

CE Comprehensive Course on GST

(CE GST Comprehensive Course: Season 4)

Index

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Sl. No.	Topic	Page no.
1.	101 st Constitutional amendment Act & Constitutional Background of GST	
2.	FCM & RCM	
3.	Inter state and Intra state supply	
4.	Section 7 & 8 of IGST Act	
5.	Type of taxes in GST and their nature	
6.	Important concepts & definitions to understand GST	

101st Constitutional amendment Act & Constitutional Background of GST

Article 245 in The Constitution Of India 1949

245. Extent of laws made by Parliament and by the Legislatures of States

- (1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State
- (2) No law made by Parliament shall be deemed to be invalid on the ground that it would have extra territorial operation

Article 254 in The Constitution Of India 1949

254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States

(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void

Article 254 in The Constitution Of India 1949

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State: Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State

Article 246 in The Constitution Of India 1949

246. Subject matter of laws made by Parliament and by the Legislatures of States

(1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the Union List)

Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the Concurrent List)

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included (in a State) notwithstanding that such matter is a matter enumerated in the State List

101st constitutional amendment Act

246A. (1) Notwithstanding anything contained in articles 246 and 254, Parliament, and, subject to clause (2), the Legislature of every State, have power to make laws with respect to goods and services tax imposed by the Union or by such State.

(2) Parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.

Explanation.—The provisions of this article, shall, in respect of goods and services tax referred to in clause (5) of article 279A, take effect from the date recommended by the Goods and Services Tax Council.”.

101st constitutional amendment Act

- State legislature will have right to make law.
- In case of inter state supply only the parliament will have right to make law.
- These provision will apply on items in article 279A(5) from the date recommended by council. (Article 279 A(5) covers 5 petroleum products.)
- Article 269A provide for levy of tax on inter state transactions by union government and shall be apportioned between the states.

101st constitutional amendment Act

- It further provide that supply of goods, or of services or both in the course of import into the territory of India shall be deemed to be supply of goods, or of services, or both in the course of inter-State trade or commerce.
- Parliament may, by law, formulate the principles for determining the place of supply, and when a supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.

101st constitutional amendment Act

Parliament may, by law, formulate the principles for determining the place of supply, and when a supply of goods, or of services, or both takes place in the course of inter-State trade or commerce

Basic scheme of GST

CGST Act
174
sections
and III
schedules

IGST Act
25
Sections

UTGST
Act
Replica of
CGST Act

Compens
ation Act
14
sections
and one
schedule

State
Act's for
each
state
Replica of
CGST Act

Basic scheme of Law

Chapter	Section	Title
Chapter 1 PRELIMINARY	Section 1	Short title, extent and commencement.
	Section 2	Definitions.
	Section 3	Officers under this Act.
Chapter 2 ADMINISTRATIO N	Section 4	Appointment of officers.
	Section 5	Powers of officers.
	Section 6	Authorisation of officers of State tax or Union territory tax as proper officer in certain circumstances.

Chapter 3 LEVY AND COLLECTION OF TAX	Section 7	Scope of supply.
	Section 8	Tax liability on composite and mixed supplies.
	Section 9	Levy and collection.
	Section 10	Composition levy.
	Section 11	Power to grant exemption from tax.
Chapter 4 TIME AND VALUE OF SUPPLY	Section 12	Time of supply of goods.
	Section 13	Time of supply of services.
	Section 14	Change in rate of tax in respect of supply of goods or services.
	Section 15	Value of taxable supply.

Chapter 5 INPUT TAX CREDIT	Section 16	Eligibility and conditions for taking input tax credit.
	Section 17	Apportionment of credit and blocked credits.
	Section 18	Availability of credit in special circumstances.
	Section 19	Taking input tax credit in respect of inputs and capital goods sent for job work.
	Section 20	Manner of distribution of credit by input Service Distributor.
	Section 21	Manner of recovery of credit distributed in excess.

Chapter 6 REGISTRATION	Section 22	Persons liable for registration.
	Section 23	Persons not liable for registration.
	Section 24	Compulsory registration in certain cases.
	Section 25	Procedure for registration.
	Section 26	Deemed registration.
	Section 27	Special provisions relating to casual taxable person and non-resident taxable person.
	Section 28	Amendment of registration.
	Section 29	Cancellation of registration.
	Section 30	Revocation of cancellation of registration.

