UPDATE FOR CA (Intermediate / IPC) for May, 2018 Exam.

PART "B" – Indirect Tax

Note: These amendments are already incorporated at relevant places in this book.

Chapter 2 – Definitions and Concept of Supply

Section 7 and 8 - Circular No. 11/11/2017 GST dated 20.10.2017:
Following clarifications have been given --

- Supply of books, pamphlets, brochures, envelopes, annual reports, leaflets, cartons, boxes, etc. printed with logo, design, name, address or other content supplied by the recipient of such supply, are composite supplies and the question, whether such supply constitutes Supply of Goods or Supply of Services, would depend upon the nature of "Principal supply".
- In the case of printing of **books, pamphlets, brochures, annual reports, and the like,** where only content is supplied by the publisher (i.e. the person who owns the usage rights to the intangible inputs) while the physical inputs including paper used for printing belong to the printer, supply of printing of the content supplied by the recipient of supply is the "principal supply" and therefore such supplies would constitute "**supply of service"**.
- In the case of supply of **printed envelopes, letter cards, printed boxes, tissues, napkins, wall paper, etc.** printed with design, logo etc. supplied by the recipient of goods but made using physical inputs including paper belonging to the printer, principal supply is that of goods and the supply of printing of the content supplied by the recipient of supply is ancillary to the principal supply of goods and therefore such supplies would constitute "**supply of goods".**

Section 7 - Circular No. 1/1/2017 IGST dated 07.07.2017:
We are aware that --

(a) Under section 24(1)(i) of the CGST Act, the persons making any inter-State taxable supply are compulsorily required to be registered.

(b) Under section 25(4) of the CGST Act, 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.

(c) Schedule - I to the CGST Act specifies 4 situations where the activities are to be treated as supply even if made without consideration. Those 4 situations include the supply of goods/services/both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business.

On the basis of this legal position, a very interesting issue has arisen. The issue is -- whether the inter-state movement of various modes of conveyance [Trains, buses, trucks, tankers, trailers, vessels, containers, aircrafts, etc.) carrying goods or passengers or for repairs and maintenance, between distinct persons as specified in section 25(4) of the CGST Act, 2017, (except in cases where such movement is for further supply of the same conveyance) shall be treated as "supply" and hence GST shall be leviable?

There is a view that this supply shall attract GST.

Now, the Govt. has issued clarification that such supply shall not be liable to GST. However, applicable CGST/SGST/IGST, as the case may be, shall be leviable on repairs and maintenance done for such conveyance.

Chapter 3 – Charge of tax

~~***Rule 3(4) amended:***~~

- ~~**Under this Rule, a migrated person who wants to opt for Composition Scheme shall electronically furnish a statement of the stock (including the inward supply of goods received from unregistered persons) held by him on the day preceding the day from which he opts for Composition Scheme within 60 days from the date on which the option for composition levy is exercised.**~~
- ~~**Now the time-limit has been extended from 60 days to 90 days.**~~
- ~~**This point was applicable to migrated persons only. Hence it does not seem to be relevant for examination.**~~

Section 9(3) of CGST Act / 5(3) of IGST Act – RCM:

- **In the case of supply of services by members of Overseeing Committee (constituted by RBI) to RBI, the RCM shall apply. Hence the RBI shall pay tax.**
- **In the case of services provided by GTA by way of transportation of goods, the GST shall be payable under RCM only if the GTA has not paid CGST @6%+SGST/UTGST @6% or IGST@12% (as the case may be).**
- **A doubt was raised by business community as to whether a limited liability partnership (LLP) shall be treated as "body corporate" for RCM purpose? Now, a clarificatory Explanation has been inserted in the RCM Notification to provide that for the purposes of RCM, a LLP shall be treated as a partnership firm / firm. The effect is that LLP shall not be treated as "body corporate".**

Section 9(4) of CGST Act / 5(4) of IGST Act:

Since the RCM provision of section 9(4) of CGST Act / 5(4) of IGST Act has a wide applicability, there were all-India reactions against this provision (because its very difficult to apply this provision in practical life). Considering the reactions of public, initially the Govt. issued ***Notification No. 08/2017 CT(R) dated 28.06.2017,*** wherein the Intra-state supplies of taxable goods/services/both received by a registered person from unregistered persons were exempted from levy of RCM provided the aggregate value of such supplies of goods/services/both received by a registered person from one or more unregistered suppliers does not exceed Rs. 5,000 in a day.

