RRC - ICAI

RESIDENTIAL REFRESHER COURSE - GST

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Case Studies

- Online Sales – Customer is the king
- Forfeiture against immovable property
- Cross Charge
- Liaison office
- Taxability of Builder charges
- Installation of integrated systems – whether works contract?
- Supply viz a viz manufacture
- Intermediary vs Supplier of Basic Service

Online Sales – Customer is the king

Online Sales – Supply?

- M/s Ongoing Development P. Limited is in the business of selling shoes. They sent shoes on receipt of orders which are received online or through telephone from their prospective customers.

- The Company sends the shoes on payment by cash / credit card on receipt by customer. The customer has an option not to accept delivery and the goods are returned unpaid. The customer also has 15 days return back policy whereby the customer returns the shoes and get back his 100% money.

Online Sales – Supply?

Questions:

Q1. At which stage at which the Company should identify the Supply of shoes and pay tax to government– at the time of dispatch, or at acceptance and payment by members or when the return back period expires?

Online Sales – Supply?

Analysis:

S. 7. (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;

(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.

Online Sales – Supply?

To constitute supply, we must understand the basic prerequisites of "Supply" which are as follows:

- For every supply there is a supplier
- For every supply there is a recipient and an acquisition
- To 'make a supply' a person must do something
- A supply cannot be made by more than one entity
- Creation of expectations alone does not establish a supply
- Supply of goods happens on exchange of physical possession while exchange of services on mere performance by the supplier
- Supply' usually, but not necessarily, requires something to be passed from one entity to another
- Transactions that are neither based in an agreement that binds the parties in some way nor involve a supply of goods, services, or some other thing, do not establish a supply

Online Sales – Supply?

Supply arises out of:

- written and oral contracts;
- various deeds, assignments and options;
- licence or permit conditions;
- memoranda of understanding; and
- legislative instruments, Ministerial directions and Departmental guidelines.

Forfeiture – whether supply?

Forfeiture - Whether Supply

- Mr. X is the owner of a land admeasuring 1000 sq yards in Mumbai.
- He agreed to sell the said land to Mr Y for a consideration of Rs 50 Crores vide his agreement to Sell dated 1.6.2017.
- On the same date, Mr Y paid Mr X Rs 10 Crores as advance inline with the terms of Agreement to Sell.
- Later, Mr Y was not able to pay the balance consideration on 1.10.2017 and Mr X forfeited the amount of Rs 10 Crores on the same date and the Agreement to Sell was annulled.

Question:

Q1. Is the forfeiture of amount of Rs 10 Crores taxable under GST in the hands of Mr X?

Q2. If yes, what shall be the time of supply in this case?

Forfeiture - Whether Supply

- Deemed Service - agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act;

- F. No 334/1/2012-TRU dated March 16, 2012 - Activity could be active or passive and would also include forbearance to act. Agreeing to the obligation to refrain from an act or to tolerate an act or a situation has also been specified as a declared service under section 66E of the Act.

- The supplies may be characterised as:
  - surrendering a right to pursue further legal action; or
  - entering into an obligation to refrain from further legal action; or
  - releasing another party from further obligations in relation to the dispute.

Forfeiture - Whether Supply

- Walter Construction Group Limited v Walker Corporation Ltd & Ors, - Imposition by the court upon the defendant to pay the judgment debt as ordered in these proceedings does not constitute a supply.

- Exemption granted to government when it makes forfeiture – Not. No. 12/2017 as amended

Cross Charge Taxability

Cross Charge

- M/s Child Education P. Ltd. is a company incorporated under Companies Act, 1956. It is engaged in the business of running play schools and providing education to toddlers. It has a chain of 15 pre schools in 10 states across India. It has 2 schools being run by its franchisees in 2 other states in India. The Company has its head office in Delhi. Delhi Head office has incurred the following expenses during FY 2018-19:
  - Salary cost of Managerial personnel Rs. 1 Crore
  - Marketing Expenses for all India Rs. 4 Crore (ITC available Rs 30 Lakhs)
  - Rent and maintenance paid for Delhi HO Rs 1.5 Crore (ITC available Rs 26 Lakhs)
  - Development of Content Rs 2 Crores (ITC available Rs 24 Lakhs)

Cross Charge

- Printing Cost of books as given to school Rs. 3.5 Crores (ITC available 40 Lakh)
- Interest Expenses Rs 50 Lakhs
- Other Expenses Rs 1.5 Crores (ITC available 20 Lakhs)

