

Queries for Brain Trust Session on 14 March 2019	
Workshop on GST organised jointly by GSTPAM, AIFTP(WZ), BCAS, CTC, MCTC & WIRC OF ICAI FOR THE YEAR 2018-2019.	
Trustees: CA Shri S S Gupta, CA Shri Naresh Sheth, CA Smt Sujata Rangnekar, CA Shri Vikram Mehta	
Moderator: CA Deepak Thakkar	
IGST Act	
Place of Supply of Services	
Q.1	<p>Proviso inserted in Sec. 12(8) wef 1 Feb 2019 as under: <i>"Provided that where the transportation of goods is to a place outside India, the place of supply shall be the place of destination of such goods."</i></p> <p>In view of amendment, IGST will be leviable even when service is supplied within the state. Whether any issue arises to claim ITC of such IGST in the hands of Recipient of services?</p>
Q.2	<p>Provision u/s 13 of IGST Act namely "Place of supply of service where location of supplier or location of recipient is outside India".</p> <p>2nd proviso to section 13(3)(a) is amended from 1 Feb 2019 as under: "Provided further that nothing contained in this clause shall apply in the case of services supplied in respect of goods which are temporarily imported into India for repairs or for any other treatment or process and are exported after such repairs or treatment or process without being put to any use in India, other than that which is required for such repairs or treatment or process".</p> <p>[Note: All processes may not be 'manufacture' u/s 2(72) of CGST Act but all manufacturing processes are 'process' as referred in above proviso.]</p> <p>Whether the phrase "for repairs or for any other treatment or process" represents/includes "manufacturing?"</p>
Q.3	<p>ABCL registered in Maharashtra doing Printing and Erection of Branding materials in Trade Exhibitions. Exhibition is organised at Delhi. Service Recipient is registered in Delhi.</p> <p>What is the Place of Supply in the above case?</p>

	Services by Intermediary
Q.4	<p>In case of an "Intermediary" as defined u/s 2(13) of IGST Act, the Place of Supply of its Services to a Foreign Entity shall be the location of the Indian Supplier as provided u/s 13(8) of IGST Act. Thus it is not an export of services as required u/s 2(6) of IGST Act.</p> <p>Kindly give 2 examples which can be covered by said provision and 2 examples which can be out from it.</p>
	Intermediary or Exports of Services or Pure Agent
Q.5	<p>XYZ (Head Office) has a ABC (Branch Office) in India. XYZ (Head Office) wants to incorporate a new Subsidiary Company PQR Pvt. Ltd in India. ABC (Branch Office) incurred entire incorporation expenses of PQR Pvt. Ltd on behalf of XYZ (Head Office). ABC has claimed reimbursement of such expense from XYZ.</p> <p>(a) Whether GST is applicable on such reimbursement charged by Branch Office to Head office on account of facilitator as per Sec. 2(13) read with section 13(8) of IGST and also covered under Sch. I of CGST Act?</p> <p>(b) Whether Branch office shall be considered as intermediary, as third person i.e. PQR Pvt. Ltd does not exist at the time of supply of service?</p> <p>(c) Whether such transaction can be covered as "pure agent" as per Rule 33 of CGST rules and no GST will be applicable?</p>

Q.6	Exports under LUT or IGST payment
	<p>The person who has opted for LUT can clear export/sez supply without payment of IGST. However, I understand that he also has option to make the export/sez supply with payment of IGST, depending upon credit ledger balance.</p> <p>Is there any specific provision in the law which allows the dealer to use this option interchangeably?</p>
CGST Act & SGST Act	
Scope of Supply (Sec. 7 Amended on 1 Feb 2019, Retrospectively from 1 July 2017) amended such that Sch-II is for mere classification purpose.	
Q.7	Whether tax leviable on transaction executed during construction phase of a complex/building as referred in Para 5(b) of Sch-II?
Q.8	Whether tax leviable on transfer of one of the business units as a going concern as referred in Para 4(c) of Sch-II?
Q.9	Whether tax leviable on Liquidated Damages recovered for tolerating an act as referred in Para 5(e) of Sch-II?