Now, to further relax, ***the Notification No. 38/2017 CT(R) dated 13.10.2017 and Notification No. 32/2017 IT(R) dated 13.10.2017*** have been issued by which the Intra-State as well as Inter-State supplies of taxable goods/services/both received by a registered person from unregistered person has been fully exempted from levy of RCM, till 31.03.2018.

In simple words, we can conclude that the RCM provision of section 9(4) of CGST Act / 5(4) of IGST Act has been fully suspended till 31.03.2018.

Section 9(5) of CGST Act / 5(5) of IGST Act - ECO:

- Earlier the ECOs were liable to pay GST in respect of two services provided through them. These services are:
  (i) Services by way of transportation of passengers by a radio-taxi, motorcab, maxicab and motorcycle , and
  (ii) Services by way of providing accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes.
- Now, one more service, viz. services by way of house-keeping, such as plumbing, carpentering, etc. provided through ECO *except where the person supplying such service through ECO is liable for registration u/s 22 of CGST Act,* has been added in the list of section 9(5).

  Example – Services provided through "Clean4U" shall be covered u/s 9(5). .

Section 10 – Composition Scheme:

- **Earlier a registered person, whose Aggregate Turnover (AT) in the preceding Financial Year does not exceed Rs. 75 lakh (Rs. 50 lakh for 9 special category states) could opt for Composition Scheme.**
- **Now, these limits have been increased. Hence, a registered person whose Aggregate Turnover (AT) in the preceding Financial Year does not exceed Rs. 1 Crore (Rs. 75 lakh for 9 special category states) can opt for Composition Scheme.**

Section 10 – Composition Scheme:

- We are aware that –
  - ✓ A person (i) supplying goods (may be manufacturer or trader), or (ii) supplying restaurant / catering service covered under paragraph 6(b) of Schedule – II, is eligible to opt for "Composition Scheme". A person supplying service [except a person providing restaurant / catering service covered under paragraph 6(b) of Schedule – II] is not eligible for Composition Scheme.
  - ✓ The Composition Scheme can be availed only if the "Aggregate Turnover" does not exceed Rs. 1 Crore (Rs. 75 lakh for 9 Special Category States).
  - ✓ The "Aggregate turnover" includes "exempt supplies" of goods / services / both.
- The effect of above provisions is such that a person who is eligible for composition scheme [i.e. a person (i) supplying goods, or (ii) supplying restaurant / catering service covered under paragraph 6(b) of Schedule – II], becomes ineligible just because he is making "exempt supply of services".
- Due to this, the business community is not able to avail the benefit of Composition Scheme. A simple practical example could be – An eligible person getting interest from bank, becomes ineligible because he is making exempt supply of service.
- In order to remove this difficulty, the Central Govt. has issued **Order No. 01/2017 CT dated 13.10.2017** to clarify as under:
  (i) It is hereby clarified that if a person (i) supplies goods, and/or (ii) supplies services referred to in paragraph 6(b) of Schedule - II [i.e. restaurant / catering service] 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 fulfilment of all other conditions specified therein.
  (ii) It is further clarified that in computing his "Aggregate turnover" in order to determine his eligibility for Composition Scheme, the 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 included.

Circular No. 12/12/2017 GST dated 26.10.2017:

- We take an example to understand this Circular.
  - ✓ Mr. A receives Superior Kerosene Oil (SKO) from refinery (say HP Ltd) through pipeline, extracts about 15% Normal Paraffin (NP) from such SKO and returns back remaining quantity of SKO (about 85%) to HP Ltd through pipeline.
  - ✓ The NP is used by Mr. A for manufacture of Linear Alkyl Benzene (LAB).
  - ✓ Mr. A makes payment to HP Ltd for 15% portion extracted by him only.
- In the above situation, following disputes arise in GST laws:
  (i) Whether HP Ltd shall be liable to pay GST on full value of SKO sent by it to Mr. A?
  (ii) Whether Mr. A shall be liable to pay GST on 85% of SKO returned to HP Ltd?
  (iii) Whether HP Ltd shall be liable to pay GST on the value of 15% SKO retained by Mr. A?
- Now, it has been clarified that HP Ltd. shall be liable to pay GST on 15% SKO retained by Mr. A only.