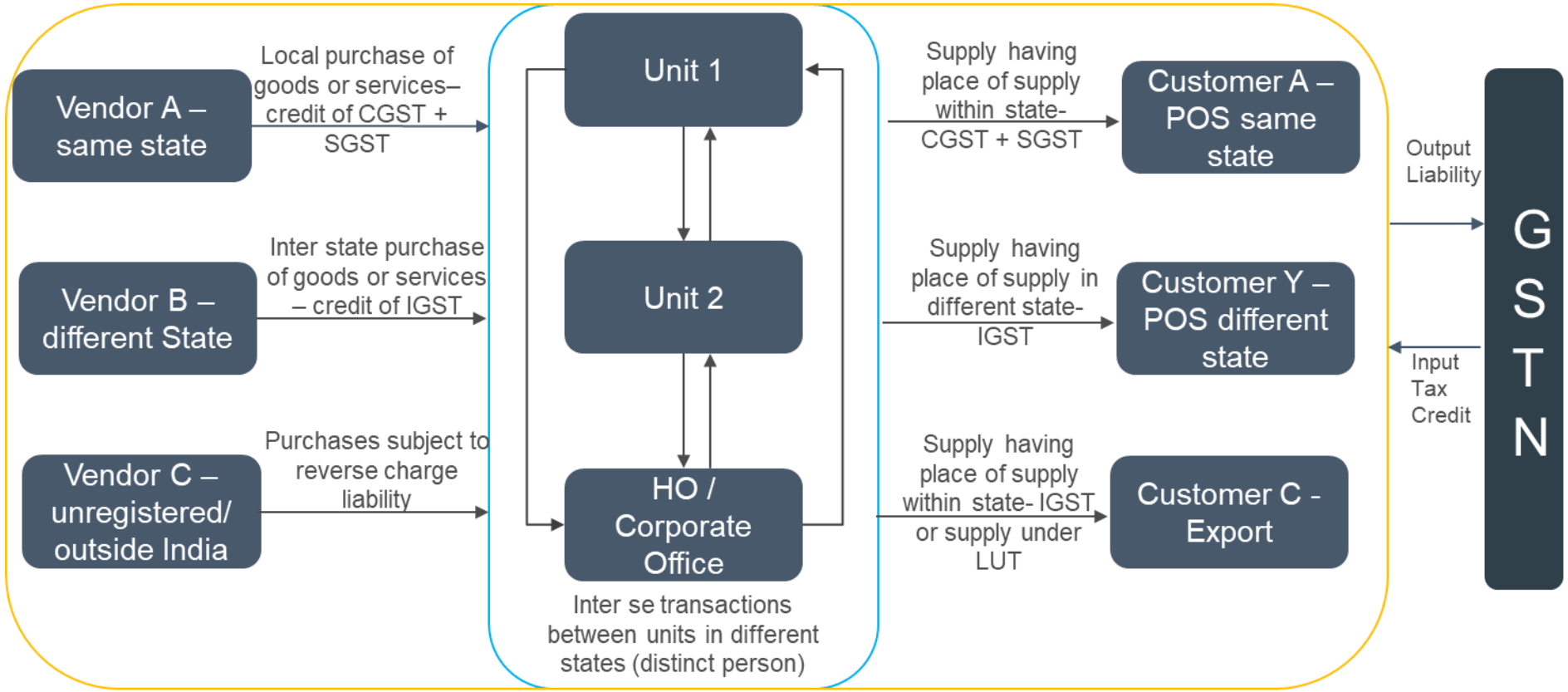
- There is no preschool branch in Delhi and the entire expenses pertain to schools and franchisee across India. Franchisee pays 40% of their receipts as royalty to the Company which had amounted to Rs 5 Crores in Fy 2018-19 on which Company has discharged GST at Delhi.

