(d) There should be an immediate connection between supply and consideration, and not only a remote connection. Consideration may actually be payable at a later point of time but linkage should be immediate. If there is no such immediate connection, then there is no supply [except if covered by sec. 7(1)(c)].

(e) An act by a charity for consideration would be a supply of service and hence, taxable unless otherwise exempted.

(f) Condition in a grant stipulating merely proper usage of funds & furnishing of account will not result in making it a supply of service.

(g) Donations to a charitable organization are not consideration unless charity is obligated to provided something in return e.g. display or advertise the name of donor in a specified manner or such that it gives a desired advantage to the donor.

(viii) **Levy of GST on the service of display of name or placing of name plates of the donor in the premises of charitable organisations receiving donation or gifts from individual donors [Circular No. 116/35/2019-GST, dated 11.10.2019]**

Issue:

Whether GST is applicable on donations or gifts received from individual donors by charitable organisations involved in advancement of religion, spirituality or yoga which is acknowledged by them by placing name plates in the name of the individual donor

Clarification:

- ***Individual donors provide financial help or any other support in the form of donation or gift to institutions such as religious institutions, charitable organisations, schools, hospitals, orphanages, old age homes etc. The recipient institutions place a name plate or similar such acknowledgement in their premises to express the gratitude. When the name of the donor is displayed in recipient institution premises, in such a manner, which can be said to be an expression of gratitude and public recognition of donor's act of philanthropy and is not aimed at giving publicity to the donor in such manner that it would be an advertising or promotion of his business, then it can be said that there is no supply of service for a consideration (in the form of donation). There is no obligation (quid pro quo) on part of recipient of the donation or gift to do anything (supply a service). Therefore, there is no GST liability on such consideration.***

- ***Some examples of cases where there would be no taxable supply are as follows:-***

  (a) "Good wishes from Mr. Rajesh" printed underneath a digital blackboard donated by Mr. Rajesh to a charitable Yoga institution.

  (b) "Donated by Smt. Malati Devi in the memory of her father" written on the door or floor of a room or any part of a temple complex which was constructed from such donation

- ***In each of these examples, it may be noticed that there is no reference or mention of any business activity of the donor which otherwise would have got advertised. Thus where all the three conditions are satisfied namely the gift or donation is made to a charitable organization, the payment has the character of gift or donation and the purpose is philanthropic (i.e. it leads to no commercial gain) and not advertisement, GST is not leviable.***

- *Summarised Conclusion: If display of name is aimed at giving publicity to the donor in such manner that it would be an advertising or promotion of his business, then it will be supply of service for a consideration (in the form of donation) and will be chargeable to GST. Otherwise, donation will not be chargeable to GST, as it is not a consideration.*

6. Analysis of "in the Course or Furtherance of Business":

(i) Whether transfer of tenancy rights to an incoming tenant, consideration for which is in form of tenancy premium, shall attract GST when stamp duty and registration charges is levied on the said premium, if yes what would be the applicable rate?

(ii) Further, in case of transfer of tenancy rights, a part of the consideration for such transfer accrues to the outgoing tenant, whether such supplies will also attract GST?

Clarification:

1. The issue has been examined. The transfer of tenancy rights against tenancy premium which is also known as "pagadi system" is prevalent in some States. In this system the tenant acquires, tenancy rights in the property against payment of tenancy premium (pagadi). The landlord may be owner of the property but the possession of the same lies with the tenant. The tenant pays periodic rent to the landlord as long as he occupies the property. The tenant also usually has the option to sell the tenancy right of the said property and in such a case has to share a percentage of the proceed with owner of land, as laid down in their tenancy agreement. Alternatively, the landlord pays to tenant the prevailing tenancy premium to get the property vacated. Such properties in Maharashtra are governed by Maharashtra Rent Control Act, 1999.

2. As per section 9(1) of the CGST Act there shall be levied central tax on the intra-State supplies of services. The scope of supply includes all forms of supply of goods and services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business and also includes the activities specified in Schedule II. The activity of transfer of tenancy right against consideration in the form of tenancy premium is a supply of service liable to GST. It is a form of lease or renting of property and such activity is specifically declared to be a service in para 2 of Schedule II i.e. any lease, tenancy, easement, licence to occupy land is a supply of services.

3. The contention that stamp duty and registration charges is levied on such transfers of tenancy rights, and such transaction thus should not be subjected to GST, is not relevant. Merely because a transaction or a supply involves execution of documents which may require registration and payment of registration fee and stamp duty, would not preclude them from the scope of supply of goods and services and from payment of GST. The transfer of tenancy rights cannot be treated as sale of land or building declared as neither a supply of goods nor of services in para 5 of Schedule III to CGST Act, 2017. Thus, a consideration for the said activity shall attract levy of GST.

4. To sum up, the activity of transfer of 'tenancy rights' is squarely covered under the scope of supply and taxable per-se. Transfer of tenancy rights to a new tenant against consideration in the form of tenancy premium is taxable. However, renting of residential dwelling for use as a residence is exempt [Sl. No. 12 of notification No. 12/2017-Central Tax(Rate)]. Hence, grant of tenancy rights in a residential dwelling for use as residence dwelling against tenancy premium or periodic rent or both is exempt. As regards services provided by outgoing tenant by way of surrendering the tenancy rights against consideration in the form of a portion of tenancy premium is liable to GST.

Clarification regarding taxability of goods imported under lease [Circular No. 113/32/2019-GST, dated 11.10.2019]

Goods like aircrafts, aircraft engines, other aircraft parts, rigs & ancillary items for oil / gas exploration / production, etc. which are imported into India on temporary basis are the transactions which are covered by item 1(b) or 5(f) of Schedule II of the CGST Act, 2017 and are liable to pay IGST leviable u/s 5(1) of the IGST Act, 2017. Further, these are exempted from Customs duty as per notifications issued under Customs Act, subject to certain conditions.

Illustration 14 :

An association has been temporarily constituted, by several members, without being registered. The object of the unregistered association was to render taxable services to its members for a consideration. The association, through its members, argued that the association was not registered and any service rendered to its members constituted

as they may not have been set up directly under Article 323B of the Constitution. However, they are clothed with the characteristics of a tribunal having regard to their functioning.

Having regard to their functioning & characteristics, it is hereby clarified that fee paid by litigants in the Consumer Disputes Redressal Commissions are not leviable to GST. Any penalty imposed by or amount paid to these Commissions will also not attract GST.

2. Activities/Transactions notified by the Government [Sec. 7(2)(b)]:

Such activities/transactions undertaken by the central Government, a state government or union territory or any local authority in which they are engaged as public authorities, as may be notified by the government on the recommendations of the Council shall be treated neither as supply of goods nor supply of services.