Chapter 4 – Exemptions	
Entry No.	**Amendment**
	Exemptions in all GST Laws (CGST+SGST/UTGST as well as IGST)
New Entry 9A	Supply of services by and to Federation Internationale de Football Association (FIFA) and its subsidiaries directly or indirectly related to any of the events under FIFA U-17 World Cup 2017 to be hosted in India.
New Entry 9B	Supply of services associated with transit cargo to Nepal and Bhutan (landlocked countries).
New Entry 9C	Supply of service by a "Government entity" to Central Government, State Government, Union territory, local authority or any person specified by Central Government, State Government, Union territory or local authority against consideration received from Central Government, State Government, Union territory or local authority, in the form of grants. Here **"Government entity"** means an authority or a board or any other body including a society, trust, corporation, (i) set up by an Act of Parliament or State Legislature; or (ii) established by any Government, with 90% or more participation by way of equity or control, to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority."
New Entry 11A	Supply of services by Fair Price Shops to Central Govt. by way of sale of wheat, rice and coarse grains under Public Distribution System (PDS) against consideration in the form of commission or margin.
New Entry 11B	Supply of services by Fair Price Shops to State Govt. or UT by way of sale of kerosene, sugar, edible oil, etc. under Public Distribution System (PDS) against consideration in the form of commission or margin.
New Entry 21A	Services provided by a GTA to an unregistered person (including an unregistered casual taxable person) other than the following recipients, namely:- (a) any factory registered under or governed by the Factories Act, 1948, or (b) any Society registered under the Societies Registration Act, 1860 or under any other law for the time being in force in any part of India, or (c) any Co-operative Society established by or under any law for the time being in force, or (d) any body corporate established, by or under any law for the time being in force, or (e) any partnership firm whether registered or not under any law including AOP, (f) any casual taxable person registered under the CGST Act or IGST Act or SGST Act or UTGST Act.
New Entry 23A	Service by way of access to a road or a bridge on payment of annuity.
New Entry 82	Supply of services by way of right to admission to the events organised under FIFA U-17 World Cup 2017.

Existing Entry 5 Modified	*Old law:* Services by a Governmental authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution. *New law:* Services by Central Govt., State Govt., UT Govt., Local authority or a Governmental authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution.
Existing Entry 35 modified	*Old law:* Services of general insurance business provided under certain specified schemes, are exempted. There is a long list of specified schemes. *New law:* Insurance under "Restructured Weather based Crop Insurance Scheme (RWCIS) and Pradhan Mantri Fasal Bima Yojana (PMFBY), have also been added in the list of specified schemes.
Existing Entry 41 modified	*Old law:* One time upfront amount (called premium, salami, cost, price, development charges or by any other name) leviable in respect of the service, by way of granting long-term (30 years or more) lease of industrial plots, provided by the State Govt. Industrial Development Corporations or State Govt. Industrial Undertakings to industrial units. *New law:* Upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable in respect of service by way of granting of long term lease (30 years or more) lease of industrial plots or plots for development of infrastructure for financial business, provided by the State Govt. Industrial Development Corporations or State Govt. Industrial Undertakings or by any other entity having 50% or more ownership of Central Government, State Government or Union territory to the industrial units or the developers in any industrial or financial business area.
Clarification on status of LLP	A doubt was raised by business community as to whether a limited liability partnership (LLP) shall be treated as "body corporate" for Exemption Notifications? Now, a clarificatory Explanation has been inserted in the Exemption Notification to provide that for the purposes of Exemptions, a LLP shall be treated as a partnership firm / firm. The effect is that LLP shall not be treated as "body corporate".
Exemptions only in IGST	
New Entry 10D	Supply of services having place of supply in Nepal or Bhutan, against payment in Indian Rupees

Chapter 5 – Time of Supply

Notification Number 40/2017 CT dated 13.10.2017:

- This Notification has been issued to grant a relaxation to middle-level persons [i.e. the registered persons having aggregate turnover not exceeding Rs. 1.50 crore in the preceding financial year (or the registered person whose aggregate turnover is likely to be less than Rs. 1.50 crore in the financial year in which such person has obtained registration)] and who does not opt for Composition Scheme. Such persons have been notified as a class of person who shall pay GST on the outward supply of goods at the time of supply (TOS) as specified in section 12(2)(a) of CGST Act.

