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CA Intermediate

Paper-3B

AMENDMENTS

In Goods and Service Tax

Jan'25 Exam

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SEGMENT - 5
INVOICE & TIME OF SUPPLY

Time of supply in respect of supply of services of construction of roadandmaintenance thereof of National Highway Projects of National Highways AuthorityofIndia (NHAI) in Hybrid Annuity Mode (HAM) MODEL - CBIC Circular[1]

This circular provides clarification on the GST implications for Hybrid Annuity Model (HAM) contracts, which involve the construction, operation, and maintenance of highways.

Hybrid Annuity Model (HAM): A HAM contract is a single, integrated contract where the concessionaire (the contractor) is responsible for both the construction of a highway and its operation and maintenance (O&M) over a specified period.

Continuous Supply of Services: Given that the concessionaire is required to perform services over an extended period, with payments made in instalments, the contract is treated as a "continuous supply of services" under section 2(33) of the CGST Act.

Due date of invoice: As per Sec. 31(5) of the CGST Act
- If due date of instalment is ascertainable from the contract, then the due date of such instalment.
- If payment is linked to completion of event, then date of completion of such event.
- In the absence of above, then the date on which such instalment is received.

Time of Supply of Services: Determined as per Sec. 13(2) of CGST Act, 2017
- Invoice date or payment date, whichever is earlier, if invoice is issued within the due date
- Completion date or payment date, whichever is earlier, if invoice not issued within the due date

Inclusion of Interest in Taxable Value: The instalments or annuities paid by the National Highways Authority of India (NHAI) to the concessionaire may include an interest component. As per section 15(2)(d) of the CGST Act, any interest amount included in the instalments or annuities is also considered part of the taxable value for GST purposes. Therefore, GST must be paid on the entire instalment amount, including the interest component.

[1] Circular No. 221/15/2024- GST dt. 26.06.2024

Question

Larsen & Toubro (L&T) has entered into a Hybrid Annuity Model (HAM) contract with the National Highways Authority of India (NHAI) for the construction, operation, and maintenance of a highway. The contract specifies that L&T will receive payments in 20 equal instalments over 10 years. Each instalment is ₹10,00,000, which includes ₹1,00,000 as an interest component. The deemed date of completion of milestone event is on 30th June 2024. The due date for the first instalment is 1st July 2024. However, L&T issued the invoice for the first instalment on 5th July 2024, and the payment was received on 15th July 2024. The applicable rate of GST for such contracts is 18%

i. What is the due date of invoice as per Sec. 31(5)?
ii. What is the time of supply as per Sec. 13(2) and what is the due date of payment of GST?
iii. Calculate the GST liability for the first instalment?
iv. What will be the time of supply, if the invoice is issued on 1st July 2024 and what is the due date of payment of GST?

Answer

SEGMENT - 6
INPUT TAX CREDIT

Clarification on time limit under section 16(4) for availing ITC in case of supplies received from unregistered suppliers in respect of RCM supplies – CBIC Circular[1]

This circular clarifies the application of the time limit for availing Input Tax Credit (ITC) under the Central Goods and Services Tax (CGST) Act, particularly in cases where the recipient of supplies is required to pay tax under the Reverse Charge Mechanism (RCM).

- When the supplier is unregistered and recipient is registered, in case of supply of goods or services, covered under RCM, recipient shall issue invoice to supplier under Sec. 31(3)(f).
- Invoice shall be issued by recipient to supplier on the date of receipt of such goods or services.

When can recipient claim ITC?

- Ascertain the financial year in which invoice is issued for such inward supply.
- Time limit u/s 16(4): 30th November of the succeeding financial year or date of filing annual return whichever is earlier.

What is the implication of delayed invoicing?

- If the recipient issues the invoice after the time of supply and pays the tax accordingly, interest on the delayed payment of tax will be applicable.
- Additionally, the recipient may also face penalty under Section 122 of the CGST Act for the delayed issuance of the invoice.

