



THE CHAMBER OF TAX CONSULTANTS

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INDIRECT TAX STUDY CIRCLE MEETING ON 7th June, 2019

**Jai hind College, A. V. Room, 4th Floor, A Road,
Churchgate, Mumbai – 400 020**

Important decisions and advance rulings relevant for GST audit

**Chairman – CA S S Gupta
Group leader – CA Jinesh Shah**

Case studies:

1. Widespread Ltd is a manufacturing company having Head Office ('HO') in Mumbai, Maharashtra and factories in Gujarat, Uttar Pradesh and Rajasthan. Company has obtained GST registration in each of the above states including its Mumbai HO.

All units are engaged in manufacturing of taxable as well as exempted products. HO is having rental income for commercial premises. Head office provides marketing, administrative, accounting, IT and other support services to all units located in different states. Head office has salary as its major cost.

Gujarat factory is obliged under Factories Act to provide canteen facilities to its workers and staff. As part of HR policy, company recovers a nominal amount (less than actual cost) from its workers and staff towards canteen / food charges.

You are appointed as GST auditors for all units (including Mumbai HO) for the FY 17-18. While reviewing the returns, you find the following:

- HO has not crossed charge to units for FY 17-18.

[Company's contention: Since salary is the major cost, it has not crossed charge to other units.]

- Gujarat unit has not discharged GST liability on nominal amount recovered from its workers / staff.

[Company's contention: It is staff welfare expense mandated under law and cannot be considered as supply to workers / staff]

What position you will take as auditor while certifying GST audit report?

References:

- Section 7 of the Act - Definition of Supply
 - Schedule I of the Act
 - AAR - M/s. Columbia Asia Hospitals
 - AAAR - M/s. Columbia Asia Hospitals
 - AAR – Caltech Polymers
2. M/s. BLUE is a company incorporated in Japan. The company is engaged in manufacturing and supplying of plant machinery. In order to expand its business operation and capture market in India, M/s. BLUE has set up wholly owned subsidiary company in the name and style M/s. RED India Private Limited.
- RED has entered into an agreement with its parent company BLUE, Japan for providing various support services listed down as under:
- Collecting and analysing information i.e. market analysis.
 - Identifying potential customer in India and supporting sales activity of parent company.
 - Providing information on products to existing and perspective customers and liaising with them.
 - Creating and arranging documentation (e.g. purchase orders, sales contracts, pro forma invoices, etc.) to be exchanged between clients and their suppliers/customers
 - Providing marketing and accounting support.

For the above activities performed by RED, BLUE has agreed to remunerate RED on monthly basis at cost plus 20% markup. RED raises invoice every month on

BLUE for providing support services and BLUE makes payment in convertible foreign exchange.

RED has treated above referred services as export of services and has claimed refund of accumulated ITC.

GST auditor is of the view that RED provides intermediary service and is liable to tax under GST. He intends to report as under:

- Erroneous claim of refund of ITC; and
- Tax payable at rate of 18% on turnover wherein tax payable will be worked out after allowing ITC.

Is this view legally tenable?

References:

- Section 2(13) of IGST Act - Definition of intermediary
 - Section 13(2) and 13(8) - Place of supply
 - AAR (service tax regime) – M/s. GoDaddy
 - AAR – VServ Global
 - AAAR – VServ Global
 - AAR – Asahi Kasei India Pvt. Ltd.
 - AAR – NES Global Engineering
3. Mr. Lucky is in the business of procuring orders for its foreign principal. The Indian Buyer places the order on Foreign Principal and goods are shipped directly to the Buyer. The payment is directly made by the Buyer to Foreign Principal. Mr. Lucky receives commission in Convertible Foreign Exchange ('CFE') from its foreign principal.

For the FY 17-18, Mr. Lucky has received commission of Rs. 2.50 crores and has discharged GST liability thereon. He has paid CGST and SGST on commission income.

