



THE CHAMBER OF TAX CONSULTANTS

3, Rewa Chambers, Ground Floor, 31, New Marine Lines, Mumbai - 400 020

●Tel.: 2200 1787 / 2209 0423 / 2200 2455 ●E-mail: office@ctconline.org

●Website: www.ctconline.org

INDIRECT TAX STUDY CIRCLE MEETING ON 3RD OCTOBER, 2019

“Issues in Input tax Credit under GST Law.”

Chairman : Mr. Bharat Raichdani, Advocate

Group Leader : CA Parth Shah

I. Scope of – “In the course or furtherance of business”

CTC Limited is a company incorporated under the provisions of Companies Act, 2013. The company is engaged in the pharmaceutical sector as manufacturer of medicines.

During FY 2017-18, the company had reported turnover of Rs. 3500 crores and profit after tax of Rs. 500 crores. As mandated under the Companies Act, 2013 and the rules framed thereunder, CTC Limited has incurred CSR expenditure as under:

- a. CTC Limited has made a donation of Rs. 1 crores to a school near its' employee housing colony wherein children of their employees are also enrolled.
- b. CTC Limited has organized a health check-up camp for citizens of a particular area wherein they have roped in the services of an event organizer who has agreed to charge Rs. 500,000 plus GST for the event. In addition, CTC Limited has also used medicines from its' stock for consumption / distribution during the event.
- c. CTC Limited also procures various medical equipment for the primary health care centre located near its' premises, the facility of which is enjoyed by their employees as well as non-employees.

Determine the ITC eligibility on the part of CTC Limited w.r.t the above in the context of Section 16 (1), 17 (1) and 17 (5) (h).

Would the answer change if incurring of expenditure was not mandatory under the Companies Act, 2013?

II. Cross-charge – Valuation & ITC aspect

Edutech Services Limited is a chain of educational institutions having presence in multiple locations across the country. The company has various faculties who are attached with a particular branch for the

purpose of their payroll management. However, such employees regularly travel to different location to deliver educational services to the students of different branches. Majority of the courses conducted

by Edutech Services Limited are exempted from GST. However, in view of the advance ruling in the case of Columbia Asia Pacific, the management is of the view that faculty of one branch delivering lectures at other branches amount to a service provided by one branch to another and therefore, there is a need to do internal cross charge between branches.

They are stuck with the method of valuation of cross-charge and seek your advice in this regard keeping in mind the fact that the taxes that would be paid would not be eligible for input tax credit in the receiving branch.

III. Blocked credits – geographical mis-match

ABC Limited is a contractor who has been provided with a contract to undertake elevator installation services in the state of Gujarat. ABC Limited do not have a presence in the state of Gujarat and therefore, they have appointed a sub-contractor to carry out the work on behalf of ABC Limited.

The sub-contractor has intimated ABC Limited that he would be charging CGST + SGST since the services are relating to an immovable property.

ABC Limited seeks to understand the eligibility of input tax credit in these case.

IV. Conditions to claim credit – receipt of goods or service

ABC Limited is a company engaged in supply of diesel generator sets and its' installation and maintenance services. The company has a pan INDIA presence. Its' CFO had recently attended a tax seminar wherein he had heard that the credit can be claimed only upon receipt of goods or services. This created in following issues in his mind:

1. Air tickets booked by the company – In this case, the company claims the credit immediately, though the travel take place in a future date.
2. Import of Goods – In case of import of goods, the company claims credit once the duty payment is done and goods are cleared for home consumption, though the same are not received at their warehouse.
3. In addition, ABC Limited also receives certain goods free of cost from foreign spare manufacturer which are cleared in ABC's name. ABC claims the credit of the same currently.

In addition, on review of the GSTR 2A of the company, the CFO observed that there was substantial mis-match vis-à-vis transactions appearing in GSTR 2A vs. transactions accounted in books. The CFO seeks your guidance w.r.t

- a. Credits accounted in books but not appearing in 2A
- b. Credits accounted in books and appearing in 2A – but marked as not filed
- c. Credits not accounted in books, but appearing in 2A – identified as pertaining to ABC
- d. Credits not accounted in books, but appearing in 2A – identified as not pertaining to ABC

The CFO seeks your guidance w.r.t the way ahead for the above scenarios.

V. Conditions to claim credit – payment to vendor

Construction Limited is a works contractor engaged in undertaking construction activities for their various clients. Most of the contracts have a clause for retention of consideration to the extent of 2 – 5% of the bill amount for a period span of 6 months – 3 years.

Construction Limited also sub-contracts substantial work to sub-contractors wherein the same principle of retention is followed.

Your opinion is sought w.r.t whether Construction Limited is required to reverse the credit to the extent retention has been done on payments to be made to sub-contractors?

Construction Limited also incurs certain expenditure in foreign currency on which they discharge tax under reverse charge. However, there are instances wherein the payment is not done to vendors within the prescribed time limit. Will the reversal be triggered under this clause?

VI. Apportionment of credit – partly for exempt and partly for taxable purposes

Events Limited is a company engaged in the business of organizing events through which they earn the following income:

- 1. Sponsorship income
- 2. Marketing support services
- 3. Stall hire charges
- 4. Delegate fees

The company incurs various expenditure on earning the above income on which GST is charged by various vendors as tabulated

below. Your opinion is sought w.r.t the applicability of provisions of Section 17 (2) r.w. Rule 42/ 43 of the CGST Rules, 2017.