Q.10	<p>Sch. III: Activities or Transactions which shall be treated Neither as a supply of goods, Nor a supply of services: Amended vide Notifn # 2/2019 – CT dt 29 Jan 2019 WEF 1 Feb 2019:</p> <p>New Para 7 inserted: "Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India." (i.e. Out & Out Sale of Goods)</p> <p>(a) What is the position prior to amendment i.e. upto 31 Jan 2019? (b) Whether such turnover is an "Exempt Supply" for the purposes of ITC Apportionment u/s 17(2)&(3) of CGST Act upto 31 Jan 2019 (prior to amendment)?</p>
Q.11	<p>New Para 8 inserted:</p> <p><i>"(a) Supply of warehoused goods to any person before clearance for home consumption; (b) Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.;</i></p> <ul style="list-style-type: none"> • <i>Explanation 2 inserted for Para 8: For the purposes of paragraph 8, the expression “warehoused goods” shall have the same meaning as assigned to it in the Customs Act, 1962.”</i> <p>(a) What is the position prior to amendment i.e. upto 31 Jan 2019? (b) Whether such turnover is an "Exempt Supply" for the purposes of ITC Apportionment u/s 17(2)&(3) of CGST Act upto 31 Jan 2019 (prior to amendment)?</p>
Works Contract Services	
Q.12	<p>ABC Construction Company was registered under VAT & Service Tax and is also registered under GST. Under Earlier Law i.e. VAT & Service Tax, they were paying Tax under Composition Scheme i.e. without claiming Input Tax Credit/Cenvat Credit. Under GST law they are paying tax at Normal Rate & claiming ITC as well.</p> <p>Work was completed 80% under Pre-GST era & 20% Post-GST. One Shop is sold @ <u>Agreement Value Rs. 1 Cr</u> after Completion certificate i.e. no GST Implication.</p> <p>For the purpose of Reversal w.r.t. said shop, what amount should be considered as "Exempt</p>

	Supply" whether Entire Agreement Value or only 20% of Agreement Value (i.e. Work done in GST Era)?
Q.13	<p>In a project which is partly qualifying under “Affordable Housing Project*” whether the rate of GST will be 12% or 18%?</p> <p>*Affordable Housing Project is covered under the Housing for All (Urban) Mission or Pradhan Mantri Awas Yojana.</p>
Supply of Services to "Governmental Authority"	
Q.14	<p>If in respect of supplies made to "Governmental Authority", the supplier charged lower or nil rate of GST and later on it was discovered that the said authority is not a governmental authority. What recourse is available to the supplier?</p> <p>For eg: Pure labour services to Governmental authority in relation to Panchayat/Municipality functions is exempt (as per Entry 3 of notification No 12/2017-CT (Rate)). But later on it was discovered that recipient does not fall within the definition of "Governmental Authority" as described above. What recourse is available to the supplier in such situation?</p> <p>*"Governmental Authority" means an authority or a board or any other body,-</p> <ol style="list-style-type: none"> a. set up by an act of Parliament or a State Legislature; or b. established by any Government, <p>with 90% or more participation by way of equity or control, to carry out any function entrusted to a Municipality under article 243W of the Constitution or to a Panchayat under article 243G of the Constitution.[Notification no.31/2017-CT(Rate)].</p>

ITC

Q.15	<p>A Developer & Builder had certain credit as per TRAN-1 and accumulated/unutilised ITC of Rs. 40 Lakhs, till March 2018. Occupation Certificate received in Apr 2018 when 30% Area was unsold.</p> <p>(a) Whether, How much & When ITC needs to be reversed OR can it be utilised against other tax liability in future?</p> <p>(b) If in May 2018, 10% Area is further sold which is an "exempt supply", then whether any ITC to be apportioned/reversed?</p>
Q.16	<p>A builder has let out an entire building consisting of several units for residential and commercial purpose for which GST is charged on units let out for commercial purpose. Also certain services like painting of wall, repair and maintenance, fencing of the compound are received for the entire building in common.</p> <p>(a) Is the ITC available on such inward supplies? Fully or Partially?</p> <p>(b) Is there any special provision for claiming such ITC?</p>
Q.17	<p>Tax payer has not made outward supply during financial year Jul-17 to Mar-18, hence, GST liability was NIL and has filed NIL return. But Tax payer has claimed Input Tax credit in the month of August 2017 & reverse the said credit in the month of Feb'18, as he came to know that the said credit is not eligible U/s 17(5).</p> <p>Whether he is liable to pay interest read with section 50(3), as he has wrongly claimed ITC even though it has been reversed and not utilized against any outward tax liability?</p>
Q.18	<p>As per the recent amendment, the ITC of FY 17-18 which were left out can be claimed before 31-03-2019.</p> <p>Whether it should be claimed in –</p> <p>3B of Feb'19 due on 20-03-19 or</p> <p>3B of Mar'19 due on 20-04-19 or</p> <p>3B of Feb'19 only, by delaying it up to 31-03-2019, along with late fees?</p>