Using this power, following activities have been notified which shall be treated neither as supply of goods nor supply of services:

(i) Services provided by Central Government, State Government, Union territory or any local authority by way of any activity in relation to a function entrusted to a Panchayat under article 243G of the constitution or to a Municipality under article 243W of the constitution [NN 14/2017 - CT(R.), dated 28.06.2017, as amended by NN 16/2018 CT(R) w.e.f. 27.07.2018].

(ii) Service provided by State Government by way of grant of alcoholic liquor license, against consideration in the form of license fee or application fee or by whatever name it is called. [inserted by NN 25/2019 - CT(R.), w.e.f. 30.9.2019]

Note: [Circular No. 121/40/2019-GST, dated 11.10.2019]
This special dispensation applies only to supply of service by way of grant of liquor licenses by the State Governments as an agreement between the Centre and States and has no applicability or precedence value in relation to grant of other licenses and privileges for a fee in other situations, where GST is payable.

Note: Further, Government has power to grant exemption to any goods or services or both from the GST leviable u/s 11 of the CGST and u/s 6 of the IGST. And, by using this power, Government has exempted many goods and services from GST, which will be discussed in later chapters of this book.

Illustration 18 :

Fifty persons, each contributing Rs. 2,000 per month, have come together to organise a chit for a period of 50 months. At the end of each month, an amount of Rs. 1,00,000 (2,000 x 50) is available in the kitty of the Chit Fund. Rs. 1,00,000 is put to auction and subscribers who are interested in drawing the money early because of their needs may participate in the auction. The auction is organised by a 'Key Member' who manages and conducts the proceedings. The successful bidder who is normally the person who offers the highest interest/discount is given that chit amount. From this interest/discount amount, after deducting a fixed amount representing the commission payable to the 'Key Member', balance becomes the dividend which is distributed among all the subscribers. The auction is repeated in the subsequent months and the same procedure is followed. Explain briefly if GST could be levied on the services rendered in connection with the Chit Fund Business.

Solution :

The services carried out by a foreman of chit fund for conducting or organising a chit in any manner for a consideration (commission) qualifies to be covered under the scope of the term "supply" and will not be considered as "merely a transaction in money or actionable claim". Hence, it is chargeable to GST. Therefore, the commission payable to the "key member (i.e. foreman of chit fund)" is taxable. Further, interest/discount earned by each person is exempt under GST as per entry no. 27 of Notification No. 12/2017 CT (R), dated 28.06.2017.

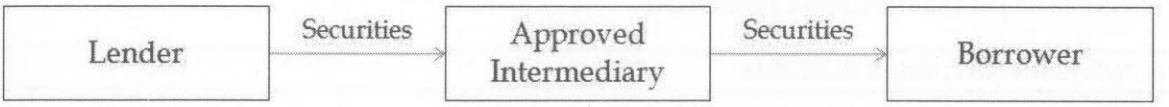
Clarification regarding taxability of supply of securities under Securities Lending Scheme, 1997 [Cicrular No. 119/38/2019-GST, dated 11.10.2019]

Issue : Whether the supply of securities under Securities Lending Scheme, 1997 ("Scheme") by the lender is taxable under GST

Facts :

1. *Securities and Exchange Board of India (SEBI) has prescribed the Securities Lending Scheme, 1997 for the purpose of facilitating lending and borrowing of securities. Under the Scheme, lender of securities lends to a borrower through an approved intermediary to a borrower under an agreement for a specified period with the condition that the borrower will return equivalent securities of the same type or class at the end of the specified period along with the corporate benefits accruing on the securities borrowed. The transaction takes place through an electronic screen-based order matching mechanism provided by the recognised stock exchange in India. There is anonymity between the lender and borrower since there is no direct agreement between them.*

2. *The lenders earn lending fee for lending their securities to the borrowers. The security lending mechanism is depicted in the diagram below: -*



3. *In the above chart:*

   (i) Lender is a person who deposits the securities registered in his name or in the name of any other person duly authorised on his behalf with an approved intermediary for the purpose of lending under the scheme.

   (ii) Borrower is a person who borrows the securities under the scheme through an approved intermediary.

   (iii) Approved intermediary is a person duly registered by the SEBI under the guidelines/scheme through whom the lender will deposit the securities for lending and the borrower will borrow the securities;

Clarification:

1. *It may be noted for the purpose of GST Act, "securities" shall have the same meaning as assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 [Section 2(101) of CGST Act]. The definition of services as per Section 2(102) of the CGST Act, is extracted as below: -*

   "services" means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged;

   Explanation.--For the removal of doubts, it is hereby clarified that the expression "services" includes facilitating or arranging transactions in securities;

2. *Securities as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 are not covered in the definition of goods under section 2(52) and services under section 2(102) of the CGST Act. Therefore, a transaction in securities which involves disposal of securities is not a supply in GST and hence not taxable.*

3. *The explanation added to the definition of services w.e.f. 01.02.2019 i.e." includes facilitating or arranging transactions in securities" is only clarificatory in nature and does not have any bearing on the taxability of the services under discussion (lending of securities) in past since 01.07.2017 but relates to facilitating or arranging transactions in securities.*

4. *The activity of lending of securities is not a transaction in securities as it does not involve disposal of securities. The clause 4 of para 4 relating to the Scheme under the Securities Lending Scheme, 1997 doesn't treat lending of securities as disposal of securities and therefore is not excluded from the definition of services.*

5. *The lender temporarily lends the securities held by him to a borrower and charges lending fee for the same from the borrower. The borrower of securities can further sell or buy these securities and is required to return the lended securities after stipulated period of time. The lending fee charged from the borrowers of securities has the character of consideration and this activity is taxable in GST since 01.07.2017.*

6. *Apart from above, the activities of the intermediaries facilitating lending and borrowing of securities for commission or fee are also taxable separately.*

7. *For the past period i.e. from 01.07.2017 to 30.09.2019, GST is payable under forward charge by the lender and request may be made by the lender (supplier) to SEBI to disclose the information about borrower for discharging GST under forward charge. The nature of tax payable shall be IGST. However, if the service provider has already paid CGST / SGST / UTGST treating the supply as an intra-state supply, such lenders shall not be required to pay IGST again in lieu of such GST payments already made.*

8. *Further, w.e.f. 1st October, 2019, the borrower of securities shall be liable to discharge GST as per Sl. No 16 of Notification No. 22/2019-Central Tax (Rate) dated 30.09.2019 under reverse charge mechanism (RCM). The nature of GST to be paid shall be IGST under RCM.*

Circular No. 76/50/2018-GST, dated 31.12.2018

Issue: Whether the supply of used vehicles, seized and confiscated goods, old and used goods, waste and scrap by Government departments are taxable under GST?

Clarification:

1. It may be noted that intra-State and inter-State supply of used vehicles, seized and confiscated goods, old and used goods, waste and scrap made by the Central Government, State Government, Union territory or a local authority is a taxable supply under GST.