Question

XYZ Pvt. Ltd., a registered company under GST, whose aggregate turnover during the previous year exceeds threshold limit, procures legal consultancy services from Mr. Santhanam, an advocate who is not registered under GST. The legal consultancy services are provided on June 15, 2023, and Mr. Santhanam charges a fee of ₹1,00,000, which is paid by XYZ Pvt. Ltd. on June 16, 2023. However, the company's accountant issues the invoice for the legal consultancy services only on August 20, 2024, and pays the applicable GST in the GSTR-3B of August 2024 filed on September 18, 2024 and also wanted to avail ITC in August 2024. Answer the following questions:

i. Who is liable to pay GST in this case?
ii. What is the due date of invoice and who is required to issue invoice?
iii. What is the time of supply of service and due date of payment of GST assuming that due date of GSTR-3B is 20th of next month?
iv. By when XYZ Pvt. Ltd. can avail ITC and whether they can avail ITC in June 2023?
v. Is there any interest payable in the present case?

[1] Circular No. 211/5/2024-GST dated 26.06.2024

Answer

Clarification in respect of GST liability and input tax credit (ITC) availability in cases involving Warranty/ Extended Warranty – CBIC Circulars

Integrated Explanation of Circulars No. 195/07/2023-GST and 216/10/2024-GST:

These two circulars provide detailed guidance on GST implications related to warranties, particularly focusing on the replacement of goods or parts under warranty, the role of distributors, and the tax treatment of extended warranties. Let's integrate the key points from both circulars.

Replacement of Goods or Parts Under Warranty:

Circular No. 195/07/2023-GST:

- Initial **Clarification: Circular No. 195/07/2023 -** GST clarified that when parts are replaced under warranty by the manufacturer, no additional GST is applicable because the replacement is part of the original supply of goods, for which GST has already been paid. The manufacturer is not required to reverse Input Tax Credit (ITC) for these replacements.

Extension in Circular No. 216/10/2024-GST:

- **Inclusion of Full Goods Replacement:** Circular No. 216/10/2024-GST extends this clarification to include cases where entire goods, not just parts, are replaced under warranty. The same principles apply—no additional GST is charged on the replacement of goods, and no ITC reversal is required. This means that whether a part or the entire product is replaced, the GST treatment remains the same as clarified earlier.

Replenishment of Goods or Parts by Manufacturer to Distributor:

Situation Clarified:

- **Distributor Replacement:** Often, distributors replace defective parts or goods for customers under warranty, using their own stock. Later, the manufacturer replenishes the distributor's stock.
- **GST Treatment:** When the manufacturer replenishes the stock provided to the distributor via a delivery challan without charging any consideration, no GST is payable on this replenishment. Additionally, the manufacturer does not need to reverse ITC on these goods or parts.

Nature of Supply of Extended Warranty at the Time of Original Supply:

Circular No. 195/07/2023-GST:

- **Composite Supply:** If an extended warranty is purchased at the same time as the original goods, and from the same supplier, it is considered part of a composite supply. The principal supply being the goods, the GST rate applicable to the goods also applies to the extended warranty.

Circular No. 216/10/2024-GST:

- **Supply by Different Supplier:** If the extended warranty is provided by a different supplier than the one who supplied the goods, it is treated as a separate supply of services. GST would then be charged as a service, distinct from the original supply of goods.

Nature of Supply of Extended Warranty Made After Original Supply:

Consistent Clarification:

- Separate Supply of Services: Whether the extended warranty is purchased at the time of the original sale or later, if purchased separately from a different supplier or after the original supply, it is treated as a distinct supply of services. The supplier of the extended warranty is liable to charge GST on this service.

Question

Samsung Electronics sells a smartphone to a customer with a 1-year manufacturer's warranty. During the warranty period, the customer experiences a defect and visits an authorized distributor, who replaces the defective smartphone with a new one from their own stock. Samsung later replenishes the distributor's stock without charging any additional amount. Additionally, at the time of purchase, the customer buys an extended 2-year warranty from a third-party service provider, Warranty Plus, which begins after the manufacturer's 1-year warranty expires.