Chapter 7 TAX INVOICE, CREDIT AND DEBIT NOTES	Section 31	Tax invoice.
	Section 32	Prohibition of unauthorised collection of tax.
	Section 33	Amount of tax to be indicated in tax invoice and other documents.
	Section 34	Credit and debit notes.
Chapter 8 ACCOUNTS AND RECORDS	Section 35	Accounts and other records.
	Section 36	Period of retention of accounts.

Chapter 9 RETURNS	Section 37	Furnishing details of outward supplies.
	Section 38	Furnishing details of inward supplies.
	Section 39	Furnishing of returns.
	Section 40	First return.
	Section 41	Claim of input tax credit and provisional acceptance thereof.
	Section 42	Matching, reversal and reclaim of input tax credit.
	Section 43	Matching, reversal and reclaim of reduction in output tax liability.
	Section 44	Annual return.
	Section 45	Final return.
	Section 46	Notice to return defaulters.
	Section 47	Levy of late fee.
Section 48	Goods and services tax practitioners.	

Chapter 10 PAYMENT OF TAX	Section 49	Payment of tax, interest, penalty and other amounts.
	Section 50	Interest on delayed payment of tax.
	Section 51	Tax deduction at source.
	Section 52	Collection of tax at source.
	Section 53	Transfer of input tax credit.
Chapter 11 REFUNDS	Section 54	Refund of tax.
	Section 55	Refund in certain cases.
	Section 56	Interest on delayed refunds.
	Section 57	Consumer Welfare Fund.
	Section 58	Utilisation of Fund.

Chapter 12 ASSESSMENT	Section 59	Self- assessment.
	Section 60	Provisional assessment.
	Section 61	Scrutiny of returns.
	Section 62	Assessment of non-filers of returns.
	Section 63	Assessment of unregistered persons.
	Section 64	Summary assessment in certain special cases.
Chapter 13 AUDIT	Section 65	Audit by tax authorities.
	Section 66	Special audit.

Chapter 14 INSPECTION, SEARCH, SEIZURE ARREST	AND	Section 67	Power of inspection, search and seizure.
		Section 68	Inspection of goods in movement.
		Section 69	Power to arrest.
		Section 70	Power to summon persons to give evidence and produce documents.
		Section 71	Access to business premises.
		Section 72	Officers to assist proper officers.

Chapter 15 DEMANDS AND RECOVER Y	Section 73	Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful-misstatement or suppression of facts.
	Section 74	Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful- misstatement or suppression of facts.
	Section 75	General provisions relating to determination of tax.
	Section 76	Tax collected but not paid to Government.
	Section 77	Tax wrongfully collected and paid to Central Government or State Government.
	Section 78	Initiation of recovery proceedings.
	Section 79	Recovery of tax.
	Section 80	Payment of tax and other amount in instalments.

Section 81	Transfer of property to be void in certain cases.
Section 82	Tax to be first charge on property.
Section 83	Provisional attachment to protect revenue in certain cases.
Section 84	Continuation and validation of certain recovery proceedings

Chapter 16 LIABILITY TO PAY IN CERTAIN CASES	Section 85	Liability in case of transfer of business.
	Section 86	Liability of agent and principal.
	Section 87	Liability in case of amalgamation or merger of companies.
	Section 88	Liability in case of company in liquidation.
	Section 89	<u>Liability of directors of private company.</u>
	Section 90	Liability of partners of firm to pay tax.
	Section 91	Liability of guardians, trustees, etc.
	Section 92	Liability of Court of Wards, etc.
	Section 93	Special provisions regarding liability to pay tax, interest or penalty in certain cases.
	Section 94	Liability in other cases.

Chapter 17 Advance ruling	Section 95	Definitions
	Section 96	Authority for advance ruling.
	Section 97	Application for advance ruling.
	Section 98	Procedure on receipt of application.
	Section 99	Appellate Authority for Advance Ruling.
	Section 100	Appeal to Appellate Authority.
	Section 101	Orders of Appellate Authority.
	Section 101A	Constitution of National Appellate Authority for Advance Ruling.
	Section 101B	Appeal to National Appellate Authority
	Section 101C	Order of National Appellate Authority

Section 102	Rectification of advance ruling.
Section 103	Applicability of advance ruling.
Section 104	Advance ruling to be void in certain circumstances.
Section 105	Powers of Authority and Appellate Authority.
Section 106	Procedure of Authority and Appellate Authority.