2. Vide notification No. 36/2017-Central Tax (Rate) and notification No. 37/2017- Integrated Tax (Rate) both dated 13.10.2017, it has been notified that intra-State and inter-State supply respectively of used vehicles, seized and confiscated goods, old and used goods, waste and scrap by the Central Government, State Government, Union territory or a local authority to any registered person, would be subject to GST on reverse charge basis as per which tax is payable by the recipient of such supplies.

3. A doubt has arisen about taxability of intra-State and inter-State supply of used vehicles, seized and confiscated goods, old and used goods, waste and scrap made by the Central Government, State Government, Union territory or a local authority to an unregistered person.

4. It was noted that such supply to an unregistered person is also a taxable supply under GST but is not covered under notification No. 36/2017-Central Tax (Rate) and notification No. 37/2017- Integrated Tax (Rate) both dated 13.10.2017.

5. In this regard, it is clarified that the respective Government departments (i.e. Central Government, State Government, Union territory or a local authority) shall be liable to get registered and pay GST on intra-State and inter-State supply of used vehicles, seized and confiscated goods, old and used goods, waste and scrap made by them to an unregistered person subject to the provisions of sections 22 and 24 of the CGST Act.

VI. COMPOSITE AND MIXED SUPPLIES [SECTION 8]

Statutory Provisions	
Section 8	**Tax liability on composite and mixed supplies**
Clauses	**Particulars**
	The tax liability on a composite or a mixed supply shall be determined in the following manner, namely :

to friends on Mrs. Agrawal birthday. Determine the value of supply.

Solution :

As per the provisions of Rule 32(6) of the CGST Rules, the value of supply would be the money value of the goods redeemable against the voucher. Thus, in case of voucher from Big Bazar, the value would be Rs. 10,000 (i.e., Rs. 1,000 × 10).

Illustration 36 :

Bobbi Brown sells coupons that are redeemable against specified cosmetic products at retail outlets. Each coupon has a face value of Rs. 1,000 but is redeemable for supplies worth Rs. 1,100. What is the value of supply of such coupon under GST laws?

Solution :

As per provision of Rule 32(6) of the CGST Rules relating to valuation, the value of a coupon is the money value of the goods redeemable against it. Therefore, though the coupon is sold for Rs. 1,000, its value is Rs. 1,100.

(7) The value of taxable services provided by such class of service providers as may be notified by the Government, on the recommendations of the Council, as referred to in paragraph 2 of Schedule I of the said Act between distinct persons as referred to in section 25, where input tax credit is available, shall be deemed to be NIL.

RULE 32A : VALUE OF SUPPLY IN CASES WHERE KERALA FLOOD CESS IS APPLICABLE

[Rule 32A inserted by NN. 31/2019 – CT, w.e.f. 01.07.2019]

The value of supply of goods or services or both on which Kerala Flood Cess is levied under clause 14 of the Kerala Finance Bill, 2019 shall be deemed to be the value determined in terms of section 15 of the Act, but shall not include the said cess.

RULE 33 : VALUE OF SUPPLY OF SERVICES IN CASE OF PURE AGENT

Notwithstanding anything contained in the provisions of this Chapter, the expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply, if all the following conditions are satisfied, namely, -

(i) the supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorisation by such recipient;

(ii) the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and

(iii) the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.

Explanation : For the purposes of this rule, the expression "pure agent" means a person who -

(a) enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;

(b) neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply;

(c) does not use for his own interest such goods or services so procured; and

(d) receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.

become reimbursable expenditure merely because they are indicated separately in the invoice issued by the service provider to the recipient of service. Hence, these expenses will be included in the value of supply.

Illustration 41 :

A contracts with B, an architect for building a house. During the course of providing the taxable service, B incurs expenses such as telephone charges, air travel tickets, hotel accommodation, etc., to enable him to effectively perform the provision of services to A. In such a case, in whatever form B recovers such expenditure from A, whether as a separately itemised expense or as part of an inclusive overall fee, service tax is payable on the total amount charged by B. Value of the taxable service for charging GST is what A pays to B.

Illustration 42 :

Company X provides a taxable service of rent-a-cab by providing chauffeur-driven cars for overseas visitors. The chauffeur is given a lump sum amount to cover his food and overnight accommodation and any other incidental expenses such as parking fees by the Company X during the tour. At the end of the tour, the chauffeur returns the balance of the amount with a statement of his expenses and the relevant bills. Company X charges these amounts from the recipients of service. The cost incurred by the chauffeur and billed to the recipient of service constitutes part of gross amount charged for the provision of services by the Company X.

Clarification on issue of GST on Airport levies [i.e. Passenger Service Fee (PSF) and User Development Fee (UDF)] [Circular No. 115/34/2019 – GST, dated 11.10.2019] (A)

Various representations have been received seeking clarification on issues relating to GST on airport levies and to clarify that airport levies do not form part of the value of services provided by the airlines and consequently no GST should be charged by airlines on airport levies.

1. ***Passenger Service Fee (PSF) is charged under rule 88 of Aircraft Rules, 1937 according to which the airport licensee may collect PSF from embarking passengers at such rates as specified by the Central Government. According to the rule the airport license shall utilize the said fee for infrastructure and facilitation of the passengers. User Development Fee (UDF) is levied under rule 89 of the Aircraft rules 1937 which provides that the licensee may levy and collect, at a major airport, the User Development Fee at such rate as may be determined under clause (b) of sub-section (1) of section 13 of the Airports Economic Regulatory Authority of India Act, 2008.***

2. ***Though the rule does not prescribe the specific purpose of levy and whether it is to be charged from the airlines or the passengers. However, it is seen from section 2(n) of Airports Economic Regulatory Authority of India Act, 2008, that the authority which manages the airport is eligible to levy and charge UDF from the embarking passengers at any airport.***

3. ***Further, Director General of Civil Aviation has clarified vide order No. AIC Sl. No. 5/2010 dated 13.09.2010 that in order to avoid inconvenience to passengers and for smooth and orderly air transport/airport operations, the User Development Fees (UDF) shall be collected from the passengers by the airlines at the time of issue of air ticket and the same shall be remitted to Airports Authority of India in the line system/procedure in vogue. For this, collection charges of Rs. 5/- shall be receivable by the airlines from AAI, which shall not to be passed on to the passengers in any manner.***

4. ***The above facts clearly indicate that PSF and UDF are charged by airport operators for providing the services to passengers.***

5. ***Section 2(31) of the CGST Act states that "consideration" in relation to the supply of goods or services or both includes any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods o services or both, whether by the recipient or by any other person. Thus, PSF and UDF charged by airport operators are consideration for providing services to passengers.***

6. ***Thus, services provided by an airport operator to passengers against consideration I the form of UDF and PSF are liable to GST. UDF was also liable to service tax. It is also clear from notification of Director General of Civil Aviation AIC Sl. No. 5 /2010 dated 13.09.2010, which states that UDF approved by MoCA, GoI is***

inclusive of service tax. It is also seen from the Air India website that the UDF is inclusive of service tax. Further in order No. AIC S. Nos. 3/2018 and 4/2018, both dated 27.2.2018, it has been laid down tha GST is applicable on the charges of UDF and PSF.