Cross Charge

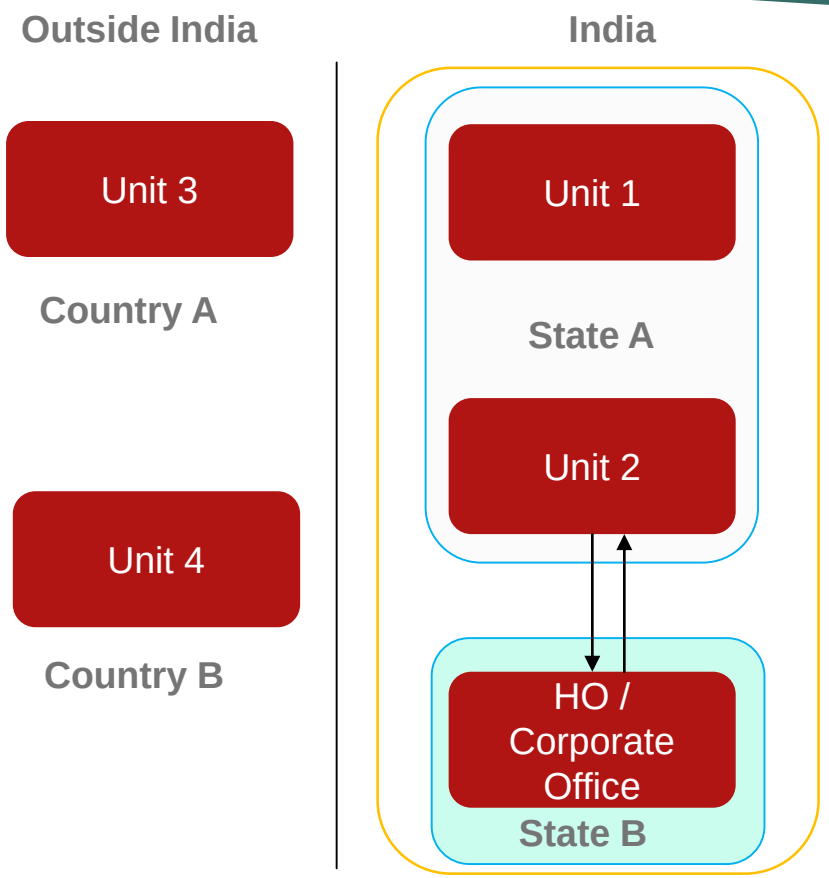
Questions

- Q1. How should the company apportion costs to different units across India?
- Q2. Will there be any levy of GST on such apportionment?
- Q3. Can the Company avail the entire ITC at Delhi?

