

Issues from transactions covered in Schedule III of Sec 7 of CGST Act

IDT Study Circle Meeting of CTC

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Case Study 1: Eligibility of ITC for transactions covered by Schedule III

- ❑ M/s. ABC is a broker agent firm in India.
- ❑ XYZ Ltd (Indian Company) deals into supply of electronics, across the globe.
- ❑ M/s. ABC charges commission of Rs. 1,00,000/- + GST to XYZ Ltd for helping XYZ Ltd secure a contract for supply of Goods worth 10 Cr.
- ❑ Due to logistics convenience, the goods will be supplied from UK to the ultimate client in USA directly, without the goods being imported into India.

Case Study 1: Eligibility of ITC for transactions covered by Schedule III

- ❑ **Issue 1: Can XYZ Ltd claim ITC on the GST charged by M/s. ABC?**
- ❑ **Issue 2: What would happen if the transaction pertained to FY 18-19 (i.e., prior to amendment)?**
- ❑ **Issue 3: If XYZ Ltd has other zero-rated supply of goods during the same period, whether supply of 10 Cr. by XYZ Ltd be part of turnover eligible for refund of ITC? Will GST on commission to paid to M/s. ABC could be claimed as refund?**

Case Study 1 - Issue 1: Points to discuss

- ❑ *Section 16 (1). Every registered person shall, subject to such conditions and restrictions as may be prescribed and, in the manner, specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.*
- ❑ *Section 17(2). Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated.*
- ❑ *Section 17(3). The value of exempt supply under sub-section (2) shall be such as may be prescribed, and shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.*

Explanation. —For the purposes of this sub-section, the expression “value of exempt supply” shall not include the value of activities or transactions specified in Schedule III, except those specified in paragraph 5 of the said Schedule

Case Study 1 - Issue 1: Points to discuss.. contd

- ❑ Whether section 17(2) acts as hinderance?
- ❑ What if Section 17(2) was negatively worded? Anomaly may have been resolved.
- ❑ “GST – Concept and Status” booklet dated 01.08.2019
 - “9.4.26 Recent Law amendments w.e.f. 01.02.2019:*
 - 9.4.26.1 Scope of input tax credit has been widened, and it would now be made available in respect of the following:*
 - a. Most of the activities or transactions specified in Schedule III;*
 -”*

Case Study 1 - Issue 2: Points to discuss.

- ❑ Prior to amendment – No Schedule III entry for out and out transactions
- ❑ By virtue of Section 7(5) of IGST Act – Inter-state transactions
- ❑ Hence, one view was that tax was payable on such ‘inter-state’ transaction treating it as B2C transaction
- ❑ Treated as taxable supply and tax was payable then ITC in relation to such transactions would also be eligible for claim, subject to Section 16(2) of CGST Act.

Case Study 1 - Issue 3: Points to discuss.

- ❑ *Section 54(3) of CGST Act: Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilised input tax credit at the end of any tax period:*

Provided that no refund of unutilised input tax credit shall be allowed in cases other than—

(i) zero rated supplies made without payment of tax....

- ❑ *Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) x Net ITC ÷ Adjusted Total Turnover – Rule 88 (4) of CGST Rules*
- ❑ *"Net ITC" means input tax credit availed on inputs and input services during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both*

Case Study 1 - Issue 3: Points to discuss.. contd

- *“Adjusted Total Turnover” means the sum total of the value of*
 - (a) the turnover in a State or a Union territory, as defined under clause (112) of section 2, excluding the turnover of services; and*
 - (b) the turnover of zero-rated supply of services determined in terms of clause (D) above and non-zero-rated supply of services*

excluding-

 - (i) the value of exempt supplies other than zero-rated supplies, and*
 - (ii) the turnover of supplies in respect of which refund is claimed under sub-rule (4A) or sub-rule (4B) or both, if any,*

during the relevant period

Case Study 1 - Issue 3: Points to discuss.. contd

- ❑ *Section 2(112). “Turnover in State” or “turnover in Union territory” means the aggregate value of value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis) and exempt supplies made within a State or Union territory by a taxable person, exports of goods or services or both and inter-state supplies of goods or services or both made from the State or Union territory by the said taxable person but excludes central tax, State tax, Union territory tax, integrated tax and cess;*
- ❑ *Section 2(47). “Exempt supply” means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply*
- ❑ *Section 2(78). “Non-taxable supply” means a supply of goods or services or both which is not leviable to tax under this Act or under the Integrated Goods and Services Tax Act*