7. *PSF and UDF being charges levied by airport operator for services provided to passengers, are collected by the airlines as an agent and is not a consideration for any service provided by the airlines. Thus, airline is not responsible for payment of GST on UDF or PSF, provided the airline satisfies the conditions prescribed for a pure agent under Rule 33 of the CGST Rules. It is the licensee, that is the airport operator (AAI, DIAL, MIAL etc) which is liable to pay GST on UDF and PSF.*

8. *Airlines may act as a pure agent for the supply of airport services in accordance with rule 33 of the CGST rules. Rule 33 of the CGST rules provides that the expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply, if all the following conditions are satisfied, namely, -*

   (i) the supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorisation by such recipient;

   (ii) the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and

   (iii) *the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to t*he services he supplies on his own account.

   "Pure agent" has been defined to mean a person who

   (a) enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both; (b) neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply; (c) does not use for his own interest such goods or services so procured; and (d) receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.

9. *Accordingly, the airline acting as pure agent of the passenger should separately indicate actual amount of PSF and UDF and GST payable on such PSF and UDF by the airport licensee, in the invoice issued by airlines to its passengers. The airline shall not take ITC of GST payable or paid on PSF and UDF. The airline would only recover the actual PSF and UDF and GST payable on such PSF and UDF by the airline operator. The amount so recovered will be excluded from the value of supplies made by the airline to its passengers. In other words, the airline shall not be liable to pay GST on the PSF and UDF (for airport services provided by airport licensee), provided the airline satisfies the conditions prescribed for a pure agent under Rule 33 of the CGST Rules. The registered passengers, who are the ultimate recipient of the airport services, may take ITC of GST paid on PSF and UDF on the basis of pure agent's invoice issued by the airline to them.*

10. *The airport operators shall pay GST on the PSF and UDF collected by them from the passengers through the airlines. Since, the airport operators are collecting PSF and UDF inclusive of GST, there is no question of their not paying GST collected by them to the Government.*

11. *The collection charges paid by airport operator to airlines are a consideration for the services provided by the airlines to the airport operator (AAI, DAIL, MAIL etc) and airlines shall be liable to pay GST on the same under forward charge. ITC of the same will* be available with the airport operator.

RULE 34 : RATE OF EXCHANGE OF CURRENCY, OTHER THAN INDIAN RUPEES, FOR DETERMINATION OF VALUE

Goods : The rate of exchange for the determination of the value of taxable goods shall be the rate as notified by CBEC u/s 14 of the Customs Act, 1962, prevalent on the date of time of supply of the said goods.
Services : The rate of exchange for the determination of the value of taxable service shall be the rate determined

Rule 36

	pursuance of any order where any demand has been confirmed on account of any fraud, wilful misstatement or suppression of facts.
(4) (A)	***Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers under sub-section (1) of section 37, shall not exceed 20 per cent. of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers under sub-section (1) of section 37 [Rule 36(4) inserted by NN 49/2019 – CT, w.e.f. 09.10.2019].***
Rule 37	**Reversal of input tax credit in the case of non-payment of consideration**
(1)	A registered person, who has availed of input tax credit on any inward supply of goods or services or both, but fails to pay to the supplier thereof the value of such supply along with the tax payable thereon within the time limit specified in the second proviso to sub-section (2) of section 16, shall furnish the details of such supply, the amount of value not paid and the amount of input tax credit availed of proportionate to such amount not paid to the supplier in FORM GSTR-2 for the month immediately following the period of one hundred and eighty days from the date of the issue of the invoice: Provided that the value of supplies made without consideration as specified in Schedule I of the said Act shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16. Provided further that the value of supplies on account of any amount added in accordance with the provisions of clause (b) of sub-section (2) of section 15 shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16. [second proviso inserted by NN 26/2018 – CT, dated 13.06.2018]
(2)	The amount of input tax credit referred to in sub-rule (1) shall be added to the output tax liability of the registered person for the month in which the details are furnished.
(3)	The registered person shall be liable to pay interest at the rate notified under sub-section (1) of section 50 for the period starting from the date of availing credit on such supplies till the date when the amount added to the output tax liability, as mentioned in sub-rule (2), is paid.
(4)	The time limit specified in sub-section (4) of section 16 shall not apply to a claim for re- availing of any credit, in accordance with the provisions of the Act or the provisions of this Chapter, that had been reversed earlier.

ANALYTICAL VIEW OF THE TOPIC

I. Eligibility for taking ITC [Section 16(1)]

1. **Registration under GST :** As per Section 16(1), every registered person shall be entitled to Input Tax Credit (ITC) charged on inward supply of goods and/or services. Therefore, unregistered person shall not be entitled to avail the ITC. But, if any person got registered subsequently, then, such person shall be entitled to avail the ITC of the Inputs held in Stock as per provisions given in section 18 (which is discussed in later parts of this chapter).

2. **Goods/services to be used for business purposes :** ITC will be available on goods and/or services which are used or intended to be used in the course or furtherance of the business. Thus, tax paid on goods and/or services which are used or intended to be used for non-business purposes cannot be availed as credit. ITC will be credited in Electronic Credit Ledger.

Illustration 1 :

LMN & Co, an unregistered supplier under GST wants to claim input tax credit and collect tax. Can it do so?

Answer :

No, LMN & Co. cannot claim input tax credit and collect tax. A person without GST registration can neither collect GST from his customers nor can claim any input tax credit of GST paid by him. However, if LMN & Co. nevertheless wants to claim input tax credit and collect tax, it can apply for voluntary registration under section 25(3) of CGST Act, 2017.

II. Conditions for taking ITC [Section 16(2)]

The registered person will be entitled to ITC on a supply only if ALL the following four conditions are fulfilled:

(a) **Possession of tax paying document [Section 16(2)(a) read with rule 36 of the CGST Rules] :** ITC can be availed on the basis of any of the following documents:

(i) Invoice issued by a supplier of goods and/or services

(ii) Invoice issued by recipient (receiving goods and/or services from unregistered supplier) along with proof of payment of tax (in case of reverse charge)

(iii) A debit note issued by supplier

(iv) Bill of entry or similar document prescribed under Customs Act

(v) Revised invoice

(vi) Document issued by Input Service Distributor

The documents on the basis of which ITC is being taken should have all the relevant particulars as prescribed in rule 46 of the CGST Rules.