You are required to:

i. Determine the GST liability for Samsung on the replacement of the defective smartphone under the manufacturer's warranty.

ii. Explain the GST implications for Samsung when it replenishes the distributor's stock with a new smartphone.

Question

iii. Discuss the GST treatment for the extended warranty provided by Warranty Plus, considering it was purchased at the time of the original sale but from a different supplier.

iv. Analyze how the GST liability would change if the extended warranty was purchased from Samsung directly, at the time of the original purchase.

Answer

Clarification on availability of input tax credit on ducts and manholes usedinnetwork of optical fibre cables (OFCs) in terms of section 17(5) of the CGSTAct, 2017 – CBIC Circular[1]

This circular provides clarification on the eligibility of Input Tax Credit (ITC) for ducts and manholes used in the network of Optical Fiber Cables (OFCs) under the Central Goods and Services Tax (CGST) Act, 2017.

Definition of "Plant and Machinery":

- **Context of OFC Network:** Ducts and manholes are essential components of the Optical Fiber Cable (OFC) network, which is crucial for providing telecommunication services. The OFC network is typically laid within PVC ducts, and manholes serve as nodes for connectivity, upkeep, and maintenance of the network.
- **Plant and Machinery under CGST Act:** According to the Explanation in Section 17 of the CGST Act, "plant and machinery" includes apparatus, equipment, and machinery used for making outward supplies. The definition specifically excludes certain items like land, buildings, civil structures, telecommunication towers, and pipelines laid outside the factory premises.
- **Clarification on Ducts and Manholes:** The circular clarifies that ducts and manholes, which are integral to the OFC network, qualify as "plant and machinery." These components are not specifically excluded from the definition because:
- They are not in the nature of land, buildings, or civil structures.
- They are not telecommunication towers or pipelines laid outside the factory premises.

Input Tax Credit (ITC) Eligibility:

- **General Rule:** Under Section 17(5) of the CGST Act, ITC is restricted for certain goods and services, particularly those related to motor vehicles, construction services, and telecommunication towers, among others.

- **Application to Ducts and Manholes:**
  - **Not Restricted:** The circular clarifies that the availment of ITC is not restricted for ducts and manholes used in the OFC network. This means that companies laying OFCs and using these components can claim ITC on the GST paid for their procurement.
  - **Supporting Clause:** Since ducts and manholes are considered "plant and machinery" and are used in the business of providing telecommunication services, they do not fall under the exclusions listed in Section 17(5)(c) and (d) of the CGST Act.

[1] Circular No. 219/13/2024- GST dt. 26.06.2024

Question

XYZ Telecom Ltd. is engaged in providing telecommunication services and is expanding its network by laying new Optical Fiber Cables (OFCs) across various regions. The OFCs are housed within PVC ducts, and service/connectivity manholes are installed as nodes in the network to facilitate maintenance and connectivity. The company has incurred significant expenses on purchasing these ducts and manholes.

You are required to:

1. Determine whether XYZ Telecom Ltd. can claim Input Tax Credit (ITC) on the purchase of ducts and manholes used in its OFC network, according to the provisions of the CGST Act.
2. Explain the rationale behind the eligibility of ITC on these items, referring to the relevant sections of the CGST Act and the clarification provided in the circular.
3. Discuss whether there are any specific restrictions under Section 17(5) of the CGST Act that would prevent XYZ Telecom Ltd. from claiming ITC on these purchases.
4. Analyze the impact on XYZ Telecom Ltd.'s GST liability if these components were instead classified as excluded items under the definition of "plant and machinery."

Answer

SEGMENT - 9
REGISTRATION

Risk-based biometric aadhaar authentication of registration applicants – Pilot project in Gujarat extended to Puducherry and Andhra Pradesh

In order to improve the registration process, biometric based aadhaar authentication of the high-risk applicants who opt for authentication of Aadhaar number was introduced on a pilot basis in the State of Gujarat.