VII. Blocked credits – Scope of section 17 (5) (b)

LP LLP is a line producer engaged in the business of providing line production services wherein they carry out the entire production activity for the TV channels. In the course of providing the said services, they have to incur following expenses on which the eligibility to claim credit is questioned and your opinion is sought on the same

1. Make up staff for the crew

2. Catering services for the crew
3. Vanity van hire charges
4. Personal trainer for main cast during the period of outdoor shooting

VIII. ITC and immovable property

Lotus Properties LLP is a company engaged in the business of investing in commercial properties and leasing it to various clients on which they charge GST. Lotus has recently entered in to a contract to purchase a re-sale property where the seller has already entered into agreement for leasing for a period of 3 years, which would be assumed by Lotus. For carrying out the said deal, Lotus has received the services of a lawyer for title check of the property and commission agent for facilitating the transaction. Both the vendors have charged GST on the services provided by them to Lotus and Lotus has made the payment of the invoice value to the vendors.

During the time of audit, the auditors have raised the following queries and your advise is now sought on the same:

1. Legal services provided by advocates is covered under RCM. Therefore tax should have been discharged on the same under RCM and credit of tax charged by the advocate would not be eligible to Lotus.
2. Even otherwise, the services are covered under section 17 (5) (d) and therefore, the same have to be treated as blocked credits.

In addition, Lotus is also in the process of self – constructing a new property which it will be giving on rent. Lotus LLP is aware of provisions of Section 17 (5) (c) which provides that inward supplies when used for construction of immovable property shall not be allowed. Your view is sought on whether there is a work around which allows Lotus to claim the credit of various inward supplies received by them while constructing the immovable property.

IX. Personal Consumption – Scope vis-à-vis ITC

Outsourcers Limited is a company engaged in the BPO sector employing 7500 employees. The company incurs various expenditure for their employees on which GST is charged by the vendors. Your opinion is sought w.r.t the eligibility to claim credit on the same:

1. The company has entered in to an agreement with Coffee Day wherein CCD supplies coffee vending machine, milk powder, various types of coffee beans/ tea bags, cups, sugar sachets, etc., on which applicable GST is charged.
2. The company maintains a gymnasium within its' premises which the employees can use for their wellness. The company has entered into an AMC arrangement with a service provider for maintenance of the equipment.
3. The company had organized a musical night for their staff at its' different location. The entire event was outsourced to an event
4. management company which was responsible for following activities:
 - a. Arranging for logistics of the music show (stage, decoration, etc)
 - b. Arranging for artists

- c. F & B (including AB) for the staff and artists

The event management company raised a lumpsum invoice to the company along with GST @ 18%

5. The company also has a primary health care centre at its' locations from where more than 750 employees operate. The company has outsourced the operation of the same to a health care company. However, the medicines are purchased by the company and given to the employees from this location without any charge.
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X. ITC – Hospitality Sector

ABC Limited is a hospitality company engaged in the business of operating hotels (having tariff above 7,500 as well as below) as well as independent restaurants spread across the city. ABC was discharging tax at 18% on restaurant/ banquet services and 18% / 28% upon room services depending on the star rating of the hotels.

W.e.f 15.11.2017, the taxation structure was amended and independent restaurants / restaurants in hotels having tariff below 7500 were brought under 5% tax rate with condition that no ITC on inputs, input services or capital goods would be eligible.

The CFO is confused with the application of provisions relating to Section 17 (2) & 17 (3), 18 (4) and Rule 42/ 43 and seeks your opinion w.r.t the following:

1. Section 18 (4) requires that where goods or services supplied by a taxable person become wholly exempt, he shall pay an amount

equivalent to credit of input tax respect of inputs / capital goods held in different forms on the day immediately preceding the date of exercising of such option / date of such exemption

2. In continuation, proviso to section 18 (4) also provides that after the above, the balance in credit ledger shall lapse. ABC Limited has a balance of Rs. 7.50 crores in their credit ledger. This primarily comprises of transition credit of CENVAT balance, which was on account of a subsidiary with effective date 01.06.2017 which was transitioned to ABC credit ledger u/s 140 (1).

3. Further how would the calculation of Rule 42 / 43 be done, annually or for two different periods, one being for period up to 14.11.2017 and second for period from 15.11.2017 to 31.03.2018. Is the second option permissible under the law?
4. The CFO is also of the view that income from sale of alcoholic beverages should not be considered for the purpose of reversal u/r 42 and 43.

XI. Exempt Supply – Valuation thereof

Reliable Industries Limited is engaged in the business of trading, manufacturing and service sector.

The company has substantial cash surplus in its' hands which enables it to carry out treasury activities in the form in investing in bonds, shares and mutual funds.

The company regularly undertakes switch-in and switch-out transactions in the MFs held by it. As per the IT Act, each switch-in and switch-out is treated as sales and resultant gains/ loss are liable to capital gains. In addition, the company also enters into F&O transactions.

The Tax Manager feels that the value of exempt supply shall be as under:

1. Sale of MF – each switch-out to be treated as different sale
2. F&O Contracts – the gross value of the contract
3. Bond Redemption – principal value of the bond

Your advise is sought w.r.t the above.