However, if the said document does not contain all the specified particulars but contains atleast the following details

(i) amount of tax charged,

(ii) description of goods or services,

(iii) total value of supply of goods or services or both,

(iv) GSTIN of the supplier and recipient and

(v) place of supply in case of inter-State supply, then, the input tax credit may be availed by such registered person. [Proviso inserted by NN 39/2018 CT, w.e.f. 04.09.2018]

Note: Section 16 and the CGST Rules do not specify that which particular copy of the invoice will form the basis of taking ITC. However, rule 48 of the CGST Rules specifies that the original copy is for the recipient of goods. The original copy may preferably be kept for record to support the credit entry.

Rule 36(4): Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers u/s 37(1), shall not exceed 20% of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers u/s 37(1) [Rule 36(4) inserted by NN 49/2019 – CT, w.e.f. 09.10.2019].

Analysis:

It means even if some invoices (in respect of which amount of ITC does not exceed 20% of total eligible ITC) are not getting auto-populated/reflected in GSTR – 2A, then also, assessee can avail the input tax credit in respect of those invoices.

Analytical Example [ITC is available only to extent of 120% of the ITC (eligible) of GSTR2A] :

P.T.O.

S. No.	Particulars	Amount INR	Amount INR
A	ITC as per books		2000
B	ITC as per GSTR2A		1500
C	Invoices not uploaded by vendor(A-B)		500
D	Eligible ITC	(B*120%)= 1500*120%	1800
E	ITC reversed	A-D	200

Hence, Even though we have a tax invoice for total 2000/- we cannot claim it completely as the vendors have not uploaded the GSTR1

The same can be again taken in credit when reflecting in GSTR2A

Hence only to the extent of 120% will be allowed in case when the vendors have not uploaded their GSTR1

Highlights

- This restriction will actually mean that the Companies need to monitor whether the suppliers are uploading their returns on regular basis.
- Most Companies are likely to feel the pinch of the amendment (once it becomes effective).
- The amendment has introduced another set of compliance on a monthly basis, i.e check GSTR 2A if the credit claimed doesn't exceed GSTR 2A by 20% and also determine the credit which are 'eligible' out of the GSTR 2A before applying this 20% rule.

Illustration 2 :

Explain the conditions necessary for obtaining input tax credit? *(IPCC MTP May 2018, 5 Marks)*

Solution :

The following four conditions are to be satisfied by the registered taxable person for obtaining input tax credit:

(i) he is in possession of tax invoice or debit note or such other tax paying documents as may be prescribed;

(ii) he has received the goods or services or both;

(iii) the supplier has actually paid the tax charged in respect of the supply to the Government; and

(iv) he has furnished the return under section 39.

(b) Receipt of the goods and / or services [Section 16(2)(b)] : The person taking the ITC must have received the goods and/or services.

"Bill to Ship to" Model also included: Under this model, the goods are delivered to a third party on the direction of the registered person who purchases the goods from the supplier. Receipt of goods u/s 16(2)(b) includes delivery to another person on the direction of the registered person by way of transfer of documents of title to goods or otherwise either before or during the movement of goods. It would be deemed that the registered person has received the goods in such scenario. So, ITC will be available to the registered person on whose order the goods are delivered to third person.

Further, where the services are provided by the supplier to any other person (like employee, agent or otherwise) on the direction of and on account of such registered person, then also, it shall be deemed that the registered person has received the services for the purposes of claiming ITC [inserted by CGST (Amendment) Act, 2018, w.e.f. 01.02.2019].

~~(a) It is hereby clarified that if a person supplies goods and/or services referred to in clause (b) of paragraph 6 of Schedule II of the said Act and also supplies any exempt services including services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount, the said person shall not be ineligible for the composition scheme u/s 10 subject to the fulfillment of all other conditions specified therein.~~

~~(b) It is further clarified that in computing his aggregate turnover in order to determine his eligibility for composition scheme, value of supply of any exempt services including services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount, shall not be taken into account.~~

[omitted by CGST (Removal of Difficulties) order, 2019, w.e.f. 01.02.2019]

(iv) Clarifications by CBIC [CGST (Removal of Difficulties) Order No. 01/2019 – C.T., w.e.f. 01.02.2019) :

For the removal of difficulties, it is hereby clarified that the value of supply of exempt services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount, shall not be taken into account –

(a) for determining the eligibility for composition scheme under second proviso to sub-section (1) of section 10;

(b) in computing aggregate turnover in order to determine eligibility for composition scheme.

(v) What will be the rate of tax under composition scheme for bakery items supplied where eating place is attached. Will it quality as manufacturer for the purpose of composition levy?

Answer :

Any service by way of serving of food or drinks including by a bakery qualifies under section 10 (1) (b) of CGST Act and hence GST rate of composition levy for the same would be 5%. [Circular No. 27/01/2018 – GST, dated 04.01.2018]

(vi) The **manufacturer** of the following goods which are not eligible for Composition Scheme, have been notified u/s 10(2)(e) vide Notification No. 14/2019 C.T.:

Tariff item HSN Code	Description
2105 00 00	Ice cream and other edible ice, whether or not containing cocoa
2106 90 20	Pan masala
2202 10 10	***Aerated Water, containing added sugar or other sweetening matter or flavoured [Eg. Pepsi, Coca-cola, etc.]*** ***[inserted by NN 43/2019 – C.T., w.e.f. 01.10.2019]***
Chapter 24	All goods, i.e. Tobacco and manufactured tobacco substitutes

Illustration 1 :

Mangal Industries, a manufacturer located in Mumbai, supplies goods to its customers in Delhi also (i.e. inter-State supply of goods). Here, Mangal Industries cannot enter into the composition scheme, as it is effecting inter-State supply of goods i.e. Delhi.

Illustration 2 : Computation of amount payable under composition levy

Mr. 'Y' is a manufacturer having one unit in Maharashtra and another unit in Rajasthan. Total turnover of two units in last F.Y. was Rs. 70 lakh (Rs. 40 lakh + Rs. 30 lakh). Total turnover of two units in the second quarter of current financial year was Rs. 25 lakh (Rs. 15 lakh + Rs. 10 lakh). Compute GST payable by Mr. 'Y'.

Solution :

NN. 02/2019 – CT (R)

(ii) who is not eligible to pay tax under sub-section (1) of section 10 of the said Act;

(iii) who is not engaged in making any supply which is not leviable to tax under the said Act;

(iv) who is not engaged in making any inter-State outward supply;

(v) who is neither a casual taxable person nor a non-resident taxable person;

(vi) who is not engaged in making any supply through an electronic commerce operator who is required to collect tax at source under section 52; and

(vii) who is not engaged in making **supplies** of the following goods:

Tariff	Description
2105 00 00	Ice cream and other edible ice, whether or not containing cocoa
2106 90 20	Pan masala
2202 10 10 (A)	***Aerated Water, containing added sugar or other sweetening matter or flavoured [Eg. Pepsi, Coca-cola, etc.]*** ***[inserted by NN 18/2019 – C.T.(R.), w.e.f. 01.10.2019]***
Chapter 24	All goods, i.e. Tobacco and manufactured tobacco substitutes

2. Where more than one registered persons are having the **same Permanent Account Number**, issued under the Income Tax Act, 1961(43 of 1961), central tax on supplies by all such registered persons is paid at the rate specified in column (2) under this notification.