Mr. Lucky has given you the mandate as GST auditor. What position you will take as to correct tax payable, whether it is CGST + SGST or IGST?

If your views differ from Mr. Lucky, how would you reflect the same in form GSTR 9C?

References:

- Section 7 of IGST Act – Inter-state supply
 - Section 8 of IGST Act – Intra-state supply
 - Section 13(8) of IGST Act - Place of supply
 - AAR – Micro Systems
 - Kerala HC decision – Saji S. Vs Commissioner, SGST
4. **‘Radhe Shyam’** is a **religious** and charitable trust registered u/s 12AA of Income Tax Act. It has huge temple premises along with bhojanshala and dharamshala. It was registered under service tax for discharging service tax liability on renting of commercial premises and also dharamshala. W.e.f. 01.07.2017, trust registration under service tax got migrated to GST.
- Trust receives following types donations:
 - i. Donations in cash
 - ii. Voluntary donations in kind (in form of jewellery)
 - iii. Conditional donations where name of the donor is displayed in temple premises.
 - Trust has let out shops in the temple premises.
 - Trust conducts religious courses for young students. It charges Rs. 1,500 per month per student.

- Tea, coffee, meals, etc. are served at subsidised rate to the visitors / pilgrims in bhojanshala.
- Religious texts, Idols of God / Goddess, Pooja Samagri, Milk and Ghee made at Gaushala, Prasadam, etc. are sold by trust.
- Trust has built an air-conditioned dharamshala for purpose of letting it out to pilgrims / visitors. It charges Rs. 1,050 per day.

Trust has taken the position that its activities are not carried out in course or furtherance of business and hence not liable to GST.

Trust seeks your advice whether it is liable to GST and also to get its account audited u/s 35(5) of CGST Act read with Rule 80(3)?

References:

- Section 7 of the Act - Definition of Supply
- Section 2(17) of the Act - Definition of Business
- Hon'ble SC decision – Commissioner of Sales Tax vs Sai Publication Fund
- AAR – Shrimad Rajchandra Adhyatmik Satsang Sadhana Kendra
- AAAR – Shrimad Rajchandra Adhyatmik Satsang Sadhana Kendra

5. M/s. Mehman Nawazi Pvt. Ltd. is in hospitality business. It owns chain of five star hotels and resorts. In FY 17-18, and 18-19 company acquired leasehold land for construction of a new five star hotel.

M/s. Mehman Nawazi have incurred huge capital expenditure (in GST regime) as under:

Nature of Expenditure	Amount	GST thereon
Lease premium	Rs. 50,00,00,000	Rs. 9,00,00,000
Lease rental for 21 months	Rs. 21,00,000	Rs. 3,78,000
Procurement of goods (cement, steel, bricks, etc.)	Rs. 4,00,00,000	Rs. 72,00,000

Procurement of equipments (lifts, centralised air condition, power back up systems, etc.)	Rs. 20,00,00,000	Rs. 3,60,00,000
Procurement of services (sub-contractors)	Rs. 10,00,00,000	Rs. 1,80,00,000
Total	Rs. 84,21,00,000	Rs. 15,15,78,000

M/s. Mehman Nawazi has capitalised the above expenditure incurred for construction of hotel under the head 'Land and Buildings'. However, company

has separately parked Input tax credit ('ITC') of GST charged on such expenditure under a separate 'GST receivable a/c'. Company has availed the above mentioned ITC in its GSTR 3B filed from time to time.

You as GST auditor of M/s. Mehman Nawazi need to take call to certify form GSTR 9C. What will be your call?