Chapter 18 APPEALS AND REVISION	Section 107	Appeals to Appellate Authority.
	Section 108	Powers of Revisional Authority.
	Section 109	Constitution of Appellate Tribunal and Benches thereof.
	Section 110	President and Members of Appellate Tribunal, their qualification, appointment, conditions of service, etc.
	Section 111	Procedure before Appellate Tribunal.
	Section 112	Appeals to Appellate Tribunal.
	Section 113	Orders of Appellate Tribunal.
	Section 114	Financial and administrative powers of President.
	Section 115	Interest on refund of amount paid for admission of appeal.

Section116	Appearance by authorised representative.
Section 117	Appeal to High Court.
Section 118	Appeal to Supreme Court.
Section 119	Sums due to be paid notwithstanding appeal, etc.
Section120	Appeal not to be filed in certain cases.
Section 121	Non- appealable decisions and orders.

Chapter 19 OFFENCES AND PENALTIES	Section 122	Penalty for certain offences.
	Section 123	Penalty for failure to furnish information return.
	Section 124	Fine for failure to furnish statistics.
	Section 125	General penalty.
	Section 126	General disciplines related to penalty.
	Section 127	Power to impose penalty in certain cases.
	Section 128	Power to waive penalty or fee or both.
	Section 129	Detention, seizure and release of goods and conveyances in transit.
Section 130	Confiscation of goods or conveyances and levy of penalty.	

Chapter 19	Section 131	Confiscation or penalty not to interfere with other punishments.
	Section 132	Punishment for certain offences.
	Section 133	Liability of officers and certain other persons.
	Section 134	Cognizance of offences.
	Section 135	Presumption of culpable mental state.
	Section 136	Relevancy of statements under certain circumstances.
	Section 137	Offences by companies.
	Section 138	Compounding of offences.

Chapter 20 TRANSITIONAL PROVISIONS	Section 139	Migration of existing taxpayers.
	Section 140	Transitional arrangements for input tax credit.
	Section 141	Transitional provisions relating to job work.
	Section 142	Miscellaneous transitional provisions.

Chapter 21 MISCELLANEOUS	Section 143	Job work procedure.
	Section 144	Presumption as to documents in certain cases.
	Section 145	Admissibility of micro films, facsimile copies of documents and computer printouts as documents and as evidence.
	Section 146	Common Portal.
	Section 147	Deemed exports.
	Section 148	Special procedure for certain processes.
	Section 149	Goods and services tax compliance rating.
	Section 150	Obligation to furnish information return.

Chapter 21	Section 151	Power to collect statistics
	Section 152	Bar on disclosure of information
	Section 153	Taking assistance from an expert.
	Section 154	Power to take samples.
	Section 155	Burden of proof.
	Section 156	Persons deemed to be public servants.
	Section 157	Protection of action taken under this Act
	Section 158	Disclosure of information by a public servant.
	Section 159	Publication of information in respect of persons in certain cases.
	Section 160	Assessment proceedings, etc., not to be invalid on certain grounds.

Chapter 21	Section 161	Rectification of errors apparent on the face of record.
	Section 162	Bar on jurisdiction of civil courts.
	Section 163	Levy of fee.
	Section 164	Power of Government to make rules.
	Section 165	Power to make regulations.
	Section 166	Laying of rules, regulations and notifications
	Section 167	Delegation of powers
	Section 168	Power to issue instructions or directions.

Chapter 21	Section 169	Service of notice in certain circumstances.
	Section 170	Rounding off of tax, etc.
	Section 171	Anti Profiteering measure.
	Section 172	Removal of difficulties.
	Section 173	Amendment of Act 32 of 1994.
	Section 174	Repeal and saving.