- Thus, the effect of this Notification shall be as under:
  - ✓ In the case of such middle-level persons, the TOS for supply of goods shall be EARLIER of --
    - (i) *Date of issue of invoice*
    - *(ii) Last date for issue of invoice u/s 31*
    - ~~*(iii) Date on which the payment is entered in the books of account of supplier*~~
    - ~~*(iv) Date on which the payment is credited to the Bank A/c of supplier*~~
  - ✓ No GST shall be leviable at the time of receipt of advance.
  - ✓ The person shall furnish the details and Returns under Chapter IX of CGST Act, according to this Notification.
- Please note that the benefit of this Notification is available only in case of "outward supply of goods" and not in case of "outward supply of services".

Chapter 7 – ITC

Section 18(1) read with Rule 40:
Under the existing law, in order to claim ITC u/s 18(1), the registered person shall make a declaration of inputs, inputs contained in semi-finished or finished goods and capital goods in a prescribed form **(Form GST ITC-01)** electronically on the common portal. The declaration shall be filed within 30 days from the date when the person becomes eligible to avail ITC.

Now the amendment prescribes that the CGST / IGST Commissioner can extend the time period for submission of declaration. Further, any extension of time period granted by SGST / UTGST Commissioner shall be deemed to be extension granted by CGST / IGST Commissioner.

Chapter 9 – Registration

- Under the existing law, the Proper Officer **(PO)** may, upon submission of application in **Form GST REG-13,** assign UIN. The amendment provides that the Proper Officer **(PO)** may, upon submission of application in **Form GST REG-13 or after receiving recommendation from the Ministry of External Affairs, Govt. of India,** assign UIN.
- Section 24 prescribes compulsory registration of certain persons, irrespective of threshold limit. Now, following relaxations have been granted –

  (i) A person making inter-state supplies of handicraft goods is exempted from obtaining compulsory registration, provided following conditions are satisfied –
  (a) the aggregate value of such supplies, to be computed on all India basis, does not exceed Rs. 20 lakh (Rs. 10 lakh in case of Special Category States).
  (b) the person obtains PAN and generate an E-way Bill.

  Here "Handicraft goods" means the products specified by the Govt., when made by the craftsmen predominantly by hand even though some machinery may also be used in the process.

  (ii) A Casual Taxable Person (CTP) making taxable supplies of handicraft goods is exempted from obtaining compulsory registration, provided following conditions are satisfied –
  (a) the aggregate value of such supplies, to be computed on all India basis, does not exceed Rs. 20 lakh (Rs. 10 lakh in case of Special Category States).
  (b) the person obtains PAN and generate an E-way Bill.

  Here "Handicraft goods" means the products specified by the Govt., when made by the craftsmen predominantly by hand even though some machinery may also be used in the process.

  (iii) A person making **inter-state taxable supplies of services,** shall be exempted from obtaining registration if the aggregate turnover computed on all India basis does not exceed Rs. 20 lakh (Rs. 10 lakh in case of special category States). **[We have already discussed this point in our regular class].**

Chapter 10 - Tax Invoice, Credit Note and Debit Note

- ***Rule 46A introduced:***
  This Rule has been introduced to provide that where a registered person is supplying taxable as well as exempted goods/services/both to an unregistered person, a single "Invoice-cum-Bill of Supply" may be issued for all such supplies.

- ***Rule 54 amended:***
  This Rule prescribes that where the supplier of taxable service is an Insurer / Banking company / Financial institution / Non-banking financial company (NBFC), the supplier shall issue a tax invoice or any other document in lieu thereof (by whatever name called) ---
  -- whether issued or made available, physically or electronically,
  -- whether or not serially numbered, and
  -- whether or not containing the address of the recipient of taxable service
  but containing other information as mentioned under rule 46.

  Now this Rule has been amended to provide that the supplier can, in place of a Tax Invoice, issue a "Consolidated Tax Invoice" for the supply of services made during a month at the end of the month.

- ***Circular No. 10/10/2017 GST dated 18.10.2017:***
  Many a time businessmen carry goods (For example – Jewellery) from one place to another in the same State or a different State for approval. Thereafter, if the buyer approves, the supplier issues a Tax Invoice at the time of supply. Since the suppliers are not able to ascertain their actual supplies beforehand and also not able to estimate their tax liability in advance, it is not possible for them to obtain registration as Casual Taxable Person. To remove this difficulty, it has been clarified that the supplier can carry goods on delivery challan (alongwith E-way Bill, wherever applicable) and the invoice may be issued at the time of actual supply. The supplier can carry the Invoice Book with him so that he can issue Invoice. It is further clarified that in such a case, if the supplier carries goods from one State to another and supplies them in a different State, the sale would be treated as Inter-state and IGST shall be applicable.