References:

- Section 16(1) and 16(2) of the Act – Input tax credit
 - Blocked credits u/s 17(5) of the Act
 - Orissa HC decision – Safari Retreats Pvt. Ltd.
 - AAR – Rambagh Palace Hotels Pvt. Ltd.
 - AAR – GGL Hotels
 - AAR – Jabalpur Entertainment Complexes
6. M/s. Probiotic is engaged in manufacturing of pesticide in India. It has a large network of more than 500 distributors and 1000 retailers across the country. With a view to boost its sale, company had announced one sales promotion scheme for the period Oct'17 to Dec'17. Company has communicated the scheme to its distributor via email and also distributed one page pamphlet to its customers announcing the terms and conditions of the scheme which are as under:

- Customers who purchase the certain products on or above their specified quantity shall be entitled to one 10 grams gold coin.

For eg. – Customer purchasing atleast 200 kgs of Product X during the scheme period shall be entitled to one 10 grams gold coin.

- If the customers after lifting the products from the company, make payment in the prescribed staggered manner shall be entitled to one 8 grams Gold coin.

For eg. – Customer making payment of Rs. 1 lakh in Oct'17, Rs. 1.5 lakhs in Nov'17 and Rs. 2 lakhs in Dec'17 shall be entitled to one 8 grams gold coin.

Company had procured gold coins worth Rs. 10 crore and has claimed Input tax credit of Rs. 30 lakhs charged on procurement of gold coins.

Mr. Conservative, GST auditor of the company, intends to classify such ITC as ineligible based on certain recent advance ruling.

Whether such qualification is justified?

References:

- Section 16(1) and 16(2) of the Act – Input tax credit
- Blocked credits u/s 17(5) of the Act
- AAR – Biostadt India Limited
- Circular no. 92 – CGST

7. M/s. Aqua Private Limited are engaged in manufacturing of chemicals in India. Acetic acid, one of the major raw material, is imported on large scale from United States. M/s. Aqua enters into agreement with its foreign suppliers to supply acetic acid on CIF basis (Cost including freight and insurance). Under CIF model, the responsibility of freight and transit insurance is that of the foreign supplier. The foreign supplier on his own arranges for transportation and insurance.

M/s. Aqua clears the imported goods and discharges customs liability thereon. Company has not discharged GST liability under reverse charge mechanism on ocean freight component as it is of the following view:

- Customs duty is discharged on entire CIF Value. Discharging GST under reverse charge on 10% of CIF value would amount to double taxation.
- Services of transportation are provided by foreign shipper to foreign supplier. Company is not the actual recipient of transportation services.
- Import of acetic acid on CIF basis is a composite supply where the principal supply is import of goods. Composite supply cannot be spilt artificially into two supplies and taxed twice.

What position you will take as GST auditor of the company while certifying GST audit report in form GSTR 9C?

References:

- Section 5(3) of IGST Act – Reverse charge mechanism
- Notification no. – 10/2017 – IGST (rate)
- AAR – Chambal fertilizers
- Gujarat HC decision – Mohit Minerals
- Gujarat HC Stay order – Ghanshyamlal and Co.

8. Mr. A has filed GSTR 3B returns for entire FY 17-18 on 31st March 2018. He has discharged GST liability in cash after utilising Input tax credit available to him. He has paid interest on net liability paid in cash on 31.03.2018.

What position should be taken by GST auditor while reporting the said payment of interest in form GSTR 9C?

References:

- Section 50 of CGST Act – Interest provisions

- Press release – 31st GST council meeting
 - Standing order no. 01/2019 issued by Hyderabad Commissionerate
 - Telangana HC decision – Megha Engineering and Infrastructure
 - Delhi HC Stay order – M/s. Landmark Lifestyle
9. M/s. Royal Co-operative Housing Society owns 3 multi-storeyed buildings. It consists of 100 porch flats. Receipt of annual contribution towards maintenance charges is Rs. 6 crores.

Society, based on recent advance ruling in case of M/s. Lions Club of Poona Kothrud, has made application for refund of tax paid on maintenance charges.

What position you will take as GST auditor of the society?

References:

- Section 7 of the Act – Definition of supply
- Section 2(17) of the Act – Definition of business
- Section 2(84) of the Act – Definition of person
- AAR – Lions Club of Poona, Kothrud