Cross Charge



Cross Charge

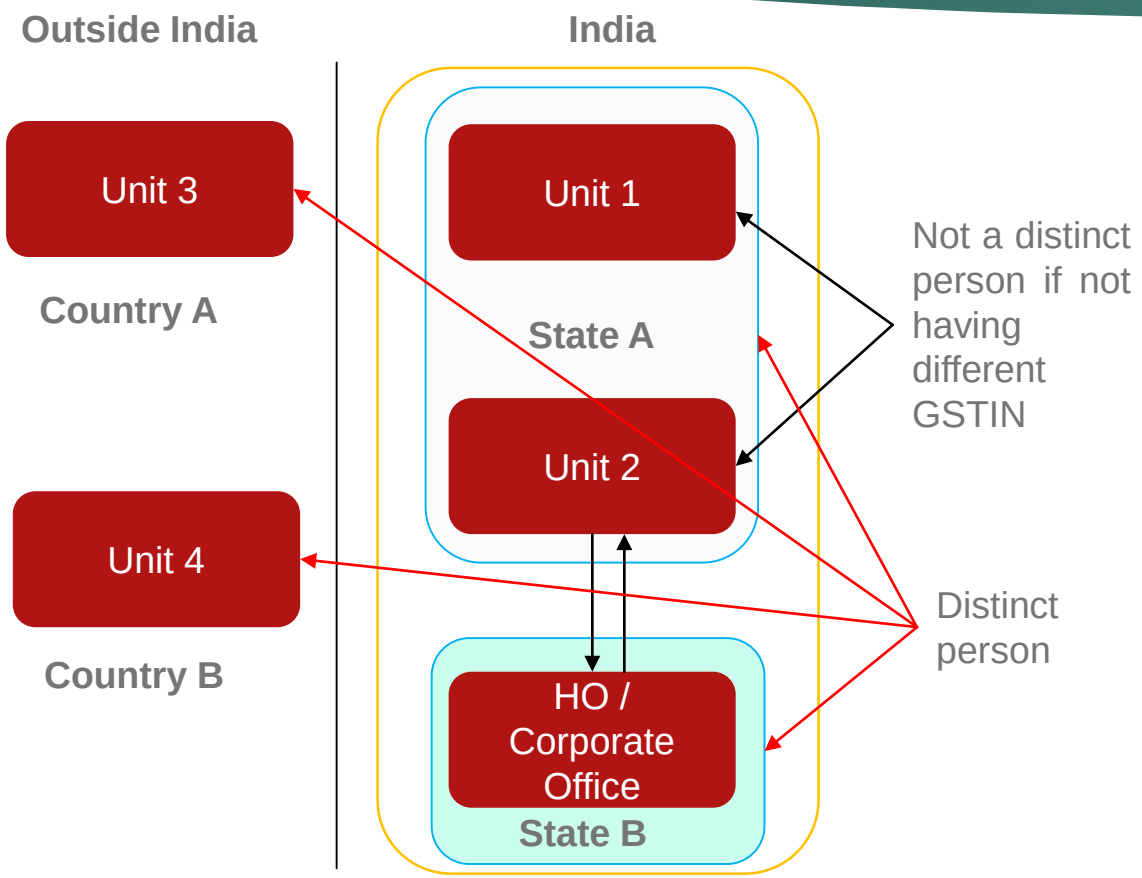


Distinct Person: Section 25

(4) A person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as distinct persons for the purposes of this Act.

(5) Where a person who has obtained or is required to obtain registration in a State or Union territory in respect of an establishment, has an establishment in another State or Union territory, then such establishments shall be treated as establishments of distinct persons for the purposes of this Act.

Cross Charge



Distinct Person: Section 8

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.

Cross Charge

Why unit wise Trial Balance?

- Accounts as prescribed are ends and not means
- TB is the means to this end
- Analysis of each item is possible
- Inter branch transaction and impacts thereof – reconciliation not possible without proper TB

Cross Charge

Things to consider:

- Valuation
- Credit optimisation
- Recipient determination
- ISD vis a vis cross charge

Liaison Office Taxability

Liaison Office

- M/s GI, India office (hereinafter referred to as "Liaison Office"), situated at Gurugram, India, is a Liaison office of its Parent company which is based out of France. Liaison Office has taken the setting up permission from Reserve Bank of India ("RBI"), wherein RBI had allowed the said setting of Liaison Office subject to the following conditions:
- The company will not generate income in India and will not engaged in any trade/commercial activity and undertake only permissible activities as mentioned in Schedule II of FEMA Notification No. 22/2000-RB dated May 03, 2000 as amended from time to time.
- The company will restrict its activities to those given Para 4(iii) (a) of Form FNC submitted by the company

Liaison Office

- - Parent Company is reimbursing all expenses incurred by Liaison Office which includes Salary, Administrative expenses, rental, professional charges, travelling expense etc.

<u>Questions</u>

- Q1. Whether Liaison Office is supplying services to Parent Company?
- Q2. If yes, what shall be method of valuing such services?
- Q3. What shall be time of supply of such services?

Liaison Office

- Supply has two prerequisites:
- Such activity must be in the course of business of commerce: Person providing such supply shall be performing such supply in the course of his business. The definition is
- Such activity must be for a consideration: Person providing such supply should be receiving some consideration from person receiving such supply.
- Schedule I provides for certain supplies which shall be taxable even when consideration is not there and one of such supplies is when made between related persons or between distinct persons as specified in section 25

Liaison Office

- Foreign Exchange Management (Establishment in India of Branch or Office or liaison office or a project office or other Place of Business) Regulations, 2016 defines Liaison Office as under:

  "'Liaison Office' means a place of business to act as a channel of communication between the Principal place of business or Head Office by whatever name called and entities in India but which does not undertake any commercial /trading/ industrial activity, directly or indirectly, and maintains itself out of inward remittances received from abroad through normal banking channel."

- Thus, not in business but engaged in activity or transaction in connection with or incidental or ancillary to the business – Section 2(17)

Liaison Office

- In re Habufa Meubelen B.V.(Indian Liaison Office) (GST AAR Rajasthan)
- Observations of AAR:
  - As mentioned in the facts itself that the liaison office does not have any independent revenue or clients. The office has been established for the purpose of liaising with the suppliers for quality control. Further the liaison office is set up only to represent the interest of the head office in Netherlands. Therefore, they are not separate person.
  - The amount received from HO are the funds for payment of salary, reimbursement of expenses like rent, security, electricity, travelling, etc. No consideration is being charged by the applicant from the HO for such services.