3. The registered person shall **not collect any tax** from the recipient on supplies made by him **nor** shall he be entitled to any credit of **input tax.**

4. The registered person shall issue, instead of tax invoice, **a bill of supply** as referred to in clause (c) of sub-section (3) of section 31 of the said Act with particulars as prescribed in rule 49 of Central Goods and Services Tax Rules.

5. The registered person shall **mention** the following words at the **top of the bill of supply**, namely: - 'taxable person paying tax in terms of notification No. 2/2019-Central Tax (Rate) dated 07.03.2019, not eligible to collect tax on supplies'.

6. The registered person opting to pay central tax at the rate of three percent under this notification shall be liable to pay central tax on **inward supplies** on which he is liable to pay tax under sub-section (3) or, as the case may be, under sub-section (4) of section 9 of said Act at the **applicable rates**.

7. Where any registered person who has availed of input tax credit **opts to pay tax under this notification,** he shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, equivalent to the credit of input tax in respect of inputs held in **stock** and inputs contained in semi-finished or finished goods held in stock and on capital goods as if the supply made under this notification attracts the provisions of **section 18(4)** of the said Act and the rules made there-under and after payment of such amount, the balance of input tax credit, if any, lying in his electronic credit ledger shall lapse [inserted by NN 09/2019 – CT (R), w.e.f. 01.04.2019].

Explanation.- For the purposes of this notification, the expression "first supplies of goods or services or both" shall, for the purposes of determining eligibility of a person to pay tax under this notification, include the supplies from the first day of April of a financial year to the date from which he becomes liable for registration under the said Act **but for** the purpose of determination of **tax payable** under this notification shall **not include** the supplies from the first day of April of a financial year **to the date from which he becomes liable for registration** under the Act.

not outward supply. Further, if a person who is registered under GST, but, has opted for composition scheme under GST, purchases certain goods or service where RCM apply, then, recipient will have to pay GST on such purchases, but in this case, recipient shall not be eligible to avail ITC of such GST paid, because, he has opted for composition scheme which do not allow any ITC of any GST paid on any inward supply.

Services / Goods taxable u/s 9(4) of the CGST Act, 2017 [Notification No. 07/2019- Central Tax (Rate), w.e.f. 01.04.2019] [Same provisions are inserted in IGST Act, 2017]

In exercise of the powers conferred by sub-section (4) of section 9 of the CGST Act, 2017, the Central Government, on the recommendations of the Council, hereby notifies that the registered person specified in column (3) of the table below, shall in respect of supply of goods or services or both specified in column (2) of the Table below, received from an unregistered supplier shall pay tax on reverse charge basis as recipient of such goods or services or both, namely:-

Sl. No.	Category of supply of goods and services	Recipient of goods and services
(1)	(2)	(3)
1	Supply of such goods and services or both [other than services by way of grant of development rights, long term lease of land (against upfront payment in the form of premium, salami, development charges etc.) or FSI (including additional FSI)] which constitute the shortfall from the minimum value of goods or services or both required to be purchased by a promoter for construction of project, in a financial year (or part of the financial year till the date of issuance of completion certificate or first occupation, whichever is earlier) as prescribed in notification No. 11/ 2017-Central Tax (Rate), dated 28th June, 2017, at items (i), (ia), (ib), (ic) and (id) against serial number 3 in the Table, published in Gazette of India vide G.S.R. No. 690, dated 28th June, 2017, as amended.	Promoter
2	Cement falling in chapter heading 2523 in the first schedule to the Customs Tariff Act, 1975 ~~which constitute the shortfall from the minimum value of goods or services or both required to be purchased by a promoter for construction of project, in a financial year (or part of the financial year till the date of issuance of completion certificate or first occupation, whichever is earlier) as prescribed in notification No. 11/ 2017- Central Tax (Rate), dated 28th June, 2017, at items (i), (ia), (ib), (ic) and (id) against serial number 3 in the Table, published in Gazette of India vide G.S.R. No. 690, dated 28th June, 2017, as amended~~. ***[Omitted words, omitted by NN24/2019 – C.T.(R.), w.e.f. 01.10.2019]***	Promoter (A)
3	Capital goods falling under any chapter in the first schedule to the Customs Tariff Act, 1975 supplied to a promoter for construction of a project on which tax is payable or paid at the rate prescribed for items (i), (ia), (ib), (ic) and (id) against serial number 3 in the Table, in notification No. 11/ 2017- Central Tax (Rate), dated 28th June, 2017, published in Gazette of India vide G.S.R. No. 690, dated 28th June, 2017, as amended.	Promoter

Explanation. - For the purpose of this notification, -

(i) the term "promoter" shall have the same meaning as assigned to it in in clause (zk) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);

(ii) "project" shall mean a Real Estate Project (REP) or a Residential Real Estate Project (RREP);

(iii) the term "Real Estate Project (REP)" shall have the same meaning as assigned to it in in clause (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);

	[inserted by NN 05/2019- CT (R), w.e.f. 01.04.2019]		
5C.	Long term lease of land (30 years or more) by any person against consideration in the form of upfront amount (called as premium, salami, cost, price, development charges or by any other name) and/or periodic rent for construction of a project by a promoter. [inserted by NN 05/2019- CT (R), w.e.f. 01.04.2019]	Any person	Promoter
6.	Services supplied by a **director** of a company/body corporate to the said company/ body corporate.	A director of a company or a body corporate	The company or a body corporate located in the taxable territory.
7.	Services supplied by an **insurance agent** to any person carrying on insurance business.	An insurance agent	Any person carrying an insurance business, located in the taxable territory.
8.	Services supplied by a **recovery agent** to a banking company or a financial institution or a non-banking financial company.	A recovery agent	A banking company or a financial institution or a non-banking financial company, located in the taxable territory.
9. (A)	Supply of services by ~~an author~~, music, composer, photographer, artist or the like by way of transfer or permitting the use or enjoyment of a copyright covered under section 13(1)(a) of the **Copyright** Act, 1957 relating to **original ~~literary,~~ dramatic, musical or artistic works** to a ~~publisher,~~ music company, producer or the like. ***[RCM related to Original Literary has been omitted from here and a separate entry is inserted for the same, by NN 22/2019 - CT (R), w.e.f. 01.10.2019]***	~~Author~~, Music composer, photographer, artist, or the like	~~Publisher~~, Music company, producer or the like, located in the taxable territory.
9A (A)	***Supply of services by an author by way of transfer or permitting the use or enjoyment of a copyright covered u/s 13(1)(a) of the Copyright Act, 1957 relating to original literary works to a publisher. [Entry No. 9A inserted by NN 22/2019 - CT (R), w.e.f. 01.10.2019]***	*Author*	***Publisher located in the taxable territory:*** ***Provided that nothing contained in this entry shall apply where, -*** ***(i) the author has taken registration under the CGST Act, 2017, and filed a declaration, in the prescribed form, within the time limit prescribed therein, with the jurisdictional GST commissioner, that he exercises the option to pay GST on the service specified in column (2), under forward charge in accordance with Section 9 (1) of the CGST Act, 2017 under forward charge, and to comply with all the provisions of CGST Act, 2017 as they apply to a person liable for paying the tax in relation to the***