Q.19	<p>Sec.17(5)(h) denies ITC when goods are lost, stolen, destroyed, written off.</p> <p>In case of goods damaged/affected by Fire, including capital goods, whether one can argue that it is different, as compared with the wordings of “Lost/Stolen/ Destroyed”.</p> <p>'Stolen' means someone has stolen/snatched from you.</p> <p>'Destroyed' means the goods are compulsorily to be destroyed under any Law like in case of chemicals/medicines.</p> <p>'Lost' means the goods are forgotten somewhere.</p> <p>Here by 'affecting' the goods under Fire, the Ashes of the same are still there which can be seen & not Lost.</p> <p>So based on the above arguments, can we say that the goods are not “Lost/Stolen/Destroyed” due to fire, but they are affected very badly & the existence of the same cannot be seen & can we avoid the reversal of ITC?</p>
Q.20	<p>Sec.17(5)(h) denies ITC when goods are disposed of by way of gift or free samples.</p> <p>(a) Whether goods given free as per sales schemes (Buy 2 Get 1 free), ITC available?</p> <p>(b) Whether goods given free to test the market (To Doctors/Chemists or FMCG goods to consumers), ITC available?</p> <p>(c) Whether goods given to discharge CSR obligations, ITC available?</p> <p>(d) Whether gifts given to Customers & Suppliers, ITC available?</p>

TDS

Q.21	<p>As per the Notification no 50/2018, the provisions of section 51 of the said act is applicable w.e.f. 1/10/2018:</p> <p>(a) Supplies made before 1.10.2018 but the payment is made after 1.10.18, whether TDS is to be deducted? If some payment was made before 1.10.18 & balance payment is made after 1.10.18 then whether TDS provisions will apply on such balance payment or on full value of transaction?</p> <p>(b) Whether TDS amount can be paid through ITC credit Ledger?</p> <p>(c) If the Deductee delays in generating Form GSTR7A, whether the Deductor will be liable to pay any penalty?</p>

Q.22	<p>I have to file GSTR 3B for the month of January, 2019. In this month, 3 Persons have deducted TDS under GST. One person has filed the return whose credit is being reflected and the other two person's credit is not reflected. Can I claim that one TDS credit & file my return and other two credits, can I take credit in the month of February,2019 later on when they file the TDS Return OR I have to wait till entire credit for the month of January,2019 get reflected and then claim the entire TDS for the month because once I filed TDS received return for January,2019 then there is no option highlighted to file TDS received return for January,2019 once again.</p>

Trans -1

Q.23	<p>We had semi finished goods in stock under manufacturing process at the time of migration to GST regime. We had paid service tax on input services required for the manufacture of the goods. Can we take ITC of service tax paid in the earlier tax regime on input services in Tran-1. Final goods were cleared with payment of GST.</p> <p>Please note – Under Rule 6 (1) of the Cenvat Credit Rules 2004 if the final goods were exempt then no CENVAT was allowed on the exempt goods. Sec 140(3) of the CGST Act 2017 mentions about Inputs held in stock and inputs contained in semi finished or finished goods held in stock.</p>
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Query to determine 'Turnover' under GST for 'Registration' & 'Audit' -

Q.24] An individual who is also Partner in a firm, having Income in his Individual return are as under:-

- | | |
|--|-------------|
| <input type="checkbox"/> Remuneration from Partnership Firm | 45,00,000/- |
| <input type="checkbox"/> Interest on Capital A/c with Partnership Firm | 14,00,000/- |
| <input type="checkbox"/> Dividend recd. On Investment | 16,50,000/- |