Liaison Office

- the reimbursement of expenses and salary paid by M/s Habufa Meubelen B.V to the liaison office, is not liable to GST, as no consideration for any services is being charged by the liaison office.
- Further, the kind of reimbursement claimed by them from their HO is also falling out of the purview of supply of service and as there are no such taxable supplies made by the Liaison office, they are not required to get themselves registered under GST.

Taxability of Builder Charges

Taxability of Builder Charges

- M/s ABC Ltd. is a builder who are in construction of residential flats. They charge the following consideration from their customers:
  - Sale of Residential Flats - Rs. 1 Crore
  - Club Membership - Rs. 10 Lakhs
  - Statutory charges like Stamp Duty – Rs. 20 Lakhs
  - Electricity meter deposit– Rs. 2 Lakhs
  - Parking charges – Rs. 8 Lakhs
  - External Development Charges / Internal Development Charges - Rs. 10 Lakhs

Questions:

The Company has built 150 flats and out of the said number, 100 were sold during construction stage.

Q1. What shall be the classification of supplies listed above?

Taxability of Builder Charges

CBE&C, has clarified as follows – (Annexure- A to JS (TRU-II) D.O. letter F. No.334/1/2010-TRU dated 26-2-2010)

- It has been reported that in addition to these activities, the builders of residential or commercial complexes provide other facilities and charge separately for them and these charges do not form part of the taxable value for charging tax on construction.

- These facilities include,-

(a) prime/preferential location charges for allotting a flat/commercial space according to the choice of the buyer (i.e. Direction- sea facing, park facing, corner flat; Floor- first floor, top floor, Vastu- having the bed room in a particular direction; Number- lucky numbers);

(b) internal or external development charges which are collected for developing/maintaining parks, laying of sewerage and water pipelines, providing access roads and common lighting etc;

(c) fire-fighting installation charges; and

(d) power back up charges etc.

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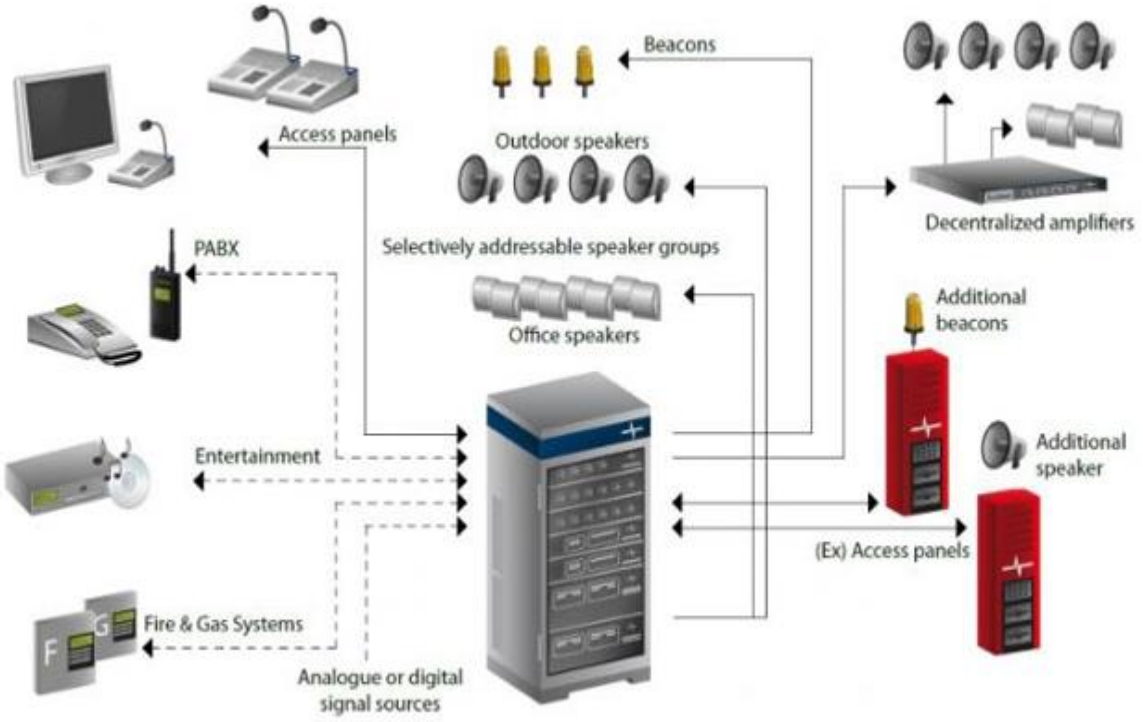
Taxability of Integrated system installations