Case Study 2: Employer-Employee conundrum

- ❑ PQR Ltd (Indian) and RST Ltd (Indian) are subsidiaries of PQRST Inc. (USA). RST Ltd only supplies in exempt services.
- ❑ As a part of some project, PQRST deutes an engineer to assist PQR Ltd for one year. Salary of this engineer paid to PQRST Inc directly as Foreign Remittance.
- ❑ To function coherently, PQR Ltd and RST Ltd employ Mr. A to work for both companies. Salary is paid by PQR Ltd first and then 50% share is recovered from RST Ltd
- ❑ **Issue 1: PQR Ltd is confused – is payment to PQRST Inc a salary cost or import of service?**
- ❑ **Issue 2: PQR Ltd and RST Ltd is confused – Salary cost reimbursed will be treated as salary or will PQR Ltd will require to charge GST, which will be a cost to RST Ltd?**

Case Study 2 - Issue 1: Points to discuss.

- ❑ Distinguish between “contract of service” and “contract for service”
- ❑ Concept of Economic Employer
- ❑ IDS Software Solution India Pvt Ltd vs. ITO [(2009) 122 TTJ 410 (ITAT-Bang)] – *a person under whose control and supervision the deputed employees work is considered to be the real and economic employer*
- ❑ Volkswagen India (Pvt) Ltd. vs. Commissioner of C. Ex., Pune-I [2014 (34) S.T.R. 135 (Tri. – Mumbai)] – *“payment of salary in the overseas bank account of the seconded employee, which was subsequently reimbursed from the Indian entity was not liable to Service tax as the method of disbursement of salary cannot determine the nature of transaction”*

Case Study 2 - Issue 2: Points to discuss.

- ❑ Understanding the conduct of the parties – Eg., whether employee knows from the job description / beginning, he is being hired to work for two companies?
- ❑ Franco Indian Pharmaceutical (P) Ltd. V. CST [2016 (42) STR 1057 (Tri. – Mumbai)] – *“Even otherwise, by its very nature, a situation where employer-companies have a pre-existing agreement to hire employees on joint basis and agree to share the cost of employment on actual by dividing it amongst themselves in such a manner that each employer bears only his part of the cost indicates that there was no intention amongst the employer-companies to render any service to each other....”*

Case Study 3: Employer-Employee conundrum continues.

- ❑ LMN Ltd (Indian), as a part of staff welfare budget, organizes various sessions (Yoga Session, Meditation session, Games session, etc.) to rejuvenate the employees and promote team building, once a month.
- ❑ Mr. A, employee of 20 years experience was parting ways with the company. LMN Ltd did not want him to work with their competitor for next 5 years and so offered to pay a lumpsum amount of Rs. 30 lakhs as non-compete fees and signed an agreement in this regard with Mr. A
- ❑ **Issue 1: Should LMN Ltd charge GST if small amounts are recovered from employees salary for sessions?**
- ❑ **Issue 2: Mr. A is worried that such non-compete fees will require him to register under GST and pay GST on the same. What should Mr. A do?**

Case Study 3 - Issue 1: Points to discuss

- ❑ Understanding the terms “in the course” and “in relation to” which give an expansive breadth to the relation of employer and employee
- ❑ Press Release issued on 10th July 2017 - clarifying the scope of “in the course of or in relation to his employment” - *supply by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST*
- ❑ Contractual privileges / cost to the company / payroll expenses
- ❑ Non-monetary benefits
- ❑ Sometimes free and sometimes at subsidized cost, but can it be segregated from the employment contract?

Case Study 3 - Issue 2: Points to discuss

- ❑ Can we not say, non-compete fees is received 'in relation to' the employment?
- ❑ Doypack Systems Pvt Ltd vs. UoI [1988 (36) ELT 201 (SC)] – *“in relation to” is a very broad expression which pre-supposes another subject matter and these are words of comprehensiveness which might both have a direct significance as well as an indirect significance depending on the context*
- ❑ Director of Income-Tax vs Sasken Communication Technologies Ltd [117 taxmann.com 278 (Karnataka)] - *The HC held that income in the hands of the employees is salary / profit in lieu of salary and it has to be treated as such.*

Case Study 4: Inter-play with Composite / Mixed Supply

- ❑ M/s. Peace sells Coffins to grieving families for a cost of Rs. 2,000/- + GST.
- ❑ M/s. Peace also provides services of transportation facility of deceased from Home to Church & Church to Cemetery for Rs. 1,000/-
- ❑ M/s. Peace offers a discount of Rs. 250/- on each transaction if both options are availed together i.e., Total price – Rs. 2,500/-
- ❑ **Issue: M/s. Peace is confused about applicability of GST on such a combo. Please help.**