An applicant who has opted for authentication of Aadhaar number and is identified on the common portal, based on data analysis and risk parameters, shall be followed by biometric-based Aadhaar authentication and taking photograph:

I. of the applicant where the applicant is an individual or

II. of such individuals where the applicant is not an individual,

along with the verification of the original copy of the documents uploaded with the application in Form GST REG-01 at one of the notified Facilitation Centres.

The application shall be deemed to be complete only after completion of the process laid down hereunder.

An acknowledgement shall be issued to the applicant only after completion of biometric-based authentication.

The above biometric based aadhaar authentication of the high-risk applicants who opt for authentication of Aadhaar number has been extended to the States of Puducherry and Andhra Pradesh.

[Notification No. 54/2023 CT dated 17.11.2023]

SEGMENT - 14
PLACE OF SUPPLY

Clarification regarding place of supply of goods to unregistered persons:

Clause (ca) of Section 10(1) of the Integrated Goods and Services Tax (IGST) Act, 2017, was inserted with effect frobonm 1st October 2023. This clause specifically deals with the determination of the place of supply of goods when the supply is made to an unregistered person, such as in e-commerce transactions. The clause serves as a non-obstante provision, meaning it overrides the general provisions related to the place of supply of goods as stated in clauses (a) and (c) of Section 10(1) of the IGST Act.

Determination of Place of Supply:

- When goods are supplied to a person other than a registered person (typically an unregistered individual or consumer), the place of supply is generally determined based on the location of recipient in the records of supplier. In the absence of such details, POS shall be location of supplier.
- **Clarification provided:**
    - **Billing Address and Delivery Address Match:** If the billing address and delivery address match, the place of supply is determined as per the address recorded on the invoice.
    - **Different Billing and Delivery Addresses:** If the billing address and the delivery address are different, the place of supply is determined by the delivery address recorded on the invoice.

Explanation of Recording the Address:

- The clause clarifies that recording the name of the State of the unregistered person on the invoice is sufficient for it to be considered as recording the address of the recipient.

Scenario:

Mr. A, an unregistered person located in State X, places an order on an e-commerce platform for a mobile phone, which is to be delivered to an address in State Y. Mr. A provides a billing address in State X when placing the order.

Question:

What would be the place of supply for this transaction—the billing address (State X) or the delivery address (State Y)?

Clarification:

- Place of Supply: In this scenario, since the delivery address is different from the billing address, the place of supply, according to Clause (ca) of Section 10(1), will be the location where the goods are delivered, i.e., State Y.

- **Invoice Requirement:** The supplier (the e-commerce platform or seller) may record the delivery address (State Y) as the address of the recipient on the invoice to determine the correct place of supply.

Practical Implications:

- GST Liability: The GST will be applied based on the place of supply, which in this case is State Y. This is crucial for determining whether Central GST (CGST) and State GST (SGST) or Integrated GST (IGST) should be levied.
- Compliance for E-commerce Platforms: E-commerce platforms need to ensure that their billing systems correctly capture the delivery address as the place of supply when it differs from the billing address to apply the correct GST

Question

Reliance Digital Ltd., an e-commerce company registered in Mumbai, Maharashtra, sells electronic goods across India through its online platform. On 10th October 2024, a customer, Mr. Ravi (an unregistered individual), placed an order for a television priced at 1,20,000. Mr. Ravi's billing address is in Pune, Maharashtra, but he requests delivery of the television to his vacation home located in Goa.

Additional Information:

- The GST rate applicable on the television is 18%.
- Reliance Digital Ltd. has received several similar orders where the billing and delivery addresses are different.
- For the order placed by Mr. Ravi, the company issued an invoice on 12th October 2024, and the television was dispatched on 13th October 2024.

You are required to:

1. Determine the place of supply for the television in this scenario based on the provisions of clause (ca) of section 10(1) of the IGST Act, 2017.
2. Compute the GST payable on this transaction and specify whether CGST/SGST or IGST will be applicable.
3. Explain the impact on the GST liability of Reliance Digital Ltd. if the billing address and delivery address were the same (both in Maharashtra).
4. Calculate the total invoice value (including GST) that Mr. Ravi would need to pay if the place of supply is determined to be in Goa.

Answer

Answer