducted from the foreign payments to be made to Shanghai Port Machinery Ltd.
- (i) Whether deduction of liquidated Damages is a Supply under GST?
 - (ii) If Yes, can it be treated as an export by treating deduction of liquidated damage by BPT as constructive receipt of convertible foreign exchange?

Real estate specific

20. Raheja Realty Ltd “a developer” has entered into a development agreement with Amar Dham CHS Ltd. for redevelopment of their society building on 15th July, 2017 by way of transfer of ‘development rights’ to developer on the following terms :

- The building is to be constructed within time of 4 years from date of sanctions of plan by BMC but it should not be completed not later than 31st December, 2021. The responsibility is that of developer to prepare and get the plan sanctioned from BMC
- The developer to construct and allot new flat to all existing members with 20% additional area.
- Developer to sell additional area if opted by member at discounted price @ Rs. 10,000 per sq. feet [Market rate – Rs.25000 per sq. ft.]
- Developer to pay Rs. 50,000/- to each member as monthly compensation for alternate accommodation till the date of possession.
- Developer to pay Corpus fund of Rs.1 Crore to society after formation.

Raheja Realty Ltd has received the IOD/CC for the project in September, 2017 and Building is likely to be completed in December,2021. The developer has allotted respective flats to each member in October, 2017 & issued allotment letters to each member.

- Whether sale of its ‘developmental rights’ to Raheja Realty Ltd is subjected to GST in the hands of Amar Dham CHS Ltd?
- If yes, what will be the time of supply, value on which GST would be payable and rate of GST?
- Whether Raheja Realty Ltd would get the ITC if GST is charged by Amar Dham Society ?
- Whether Raheja Realty Ltd has to pay GST under RCM on such transfer of development rights if Amar Dham Society has not levied GST?

- Whether Raheja Realty Ltd has to levy GST on transfer of flats to existing members?
 - If yes, what will be the time of supply, value on which GST would be payable and rate of GST?
21. Sadguru developers is developing land at Matunga. They purchased TDR from Samarth builders for Rs. 5 crore on 1st August, 2017, which they will be using for construction at Matunga Project.
- Whether Samarth builders is liable for payment of GST on sale of TDR?
- If yes, kindly advise on following:
- Applicable rate of GST
 - Eligibility of input tax credit for Sadguru developers.
22. Vinayak builders had sold many flats during pre GST regime say during the period January, 2017 to June 2017 and collected/paid VAT & Service Tax at appropriate rate. Few of the buyers have cancelled the flats in October, 2017 & requested builders to return back their booking amount along with VAT/service tax paid. Vinayak Builders have refunded the amount along with VAT/service tax to such buyers in October, 2017 after deducting cancellation charges. Vinayak builder want to know as to how they can claim reversal of VAT & service tax paid on such cancelled flats?
- Vinayak Builder also want to know whether the flat cancellation charges recovered form buyer is liable for GST? Whether 33% abatement can be claimed for payment of GST on such charges for cancellation?

Transitional provisions:

23. Vishal Developers have completed 80% of their project as at 30th June, 2017. There is substantial amount of cements, paints, tiles, marbles, pipe fittings etc. which remained in stock as on 30.06.2017. Vishal Developers are in possession of excise paid invoice or bill of entries for such stocks purchases. Vishal Developers will be

providing such materials to its building contractors as free supply to execute their job. Vishal Developers had following apprehensions while taking credit of materials in stock as on 30.06.2017.

- A. Whether transitional credit of duty paid on purchase of said goods remaining in stock shall be allowed, especially when Vishal Developers is claiming 1/3rd deduction for land while levying GST on buyers of flat?
- B. Since Vishal Developers is making free supply of goods remaining in stock to contractors, whether transitional credit would be available?
- C. Whether Vishal Developers will be eligible for the credit of excise duty/VAT paid on various inputs such as cement, marble, tiles etc. embedded in WIP under transition?
- D. Can Vishal Developers take credit of material portion embedded in works contract services (forming part of WIP) availed by it during last 12 months?
If one takes the view that it is permissible to take credit, it is necessary to fill the quantitative details and HSN code of material forming part of stock in GST Trans-1 form. How to fulfill such condition?

24. A proprietary CA firm was discharging service tax liability on cash basis till 30th June 2017. It has debtors outstanding as on 30th June, 2017 which will be realized during GST regime.

Queries:

- Whether CA Firm is required to discharge GST or service tax?
- If service tax is to be paid, whether he is required to file service tax returns? If yes, how to file such returns in absence of ACES website providing return filing facility?