Taxability of Integrated system installations

- Total Electronics P. Ltd. ("TEPL") is engaged in various types of contracts for supply and installations of different kind of plant and machinery for various customers. Amongst others, the major category of products as dealt by TEPL are as follows:
- Railway information and public announcement system
- Axle Counters for Railways Axle system
- All components of the system are manufactured at TEPL manufacturing facility at Noida
- All manufactured and bought components are then packaged together and shipped to the installing location.



Taxability of Integrated system installations

- The components are installed and plugged together to form a workable solution.
- The installation of all components of the system is more of a plug and play other than laying underground cables for joining such system. Installation is mainly with the help of nuts and bolts.
- TEPL then raises a single invoice for supply, installation and commissioning of the entire system.

Taxability of Integrated system installations

Questions:

- Q1. Whether the above two categories of supplies are to be considered as supply of movable goods requiring installation or installation of an immovable property amounting to works contract?

- Q2. What shall be the rate of tax applicable and time of supply of above supplies?

Taxability of Integrated system installations

- Section 2(30) of the CGST Act defines "composite supply" to mean a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply.
- Illustration: Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply;

Taxability of Integrated system installations

- Supreme Court in the case of HAL v. State of Karnataka, (1984) (55 STC 314) held,
  - A contract of sale is a contract whose main object is the transfer of the property in, and the delivery of the possession of, a chattel as a chattel to the buyer. Where, however, the main object of work undertaken by the payee of the price was not the transfer of chattel qua chattel, the contract is one of work and labour.

Taxability of Integrated system installations

- ‘works contract’ has been defined in Clause 2(119) of the CGST Act, 2017 as under:-
- “Works Contract” means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract”

Taxability of Integrated system installations

Immovable Property:

- Test of movability
  - Commnr. of Central Excise, Indore Vs. Virdi Brothers and ors. 2007(207)ELT321(SC); 2006(14)SCALE115 it was held that If items assembled or erected at site and attached by foundation to earth cannot be dismantled without substantial damage to its components and thus cannot be reassembled, then the items would not be considered as moveable.
  - M/S.Bharti Airtel Ltd. vs The Commissioner Of Central Excise, Bombay High Court, telecom towers installed were held to be immovable property

Taxability of Integrated system installations

- Solid & Correct Engineering Works ([2010 (252) E.L.T. 481 (S.C.)],
  - . The structures were also custom made for the fixing of such machines without which the same could not become functional. The machines thus becoming a part and parcel of the structures in which they were fitted were no longer moveable goods.
- Ibex Gallagher Private Limited v. Commissioner 2008 (231) ELT 580 (Tri-Bang)
  - that it is a system containing various components which are connected with each other for a specific purpose and such system cannot be shifted and used in another area as such without dismantling and also without adding some more components or diminishing the original components, it was held that it does not pass the test of movability.

Taxability of Integrated system installations

- Test of Permanency
- Municipal Corporation Of ... vs Indian Oil Corporation Ltd 1991 AIR 686, 1990 SCR Supl. (3) 365
  - tanks, though, are resting on earth on their own weight without being fixed with nuts and bolts, they have permanently been erected without being shifted from place to place. Permanency is the test.
- Test of Marketability
- Air Liquide North India Pvt. Ltd. v. CCE, Jaipur - 2011 (271) E.L.T. 321 (S.C.)
  - when the goods purchased by a consumer from a trader for consumption, itself indicates that the goods become marketable as the same become fit for consumption which it was not so in the hands of trader.

Taxability of Integrated system installations

- <u>Emergence of product only on installation</u>
- The product being sold is different from its components also defines the nature

Taxability of Integrated system installations

- M/s Dinesh Kumar Agrawal (AAR Andhra Pradesh)
- The scope of work in respect of "Turn key EPC Contract" and "Other EPC Contract" includes civil works, procurement of goods and erection and commissioning. Accordingly, "Turnkey EPC Contracts" and "Other EPC Contracts" are not getting covered under supply of 'solar power generating system' under Entry 234 of Schedule I of the Notification No. 1/2017- Integrated Tax (Rate).
- The applicant sought a clarification on the liability of division of contract in to two, one is supply of material and other one is erection, commission and there on., in this regard it is opined that, it depends upon the terms and conditions of the agreements as to whether the split of confract is an arfificial and colourable device fo avoid the legitimate tax or the requirement of fhe contracfee demands separation of contract for better execution.