IGST Act: The scheme of Act

Chapter	Section	Head
CHAPTER I PRELIMINARY	Section 1	Short title, extent and commencement
	Section 2	Definitions
CHAPTER II ADMINISTRATION	Section 3	Appointment of officers
	Section 4	Authorisation of officers of State tax or Union territory tax as proper officer in certain circumstances.
CHAPTER III LEVY AND COLLECTION OF TAX	Section 5	Levy and collection
	Section 6	Power to grant exemption from tax

Chapter	Sections	Head
CHAPTER IV DETERMINATION OF NATURE OF SUPPLY	Section 7	Inter-State supply
	Section 8	Intra-State supply
	Section 9	Supplies in territorial waters
CHAPTER V PLACE OF SUPPLY OF GOODS OR SERVICES OR BOTH	Section 10	Place of supply of goods other than supply of goods imported into, or exported from India
	Section 11	Place of supply of goods imported into, or exported from India.
	Section 12	Place of supply of services where location of supplier and recipient is in India
	Section 13	Place of supply of services where location of supplier or location of recipient is outside India.
	Section 14	Special provision for payment of tax by a supplier of online information and database access or retrieval services.

Chapter	Sections	Head
CHAPTER VI REFUND OF INTEGRATED TAX TO INTERNATIONAL TOURIST	Section 15	Refund of integrated tax paid on supply of goods to tourist leaving India
CHAPTER VII ZERO RATED SUPPLY	Section 16	Zero rated supply
CHAPTER VIII APPORTIONMENT OF TAX AND SETTLEMENT OF FUNDS	Section 17	Apportionment of tax and settlement of funds
	Section 17A	Transfer of certain amounts
	Section 18	Transfer of input tax credit
	Section 19	Tax wrongfully collected and paid to Central Government or State Government

Chapter	Sections	Head
CHAPTER IX MISCELLANEOUS	Section 20	Application of provisions of Central Goods and Services Tax Act
	Section 21	Import of services made on or after the appointed day
	Section 22	Power to make rules
	Section 23	Power to make regulations
	Section 24	Laying of rules, regulations and notification
	Section 24	Removal of difficulties

Inter state supply: Section 7 of IGST Act

Inter-State supply: Section 7 of IGST Act

(1) Subject to the provisions of section 10, supply of goods, where the location of the supplier and the place of supply are in—

- (a) two different States;
- (b) two different Union territories; or
- (c) a State and a Union territory,

shall be treated as a supply of goods in the course of inter-State trade or commerce.

Inter-State supply: Section 7 of IGST Act

(2) Supply of goods imported into the territory of India, *till they cross the customs frontiers of India*, shall be treated to be a supply of goods in the course of inter-State trade or commerce.

When it will assumed that goods are imported?

- Filing of bill of entry for home consumption.
- Filing bill of entry for warehousing-----Filing bill of entry for home consumption

Relevant Cases:

- i) Garden silk mills V. UOI 1999 (113) E.L.T. 358(S.C.)
- ii) Kiran Shipping Mills V. Collector of Customs 1999 (113) E.L.T. 753 (S.C.)

Meaning of custom frontiers of India

Definition of the term “Customs Frontiers of India” under the Integrated Goods and Services Tax (IGST) Act, 2017

As per Section 2(4) of the Integrated Goods and Services Tax (IGST) Act, 2017, unless the context otherwise requires, the term “customs frontiers of India” means the limits of a customs area as defined in section 2 of the Customs Act, 1962 (52 of 1962).

Section 2 (28) of the The Customs Act, 1962 (52 of 1962)

“Indian customs waters” means the waters extending into the sea up to the limit of contiguous zone of India under section 5 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 (80 of 1976) and includes any bay, gulf, harbour, creek or tidal river.

Meaning of Contiguous zone of India

Contiguous zone of India:Section 5 of THE TERRITORIAL WATERS, CONTINENTAL SHELF,
EXCLUSIVE ECONOMIC ZONE AND OTHER MARITIME ZONES ACT, 1976

The contiguous zone of India (hereinafter referred to as the contiguous zone) is an area beyond and adjacent to the territorial waters and the limit of the contiguous zone is the line every point of which is at a distance of twenty-four nautical miles from the nearest point of the baseline referred to in sub-section (2) of section 3.....

Inter-State supply: Section 7 of IGST Act

(3) Subject to the provisions of section 12, supply of services, where the location of the supplier and the place of supply are in—

- (a) two different States;
- (b) two different Union territories; or
- (c) a State and a Union territory,

shall be treated as a supply of services in the course of inter-State trade or commerce.