(of which 10L will be exempted under Income Tax Act)

- | | |
|--|---------------|
| <input type="checkbox"/> Interest on Deposits with Bank/FI | 13,50,000/- |
| <input type="checkbox"/> LT/ST Capital Gain on Shares/MF | 1,25,000/- |
| <input type="checkbox"/> Resale of Shop (Sales value) | 2,25,00,000/- |

Please clarify from the above:

- (a) how many receipts are be treated, neither as a supply of Goods nor a supply of Service
 (b) If a particular receipt is not considered as a 'supply' then whether to consider it for calculating “aggregate turnover” & “turnover in state” **for Registration?**
 (c) If a particular receipt is not considered as a 'supply' then whether to consider it for calculating “aggregate turnover” & “turnover in state” **for Audit?**

Q.25] Whether following will be added in "aggregate T.O." for calculating GST Registration T.O. limit:

- a) Non -GST item/ non-taxable supply (like petroleum products or Liquor)
- b) Interest from bank and from others
- c) Agriculture income
- d) LIC maturity or any other security maturity

- e) Share in Profit received by partner from P. Firm
- f) Share in Loss by partner from P. Firm, whether can be reduced
- f) Receipt of gift from Related Persons or Non-related Persons.
- g) Sale of capital assets like gold, furniture, house etc..

Q.26] A Ltd is an E-commerce Operator supplying GOODS and is located outside India operating through online portal. Mr B and C Ltd from India have ordered some goods from online portal of A Ltd. Mr B is an unregistered person under GST whereas C Ltd is registered under GST in India. A Ltd does not have any presence in India.

(a) Will A Ltd be required to take compulsory registration u/s 24 of CGST Act 2017 or Mr B and C Ltd shall be liable to pay Custom duty and GST on import ?

(b) Further if A Ltd has to take compulsory registration, can they appoint a representative in India to make payment and other compliance of GST on their behalf ?

E-way Bills

Q.27] In case of any default or non-compliance of E-way bill provisions, the Authority insist for payment of tax & equal amt as penalty then only release the goods.

The Authority does not issue show cause notice for same. It does not issue penalty order also. How to appeal against such matter & please explain the procedure in brief.

Q.28] A person is providing industrial radiography services. His employees carry cameras to customers' location , do the necessary testing on site and then after analysis , the person gives report to the customer for which bill of service charges is raised with GST.

In most cases, the employee carry camera's in vehicle and travel from one customer's location to another and at the day end come back to dealer's place of business.

How e-way bill should be generated?.

Tax Invoice & Bill of Supply

Q.29] Under Rule 46, 5th Proviso and u/r 49, 3rd Proviso Inserted vide Notf no. 74/2018-CT dt. 31.12.2018, as under:

"Provided also that the signature or digital signature of the supplier or his authorised representative shall not be required in the case of issuance of an electronic invoice in accordance with the provisions of the Information Technology Act, 2000 (21 of 2000)."

- (a) What's the meaning of "Electronic Invoice"?
- (b) Instead of Sign what is to be mentioned on invoice?
- (c) ITC claim does not need signed Invoice?

Refund

Q.30] For claiming Refund under Inverted Rate Duty, the dealer is **manufacturer** of Stainless Steel Utensils, **Jobwork Charges** are incurred for conversion of Raw Material into St. Steel utensils. My Question is, Whether Jobwork charges paid would be eligible for claiming Refund of Input Tax Credit of Jobwork Charges (i.e Input Tax on Services) while filing Form RFD-1 ?

Returns

Q.31] While filing return from July 2018 to December 2018, under GSTR-3B the company had shown **Export Sales (zero rated sales) Under local sales** instead of Export column of 3B. In GSTR-1 of Outward Supply, the same amount of Exports are correctly shown as Exports. My question is, how to rectify this error? The Company has only Export Sales and **no local sales**.

Annual Return Form GSTR-9

Q.32] **GSTR-9** - In GSTR 9 the RCM details are asked in case of 1) RCM on URD supply (upto 12/10/17) & 2) RCM on registered dealers supply such as GTA, advocate etc . My query is if the GTA or advocate is unregistered, then where to show RCM details in such as case.