Taxability of Integrated system installations

M/s Fermi Solar Farms P. Ltd. (AAR Maharasthra)

- Installation of Solar parks amounts to Works contract taxable @18%

M/s Giriraj Renewables Private Ltd (AAR Karntaka)

- Supply of parts and installation when distinct under a contract cannot be termed as composite supply

Supply viz a viz manufacture

Supply viz a viz manufacture

- M/s Print me Enterprise is in the business of supplying printed packaging material. The logo and design of wrapper is provided by the customer and using the same, the printing is done by the Print me Enterprise using his material including ink, paper, plastic film etc and supplied to customer

Supply viz a viz manufacture

Questions:

Q1. Whether Print me Enterprise is supplying printing services or supplying printed material?

Intermediary vs Supplier of Basic Service

Intermediary vs Supplier of Basic Service

- M/s Happy booking P. Ltd. is in the business of booking accommodation for their customers. Amongst others, the Company extends services of reservation of accommodation services like Hotels, Camps, lodges, Motel etc. for its customers. The customers from all across the Country engages the Applicant for booking their stay in different cities of India including those located in Haryana.
- As the business process, the Applicant undertakes the following steps:

The customer requests for booking of a particular category Hotel / accommodation unit in his choice of city.

→

The Applicant check for available inventory in various Hotels / accommodation unit and mails the available choices and their rates to the customers.

→

The Customer then informs his choice to the Applicant who books the Hotels / accommodation unit and send the stay voucher to the customer.

→

The invoicing is done in either of the modes as agreed with the customer.

Intermediary vs Supplier of Basic Service

- When booking the accommodation services, the Applicant follows two model of services:

a. Booking of accommodation unit against transaction fee

In this case, the booking of accommodation unit is made directly in the name of the customer and the invoice is directly raised by the accommodation service provider in the name of the customer.

b. Booking of accommodation unit for profit margin

In this case, the booking of accommodation unit is made in the name of the Applicant and the invoice is raised by the accommodation service provider in the name of the Applicant. The Applicant after adding his margin raises the invoice on the customer for booking of Hotel services as a single amount consisting of accommodation services as well his margin.

Intermediary vs Supplier of Basic Service

Q1. Whether the services of booking of hotel for its customers under the aforementioned two models shall be classified as tour operator services or accommodation services?

Q2. Whether the applicant can take input tax credit of the accommodation services of invoices which are raised in the name of the applicant and wherein he is invoicing his client a single amount including his margin?

Q3. Whether the applicant can take the input tax credit of central tax as charged in their invoices raised by the accommodation service providers located outside Haryana?

Intermediary vs Supplier of Basic Service

Intermediary

2(13) "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;

Intermediary vs Supplier of Basic Service

Intermediary vs Supplier of Basic Service

- M/s Roam Around P. Ltd. is in the business of arranging tour and travel related services for their clients. Amongst others they are also in the business of booking air tickets. While acting as booking agent, they follow two models:
- They book tickets filing details of their customers and thus, airline raises invoice directly on their customer. They issue another invoice charging their transaction fee with tax from their customer.
- They fill in their details, take credit of the tax charged by the airline and issue their invoice to the customer charging margin as inherent part of ticket price and not shown separately.

Intermediary vs Supplier of Basic Service

Q1. What is the classification of supply made by the Company under the two models?

Analysis:

- Does capacity to make a supply necessary for person to act as a principal supplier?

Two Supplies or valuation issue?

Two Supplies or valuation issue?

- M/s Check and Balance P. Limited is providing services of security services to Hindustan Bank. The Bank requires the Company to provide security guard to the various branches of Bank. Bank provides food, stay facilities and uniform to the security guards.

Q. Whether the supply of food, stay facilities and uniform to the security guards can be termed as supply from Bank to the Company and whether the same is exigible to tax on both or either side?

Two Supplies or valuation issue?

Analysis:

- One supply or counter supplies
- Section 15(2) riding over Section 7?
- Mere valuation – can it counter two supplies?

"any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods and/or services;"

Thank You

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