Inter-State supply: Section 7 of IGST Act

(4) Supply of services imported into the territory of India shall be treated to be a supply of services in the course of inter-State trade or commerce.

Import of service:

Section 2(11) of IGST Act:

‘import of services’ means the supply of any service, where—

- (i) the supplier of service is located outside India;
- (ii) the recipient of service is located in India; and
- (iii) the place of supply of service is in India;

Inter-State supply: Section 7 of IGST Act

(5) Supply of goods or services or both,—

- (a) when the supplier is located in India and the place of supply is outside India;
- (b) to or by a Special Economic Zone developer or a Special Economic Zone unit; or
- (c) in the taxable territory, not being an intra-State supply and not covered elsewhere in this section, shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce.

Practical case studies:-1

- Supply by a hotel to SEZ

Splendid residency is located in Trissur in Kerala. IT Infotech is located in Gurgaon. IT infotech availed the Hotel services by Splendid residency.

What will be the nature of tax charged.

Intra state supply: Section 8 of IGST Act

Intra state supply: Section 8 of IGST Act

(1) Subject to the provisions of section 10, supply of goods where the location of the supplier and the place of supply of goods are in the same State or same Union territory shall be treated as intra-State supply:

Provided that the following supply of goods shall not be treated as intra-State supply, namely:—

- (i) supply of goods to or by a Special Economic Zone developer or a Special Economic Zone unit;
- (ii) goods imported into the territory of India till they cross the customs frontiers of India; or
- (iii) supplies made to a tourist referred to in section 15.

Intra state supply: Section 8 of IGST Act

(2) Subject to the provisions of section 12, supply of services where the location of the supplier and the place of supply of services are in the same State or same Union territory shall be treated as intra-State supply:

Provided that the intra-State supply of services shall not include supply of services to or

by a Special Economic Zone developer or a Special Economic Zone unit.

Intra state supply: Section 8 of IGST Act

Explanation 1.—For the purposes of this Act, where a person has,—

- (i) an establishment in India and any other establishment outside India;
- (ii) an establishment in a State or Union territory and any other establishment outside that State or Union territory; or
- (iii) an establishment in a State or Union territory and any other establishment being a ~~business~~ ~~vertical~~ registered within that State or Union territory, then such establishments shall be treated as establishments of distinct persons.

Explanation 2.—A person carrying on a business through a branch or an agency or a representational office in any territory shall be treated as having an establishment in that territory

Practical case studies:-2

- Intermediary services:-
M/s A provided sales leads to Foreign tech, a company located outside India. These services will fall in intermediary services. Location of supplier will be the place of supply. Please find out the nature of tax to be levied.

Supplies in territorial waters: Section 9 of IGST Act

9. Notwithstanding anything contained in this Act,—

- (a) where the location of the supplier is in the territorial waters, the location of such supplier; or
- (b) where the place of supply is in the territorial waters, the place of supply, shall, for the purposes of this

Act, be deemed to be in the coastal State or Union territory where the nearest point of the appropriate

baseline is located.

Type of taxes in GST and their nature

CG
ST

SGST/UTG
ST

Taxes
in
GST

IGS
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What if I make payment of a wrong tax?

Pay the correct tax

Claim refund of wrongly paid tax

No interest

Case Law: Saji S. Vs. Commissioner, State GST Department (Kerala High Court at Ernakulam)

The petitioner paid SGST in place of IGST and penalty for release of goods detained. The authorities insisted that to get the goods release they will have to pay the IGST first.

The court held that authorities can shift the amount from CGST to IGST. It is an unnecessary burden on applicant to first pay correct tax and then claim refund. Section 77 provide for payment and refund rule provide for adjustment.

Clause 98 of Finance bill 2019: Sec 49 amended

In section 49 of the Central Goods and Services Tax Act, after sub-section (9), the following sub-sections shall be inserted, namely:—

“(10) A registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under this Act, to the electronic cash ledger for integrated tax, central tax, State tax, Union territory tax or cess, in such form and manner and subject to such conditions and restrictions as may be prescribed and such transfer shall be deemed to be a refund from the electronic cash ledger under this Act.

Clause 13 inserted in rule 87 of CGST Rules

“(13) A registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under the Act to the electronic cash ledger for integrated tax, central tax, State tax or Union territory tax or cess in FORM GST PMT-09.”