		(A)	***supply of any goods or services or both and that he shall not withdraw the said option within a period of 1 year from the date of exercising such option;*** ***(ii) the author makes a prescribed declaration on the invoice issued by him to the publisher.***
10.	Supply of services by the members of **Overseeing Committee** to Reserve Bank of India (**RBI**) [Entry No. 10, inserted by NN. 33/2017-CT (Rate), w.e.f. 13.10.2017]	Members of Overseeing Committee constituted by the RBI	Reserve Bank of India (RBI)
11.	Services supplied by **individual Direct Selling Agents (DSAs)** other than a body corporate, partnership or limited liability partnership firm to bank or non-banking financial company (NBFCs). [this entry inserted by NN 15/2018 CT(R) w.e.f. 27.07.2018]	Individual Direct Selling Agents (DSAs) other than a body corporate, partnership or limited liability partnership firm	A banking company or a non-banking financial company, located in the taxable territory.
12.	Services provided by **business facilitator (BF)** to a banking company [inserted by NN 29/2018 – CT (R), w.e.f. 01.01.2019]	Business facilitator (BF)	A banking company, located in the taxable territory
13.	Services provided by an **agent of business correspondent (BC)** to business correspondent (BC) [inserted by NN 29/2018 – CT (R), w.e.f. 01.01.2019]	An agent of business correspondent (BC)	A business correspondent, located in the taxable territory.
14.	**Security services** (services provided by way of supply of security personnel) provided to a registered person: Provided that nothing contained in this entry shall apply to, - (i)(a) a Department or Establishment of the Central Government or State Government or Union territory; or (b) local authority; or (c) Governmental agencies; which has taken registration under the Central Goods and Services Tax Act, 2017 (12 of 2017) only for the purpose of deducting tax u/s 51 of the said Act and not for making a taxable supply of goods or services; or (ii) a registered person paying tax under section 10 of the said Act. [inserted by NN 29/2018 – CT (R), w.e.f. 01.01.2019]	Any person other than a body corporate	A registered person, located in the taxable territory
15. (A)	***Services provided by way of renting of a motor vehicle provided to a body corporate*** ***[Entry No. 15 inserted by NN 22/2019 – CT (R), w.e.f. 01.10.2019]***	***Any person other than a body corporate, paying central tax at the rate of 2.5% on***	***Any body corporate located in the taxable territory.***

		renting of motor vehicles with input tax credit only of input service in the same line of business	
16.	*Services of lending of securities under Securities Lending Scheme, 1997 ("Scheme") of Securities and Exchange Board of India ("SEBI"), as amended.* *[Entry No. 16 inserted by NN 22/2019 – CT (R), w.e.f. 01.10.2019]*	*Lender i.e. a person who deposits the securities registered in his name or in the name of any other person duly authorised on his behalf with an approved intermediary for the purpose of lending under the Scheme of SEBI*	*Borrower i.e. a person who borrows the securities under the Scheme through an approved intermediary of SEBI.*

List of Additional services taxable under reverse charge under IGST Act (Notification No. 10/2017 IT (R) dated 28.06.2017) : All the services which have been notified for reverse charge purposes under CGST Act (as given above) have also been notified for reverse charge under IGST Act. Further, following two services are additionally included under RCM for IGST purposes:

S.No.	Category of Supply of Service	Supplier of Service	Recipient of Service
1	Any service **supplied by any person who is located in a non taxable territory** to any person, other than non-taxable online recipient.	Any person located in a non-taxable territory	Any person located in the taxable territory, other than non taxable online recipient.
2	Services **supplied by a person located in nontaxable territory by way of transportation of goods by a vessel** from a place outside India up to the customs station of clearance in India.	A person located in non-taxable territory	Importer, as defined in section 2(26) of the Customs Act, 1962, located in the taxable territory. **Importer**, in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes any owner, beneficial owner or any person holding himself out to be the importer [Sec. 2(26) of the Customs Act, 1962].

Explanation : For purpose of this notification, -

(a) The person who pays or is liable to pay freight for the transportation of goods by road in goods carriage, located in the taxable territory shall be treated as the person who receives the service for the purpose of this notification.

(b) "Body Corporate" has the same meaning as assigned to it in clause (11) of section 2 of the Companies Act, 2013.
As per section 2(11) of the Companies Act, 2013, body corporate or corporation includes a company incorporated outside India, but does not include -

(i) a co-operative society registered under any law relating to co-operative societies; and

Explanation: For the purposes of this sub-section, person receiving such services shall be deemed to be located in the taxable territory, if any two of the following no contradictory conditions are satisfied, namely :

(a) the location of address presented by the recipient of services through internet is in the taxable territory;

(b) the credit card or debit card or store value card or charge card or smart card or any other card by which the recipient of services settles payment has been issued in the taxable territory;

(c) the billing address of the recipient of services is in the taxable territory;

(d) the internet protocol address of the device used by the recipient of services is in the taxable territory;

(e) the bank of the recipient of services in which the account used for payment is maintained is in the taxable territory;

(f) the country code of the subscriber identity module card used by the recipient of services is of taxable territory;

(g) the location of the fixed land line through which the service is received by the recipient is in the taxable territory.

Illustration 55 :

Mr. Student of Abu Dhabi, subscribes to the GST videos of Yashvant Mangal Classes by paying a Subscription fee of Rs.1 Lac from his Abu Dhabi Bank Account. The place of supply will be Abu Dhabi (i.e. outside India).

Illustration 56 :

Mr. Student of Abu Dhabi, had come to India and subscribed and watched the video in Mangal Internet Cafe in Mumbai. The Place of supply will be Mumbai as the internet protocol address of the device and the location of the fixed land line through which the service is received by the recipient is in the taxable territory.

SEC. 13(13)

(13) In order to prevent double taxation or non-taxation of the supply of a service, or for the uniform application of rules, the Government shall have the power to notify any description of services or circumstances in which the place of supply shall be the place of effective use and enjoyment of a service.