Case Study 4: Points to discuss

Composite Supply under Section 2(30)	Mixed Supply under Section 2(74)
<p data-bbox="155 362 741 411">“Composite supply” means</p> <ul data-bbox="155 458 1059 1158" style="list-style-type: none"><li data-bbox="155 458 1059 572">- a supply made by a taxable person to a recipient<li data-bbox="155 601 1059 793">- consisting of <u>two or more taxable supplies</u> of goods or services or both, or any combination thereof,<li data-bbox="155 822 1059 1086">- which are naturally bundled and supplied in conjunction with each other in the ordinary course of business,<li data-bbox="155 1115 1059 1158">- one of which is a principal supply	<p data-bbox="1085 362 1574 411">“Mixed supply” means</p> <ul data-bbox="1085 458 1964 1015" style="list-style-type: none"><li data-bbox="1085 458 1964 651">- <u>two or more individual supplies</u> of goods or services, or any combination thereof,<li data-bbox="1085 679 1964 801">- made in conjunction with each other by a taxable person<li data-bbox="1085 829 1964 872">- for a single price<li data-bbox="1085 901 1964 1015">- where such supply does not constitute a composite supply.

Case Study 4: Points to discuss..Contd

- ❑ Applicability of composite supply and mixed supply intend to deal with situations where there is existence of “two or more supplies”
- ❑ Section 7(2) of CGST Act,
*“Notwithstanding anything contained in sub-section (1),
(a) activities or transactions specified in Schedule III, or.....
shall be treated neither as a supply of goods nor a supply of services”*
- ❑ Section 7(2) has overriding effect over Section 7(1) of CGST Act i.e. equivalent to saying that in spite of those provisions in sub-section (1), this sub-section would prevail over it and have a full operation.
- ❑ Hence, Schedule III activities have been excluded from scope of “Supply” altogether.
- ❑ Hence, if Schedule III items are identifiable in a contract along with other supplies, then GST would not be applicable on such identified value.

Case Study 5: Expenses incurred by bereaved families

- ❑ Mr. A visited Holy Trust who provide Halls on rent for various occasions including a Prayer meeting. If the venue is booked for a Prayer meeting, the rent is substantially low as compared to other events. However, Mr. A is shocked to receive a tax invoice for booking the venue for a prayer meeting because he was not charged GST for transportation of the deceased.
- ❑ **Issue 1: Mr. A believed that services in relation to the deceased are not covered under GST. He felt M/s. Peace and Holy trust should not have levied GST. Is he right?**
- ❑ **Issue 2: What would be the applicability of GST if the deceased was his pet dog? Whether transportation / cemetery expenses be liable to GST?**

Case Study 5 - Issue 1: Points to discuss

- ❑ Service restricted only to funeral, burial, crematorium or mortuary and transportation
- ❑ Activities and transactions beyond the above list are not part of Schedule III.
- ❑ Prayer meeting / Service / Rituals / Prathna sabha or obituaries in newspapers – Not covered by Schedule III
- ❑ Foreign Jurisprudence: UK VAT Laws vide VAT Notice 701/32 treat services of the disposal of the remains of dead people, making of arrangements for or in connection with the disposal of the remains of dead people (including transportation services) and services of one undertaker to another in connection with a specific funeral exempt from tax liability

Case Study 5 - Issue 2: Points to discuss

- ❑ Does entry no 4 cover only human “deceased” or other living things as well?
- ❑ Simple definition of “deceased” – no longer living ([merriam-webster.com](https://www.merriam-webster.com) & [dictionary.com](https://www.dictionary.com))
- ❑ Entry no 4 – does not distinguish between humans and animals, but merely covers “Services of funeral, burial, crematorium or mortuary and transportation of the deceased”
- ❑ Foreign Jurisprudence: UK VAT Laws vide VAT Notice 701/32 treat services of burial or cremation of animals a taxable supply – need not be the case in Indian GST law.