5. Details of the amount to be transferred from one account head to another
(Amount in Rs.)

Amount to be transferred from			Amount to be transferred to		
Major head	Minor head	Amount available	Major Head	Minor head	Amount transferred
1	2	3	4	5	6
<Central tax, State/ UT tax, Integrated tax, Cess>	Tax		<Central tax, State / UT tax Integrated tax, Cess>	Tax	
	Interest			Interest	
	Penalty			Penalty	
	Fee			Fee	
	Others			Others	
	Total			Total	

Instructions -

1. Major head refers to - Integrated tax, Central tax, State/UT tax and Cess.
2. Minor head refers to – tax, interest, penalty, fee and others.
3. The form may be filled up if amount from one major / minor head is intended to be transferred to another major/minor head. Minor head for transfer of amount may be same or different.
4. The amount from one minor head can also be transferred to another minor head under the same major head.
5. Amount can be transferred from the head only if balance under that head is available at the time of transfer.

Important concepts & definitions to understand GST

Meaning of Goods: Section 2(52)

“goods” means every kind of movable property other than **money** and **securities** but includes **actionable claim, growing crops, grass and things attached to or forming part** of the land which are agreed to be severed before supply or under a contract of supply;

Meaning of immovable property:

Section 3(26), The General Clauses Act, 1897, defines, " immovable property" shall

include land, benefits to arise out of the land, and things attached to the earth, or

permanently fastened to anything attached to the earth.

Meaning of immovable property:

‘Section 3 of “Transfer of property Act”

immovable property’ does not include standing timber, growing crops or grass.

The Section, however, defines the term “**attached to the earth**” to mean (a) rooted in the earth, as in the case of trees and shrubs, (b) embedded in the earth, as in the case of walls or buildings, and (c) attached to what is so embedded for permanent beneficial enjoyment of that to which it is attached.

Some judicial pronouncements for immovable properties

Municipal corporation of greater Bombay V. Indian oil corporation Ltd.:

It was held that a petrol tank resting on earth on its own weight without being fixed with nuts and bolts, had been erected permanently and was an immovable property.

Tewari Warehousing Co Pvt Ltd. (GST AAR West Bengal):

It was held that prefabricated warehouse is an immovable property. It was held that the pre fabricated system has been used for constructing the warehouse and the same is not a warehouse itself. The issue is not the beneficial enjoyment of the system but the property of the warehouse which is being built.

Definition of service: Section 2(102) of CGST Act as amended till date

“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; (inserted via CGST amendment Act 2018)

Meaning of Capital Goods: Section 2(19)

“capital goods” means goods, the value of which is **capitalised in the books of account** of the person claiming

the input tax credit and which are used or intended to be used in the course or furtherance of business

Meaning of Inputs: Section 2(59)

“input” means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business;

Meaning of Inputs: Section 2(59)

“input” means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business;

Section 2(6) of CGST Act: Aggregate Turnover

“aggregate turnover” means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and inter-State supplies of persons having the same Permanent Account Number, to be computed on all India basis but excludes central tax, State tax, Union territory tax, integrated tax and cess;

Section 7 of CGST Act: Scope of Supply

- (1) For the purposes of this Act, the expression “supply” includes—
- (a) all forms of supply of goods or 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;
 - (b) import of services for a consideration whether or not in the course or furtherance of

business; **and**

Section 7 of CGST Act: Scope of Supply

(c) the activities specified in Schedule I, made or agreed to be made without a consideration; ~~and~~

~~(d) the activities to be treated as supply of goods or supply of services as referred to in~~

~~Schedule II.~~

Section 7 of CGST Act: Scope of Supply

“(1A) where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.”;

(2) Notwithstanding anything contained in sub-section (1),—

(a) activities or transactions specified in Schedule III; or

(b) such activities or transactions undertaken by the Central Government, a State Government 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 a supply of

goods nor a supply of services.

Section 7 of CGST Act: Scope of Supply

(3) Subject to the provisions of ~~sub-sections (1) and (2)~~, **“sub-sections (1), (1A) and (2)”** the Government may, on the

recommendations of the Council, specify, by notification, the transactions that are to be treated as—

- (a) a supply of goods and not as a supply of services; or
- (b) a supply of services and not as a supply of goods.