(A) ***In exercise of the powers conferred by section 13(13) of the IGST Act, 2017, the Central Government, on being satisfied that it is necessary in order to prevent double taxation or non-taxation of the supply of a service, or for the uniform application of rules, on the recommendations of the Council, has notified following description of services or circumstances in which the place of supply shall be the place of effective use and enjoyment of a service as specified in following table:***

Description of services or circumstances	*Place of Supply*
Supply of research and development services related to pharmaceutical sector by a person located in taxable territory to a person located in the non-taxable territory.	*The place of supply of services shall be the location of the recipient of services subject to fulfillment of the following conditions:* *(i) Supply of services from the taxable territory are provided as per a contract between the service provider located in taxable territory and service recipient located in non-taxable territory.* *(ii) Such supply of services fulfills all other conditions in the definition of export of services, except condition provided at Section 2(6)(iii) of IGST Act, 2017 [i.e. the place of supply of service is outside India].*

[NN/04/2019-I.T., w.e.f. 01.10.2019]

Illustration 57 :

3. Thus, even if the full consideration for the services as per the contract value is not received in convertible foreign exchange in India due to the fact that the recipient of services located outside India has directly paid to the supplier of services located outside India (for the outsourced part of the services), that portion of the consideration shall also be treated as receipt of consideration for export of services in terms of section 2(6)(iv) of the IGST Act, provided the:

   (i) integrated tax has been paid by the supplier located in India for import of services on that portion of the services which has been directly provided by the supplier located outside India to the recipient of services located outside India; and

   (ii) RBI by general instruction or by specific approval has allowed that a part of the consideration for such exports can be retained outside India.

Illustration to understand the Circular:

ABC Ltd. India has received an order for supply of services amounting to $ 5,00,000/- to a US based client. ABC Ltd. India is unable to supply the entire services from India and asks XYZ Ltd. Mexico (who is not merely an establishment of a distinct person viz. ABC Ltd. India, in accordance with the Explanation 1 in Section 8 of the IGST Act) to supply a part of the services (say 40% of the total contract value). ABC Ltd. India shall be the exporter of services for the entire value if the invoice for the entire amount is raised by ABC Ltd. India. The services provided by XYZ Ltd. Mexico to the US based client shall be import of services by ABC Ltd. India and it would be liable to pay integrated tax on the same under reverse charge and also be eligible to take input tax credit of the integrated tax so paid. Further, if the provisions contained in section 2(6) of the IGST Act are not fulfilled with respect to the realization of convertible foreign exchange, say only 60% of the consideration is received in India and the remaining amount is directly paid by the US based client to XYZ Ltd. Mexico, even in such a scenario, 100% of the total contract value shall be taken as consideration for the export of services by ABC Ltd. India provided integrated tax on import of services has been paid on the part of the services provided by XYZ Ltd Mexico directly to the US based client and RBI (by general instruction or by specific approval) has allowed that a part of the consideration for such exports can be retained outside India. In other words, in such cases, the export benefit will be available for the total realization of convertible foreign exchange by ABC Ltd. India and XYZ Ltd. Mexico.

Clarification regarding determination of place of supply in respect of various cargo handling services provided by ports to clients and Services rendered on goods temporarily imported in India [Circular No. 103/22/2019-GST, dated 28.06.2019]

Issue 1:

Various services are being provided by the port authorities to its clients in relation to cargo handling. Some of such services are in respect of arrival of wagons at port, haulage of wagons inside port area up-to place of unloading, siding of wagons inside the port, unloading of wagons, movement of unloaded cargo to plot and staking hereof, movement of unloaded cargo to berth, shipment/loading on vessel, etc. Doubts have been raised about determination of place of supply for such services i.e. whether the same would be determined in terms of the provisions contained in Section 12(2) or Section 13(2) of the IGST Act, as the case may be or the same shall be determined in terms of the provisions contained in Section 12(3) of the IGST Act.

Clarification:

It is hereby clarified that such services are ancillary to or related to cargo handling services and are not related to immovable property. Accordingly, the place of supply of such services will be determined as per the provisions contained in Section 12(2) or Section 13(2) of the IGST Act, as the case may be, depending upon the terms of the contract between the supplier and recipient of such services.

Issue 2:

Doubts have been raised about the place of supply in case of supply of various services on unpolished diamonds such as cutting and polishing activity which have been temporarily imported into India and are not put to any use in India and exported after the said processes?

Clarification:

Place of supply in case of performance based services is to be determined as per the provisions contained in Section 13(3)(a) of the IGST Act and generally the place of supply is where the services are actually performed. But an exception has been carved out in 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.

In case of cutting and polishing activity on unpolished diamonds which are temporarily imported into India & are not put to any use in India, the place of supply would be determined as per the provisions contained in Section 13(2) of the IGST Act.

Clarification on doubts related to supply of Information Technology enabled Services (ITeS services)[Circular No.107/26/2019-GST,dated 18.07.2019]

1. *Various representations have been received seeking clarification on issues related to supply of Information Technology enabled Services (hereinafter referred to as "ITeS services") such as call center, business process outsourcing services, etc. and "Intermediaries" to overseas entities under GST law and whether they qualify to be "export of services" or otherwise.*

2. *Intermediary has been defined in the sub-section (13) of section 2 of the Integrated Goods and Service Tax Act, 2017 (hereinafter referred to as "IGST" Act) as under -*

   — Intermediary means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account.

3. *The definition of intermediary inter alia provides specific exclusion of a person i.e. that of a person who supplies such goods or services or both or securities on his own account. Therefore, the supplier of services would not be treated as 'intermediary' even where the supplier of services qualifies to be 'an agent/ broker or any other person' if he is involved in the supply of services on his own account.*

4. *There may be various possible scenarios when a supplier of ITeS services located in India supplies services for and on behalf of a client located abroad. These scenarios have been examined and are being discussed in detail hereunder:*

   4.1 Scenario -I:

   The supplier of ITeS services supplies back end services. In such a scenario, the supplier will not fall under the ambit of intermediary under sub-section (13) of section 2 of the IGST Act where these services are provided on his own account by such supplier. Even where a supplier supplies ITeS services to customers of his clients on clients' behalf, but actually supplies these services on his own account, the supplier will not be categorized as intermediary. In other words, a supplier "A" supplying ITeS services on his own account to his client "B" or to the customer "C" of his client would not be intermediary in terms of sub-section (13) of section 2 of the IGST Act.

   4.2 Scenario -II:

   The supplier of backend services located in India arranges or facilitates the supply of goods or services or both by the client located abroad to the customers of client. Such backend services may include support services, during pre-delivery, delivery and post-delivery of supply (such as order placement and delivery and logistical support, obtaining relevant Government clearances, transportation of goods, post-sales support and other services, etc.). The supplier of such services will fall under the ambit of intermediary under sub-section (13) of section 2 of the IGST Act as these services are merely for arranging or facilitating the supply of goods or services or both between two or more persons. In other words, a supplier "A" supplying backend services as