Case Study 6: Land & Building

- ❑ Mr. Richie Rich owns 3 properties, all of which are situated in different parts of the country – Land in his native village, A 2-storey building in Mumbai and a barren land near a school.
- ❑ Mr. Richie Rich decides to gift his land in native place to his daughter.
- ❑ He gets an offer from Bob the Builder to demolish the 2-storey building and build a 10-storey tower of which 3 floors will belong to Richie Rich and balance 7 will be sold by Bob, independently. Richie Rich will not have to pay anything to Bob but only hand over the rights to exploit the property for the period of demolition and construction.
- ❑ Mr. Richie Rich decides to give the barren land on a 99-year lease with yearly rentals to the school for them to develop a ground and grow athletics division in the school.
- ❑ **Issue: Mr. Richie Rich wants to understand GST implications from all sides and for all parties involved. Please advice.**

Case Study 6: Points to discuss

Gift of Land

- ❑ Concept of “Land”, “Sale” – not defined under the GST Law
- ❑ Sale is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.
- ❑ ‘Transfer’ must be permanent and irrevocable.
- ❑ 20th Century Finance Corp. Ltd. v. State of Maharashtra [(2000) 6 SCC 12] – *“the common use of the word “transfer” is to denote the passing of title in property or an interest therein from one person to another and in that sense the term means that the owner of the property delivers it to another person with the intent of passing the rights which he had in it”*
- ❑ Schedule II elaborates on the intention of law – Para 2, 5(a) of Schedule II – ownership does not change
- ❑ Aid from State List of the Constitution of India.

Case Study 6: Points to discuss

Transfer of Development Rights

- ❑ Benefits arising out of land different from “land”?
- ❑ Sale of Land (GST) vs transfer in title of immovable property (ST)
- ❑ Sale would mean complete transfer of title – ‘sale’ cannot include transfer of limited rights over the use of the land
- ❑ Developer is bound by the terms of development agreement in respect of rights and interests created
- ❑ Notification No. 4/2018 – Central Tax (Rate) dated 25.01.2018 – time of supply in case of transfer of development rights
- ❑ Notification No. 4/2019 – Central Tax (Rate) dated 29.03.2019 – valuation of transfer of development rights
- ❑ Notification No. 5/2019 – Central Tax (Rate) dated 29.03.2019 – tax on transfer of development rights payable under RCM

Case Study 6: Points to discuss.. Contd

- ❑ Is a long term “Lease” like 99 years covered by Schedule III?
- ❑ Re: Greentech Mega Food Park Pvt Ltd [2019 (27) GSTL 143 (AAR – GST)] – Lease agreement for 99 years liable to GST @ 18%
- ❑ Builders Association of India vs UoI [Bombay HC - 2018-VIL-166-BOM] - GST on long term lease of plots for 60 years sustained
- ❑ Schedule III covers only “Sale” and nothing more. Para 2, 5(a) of Schedule II classifies such revocable transfers as supply of service
- ❑ Foreign Jurisprudence
 - ❑ UK VAT Law - GST is exempted in case there is a grant of a major interest (term exceeding 21 years) created for the building in favour of the tenant
 - ❑ Australian GST Law - the charge and collection of GST depends upon the use of the property - personal home does not attract GST

Case Study 7: Actionable Claims

- ❑ Mr. Hard-work was tired seeing his hard earned money spent by his unemployed Son over online fantasy gaming, little by little, everyday.
- ❑ Everything changed when one day, all of a sudden, his son won Rs. 50 lakhs in the same fantasy game.
- ❑ His son kept insisting that it is a skill that he has honed over last 2 years but Mr. Hard-work believed that it was fluke and similar to gambling.
- ❑ **Issue 1: What will be the treatment of money pooled by fantasy game under GST? If tax is payable, what is value for on which GST is payable?**
- ❑ **Issue 2: Mr. Hard-work along with his Son has come to you to understand the GST implication on such winnings. As his tax consultant, please advice him.**

Case Study 7 - Issue 1: Points to discuss

- ❑ Actionable claims, other than lottery, betting and gambling are neither as supply of goods nor as supply of service.
- ❑ Actionable claims as per Transfer of Property Act 1882

“Actionable claim” is a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property, or to any beneficial interest in movable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognize as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent.

Case Study 7 - Issue 1: Points to discuss.. contd.

- ❑ Gurdeep Singh Sachar vs. Union of India [2019 (30) GSTL 441 (Bom.)] - *“13. In the instant case, admittedly, there is no dispute that the amounts pooled in the escrow account is an 'actionable claim', as the same is to be distributed amongst the winning participating members as per the outcome of a game. But, as held hereinabove since the activities of the respondent No.3 do not amount to lottery, betting and gambling, the said actionable claim would fall under Entry 6 of the Schedule III under Section 7(2) of CGST Act....”*
- ❑ GST is payable only on the portion retained by the company and not the amounts pooled together in the escrow account.

Case Study 7 - Issue 2: Points to discuss

- ❑ Betting / Gambling liable to GST – Skill vs Chance
- ❑ Varun Gumber vs. UT of Chandigarh & Ors [2017 Cri LJ 3827] - success in Dream 11's Fantasy Sports basically arises out of participants exercising of superior knowledge, judgment and attention thus as per their skill. It is a game of skill and not a game of chance. The participants do not bet on the outcome of the match and merely play a role akin to that of selectors in selecting the team.
- ❑ Similar answer in Gurdeep Singh Sachar vs. Union of India [2019 (30) GSTL 441 (Bom.)] & Ravindra Singh Chaudhary vs Union of India [2020 (42) GSTL 195 (Raj.)]
- ❑ Amounts pooled together treated as “Actionable claim” and hence, on distribution of the same, will be treated as such in the hands of the winner as well.

Case Study 8: Actionable Claims - Part 2

- ❑ In case of debt securitization, a Special Purpose Vehicle (SPV) converted illiquid loans (such as home loans, vehicle loans which have a long tenure) of a Bank / NBFC into one product known as Covered Bonds, which were issued to investors against payment of fixed interest.
- ❑ Bank was able to realize cash component from this transaction to give further loans.
- ❑ **Issue: Whether sale of secured debts would be chargeable to GST?**

Case Study 8: Points to discuss

❑ Actionable claims as per Transfer of Property Act 1882

“Actionable claim” is a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property, or to any beneficial interest in movable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognize as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent.

❑ Banking sector FAQ by CBIC:

FAQ	Reply by CBIC
40. Whether assignment or sale of secured or unsecured debts is liable to GST?Where sale, transfer or assignment of debts falls within the purview of actionable claims, the same would not be subject to GST...
65. What is the leviability of GST on securitization transactions undertaken by banks?	Answer: Securitized assets are in the nature of securities and hence not liable to GST. However, if some service charges or service fees or documentation fees or broking charges or such like fees or charges are charged, the same would be a consideration for provision of services related to securitization and chargeable to GST

Case Study 9: Out and Out transactions

- ❑ A Ltd, Mumbai received Order from B Ltd, Delhi to supply goods to his client in USA. A Ltd purchases the goods from South America and directly sends them to USA.
- ❑ **Issue: When A Ltd invoices to B Ltd – how will the transaction be treated under GST?**

Case Study 9: Points to discuss

- ❑ “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”
- ❑ Key conditions to fulfill:
 - ❑ Must be a supply of goods
 - ❑ From a place in non-taxable territory
 - ❑ To a place in non-taxable territory
 - ❑ goods should not enter India
- ❑ No reference / indication regarding location of recipient
- ❑ No benefit of “Export of goods” as well in the present case

Case Study 10: Fees paid to Court Receiver

- ❑ Square Ltd and Circle Ltd were drawn in a long Court drama regarding ownership of certain immovable properties located in different districts of Maharashtra.
- ❑ To maintain the value of the asset and ensure the rightful owner is not aggrieved on account of such dispute, the Court decided to appoint a 'receiver' and the cost / administration fees of such 'receiver' would be borne by both parties equally.
- ❑ **Issue: Whether the Court appointed receiver is required to register under GST for the property administration fees received from both the parties?**

Case Study 10: Points to discuss

- ❑ Who is a Court appointed receiver?
- ❑ Order XL in Code of Civil Procedure, 1908 – Appointment of Receivers

Where it appears to the Court to be just and convenient, the Court may by order-

 - (a) appointment a receiver of any property, whether before or after decree;*
 - (b) remove any person from the possession or custody of the property;*
 - (c) commit the same to the possession, custody or management of the receiver; and*
 - (d) confer upon the receiver all such powers, as to bringing and defending suits and for the realization, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself has, or such those powers as the Court thinks fit.*
- ❑ He is not the agent or representative of either party to the action, but is uniformly regarded as an officer of the Court, exercising his functions in the interest of neither plaintiff nor defendant, but for the common benefit of all parties in interest

Case Study 10: Points to discuss

- Bai Mamubai Trust v. Suchitra [2019 (31) GSTL 193 (Bom.)]

“42....Since the office of the Court Receiver is an establishment of the High Court and a permanent department of the High Court, it is necessarily an adjunct of the Court through which the orders of protection issued by the Court are given effect to.....

43. I am also inclined to accept the Learned Amicus Curiae’s submission that fees of the Court Receiver fall under Item 2 of Schedule III to the CGST Act as it is for a service provided by an officer of the Court. Accordingly, this service is not treated as a supply of goods or services within the meaning of the CGST Act. The Court Receiver implements orders of the Court and functions under the supervision and direction of the Court.

44. It is thus clear that services of the Court Receiver are activities or transactions which shall be treated neither as a supply of goods nor a supply of services. Accordingly, the fees or charges paid to the Court Receiver are not liable to GST....”



Thank You!