

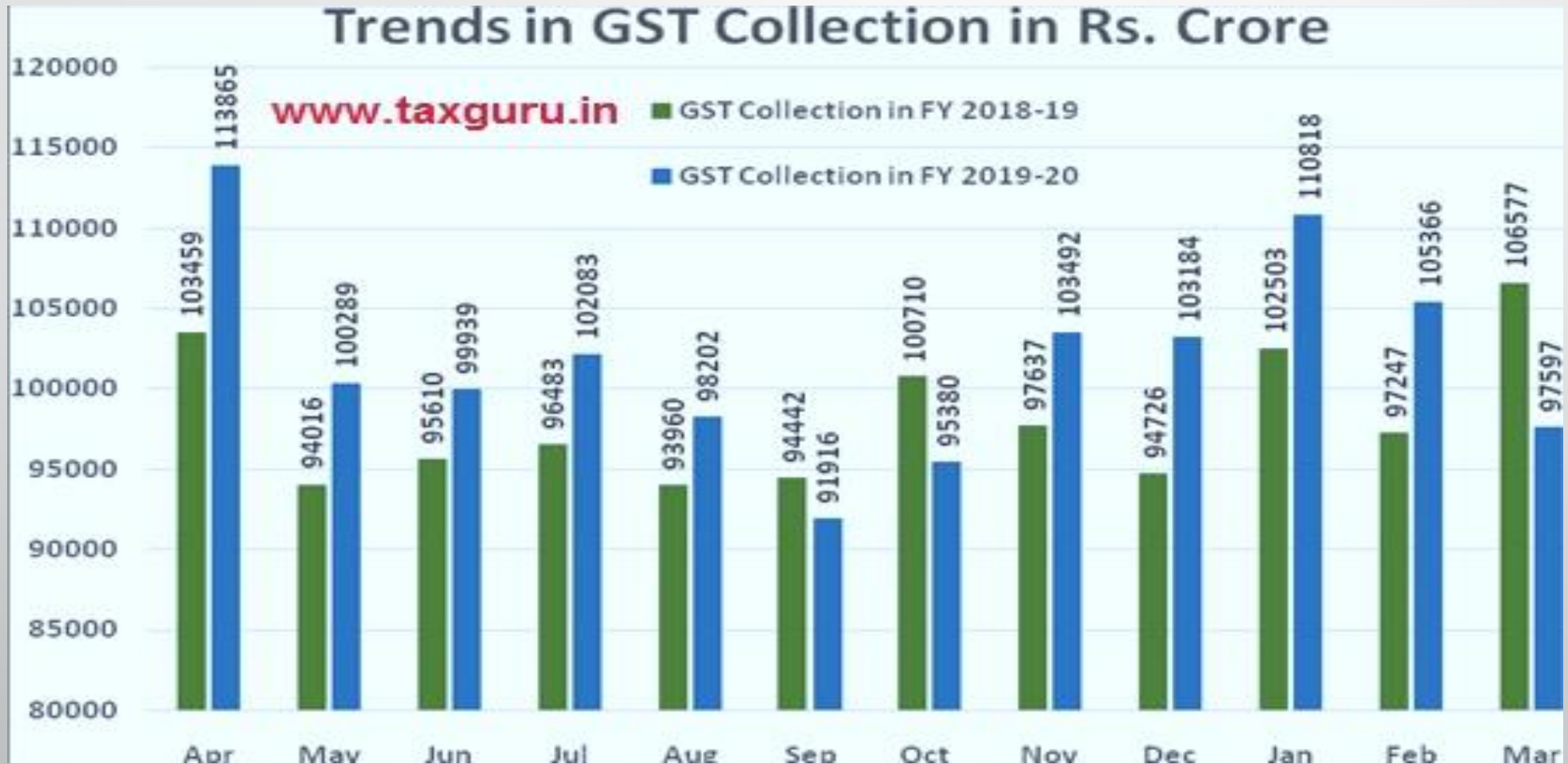


**THE INSTITUTE OF CHARTERED
ACCOUNTANTS OF INDIA
NAVI MUMBAI BRANCH OF WIRC
ISSUES IN RCM UNDER GST**

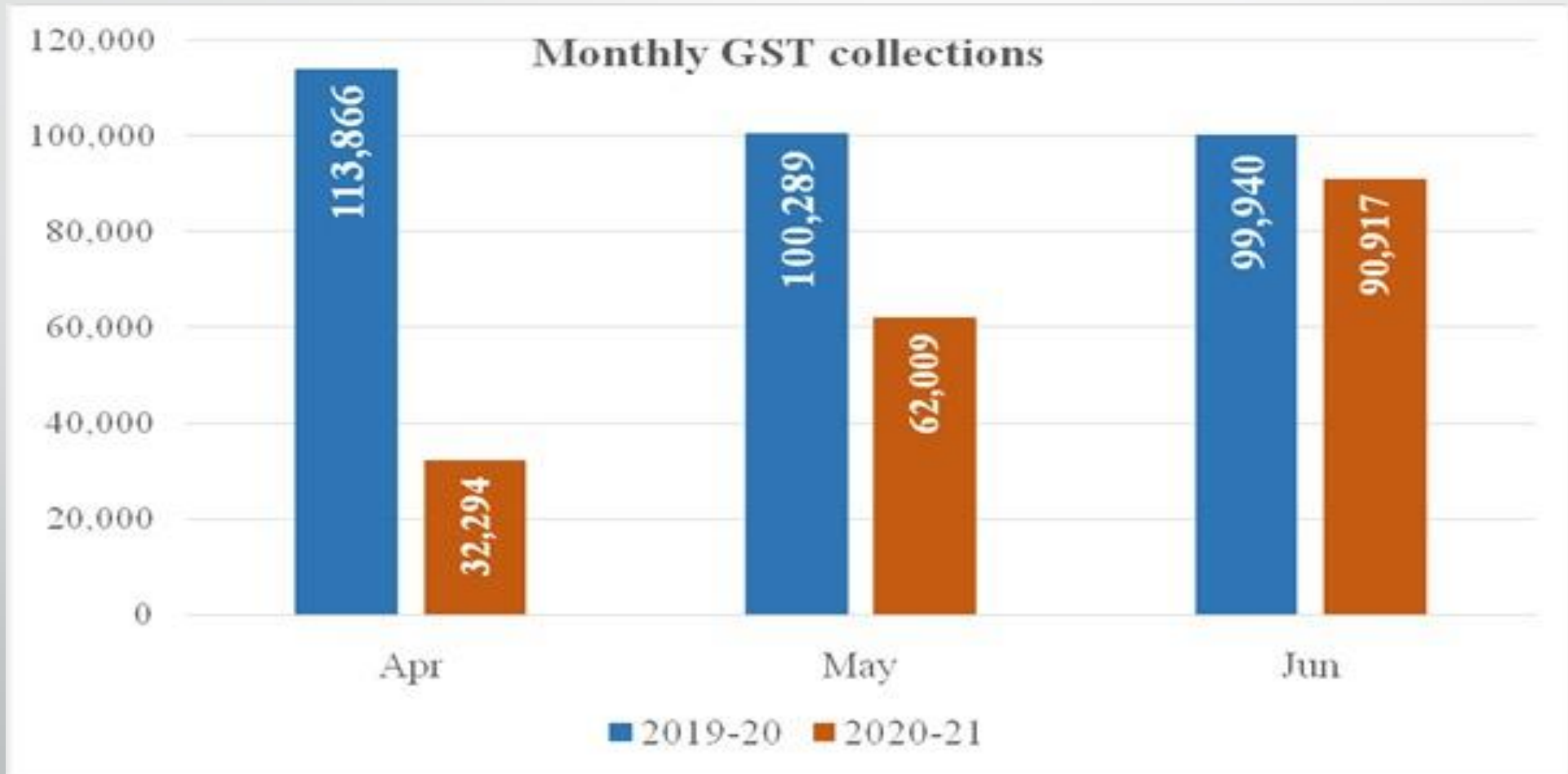
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-12/07/2020

GST COLLECTIONS IN FY 2018-19 & 2019-20



GST COLLECTIONS IN FY 2019-20 & 2020-21



Current Scenario Uphill Task



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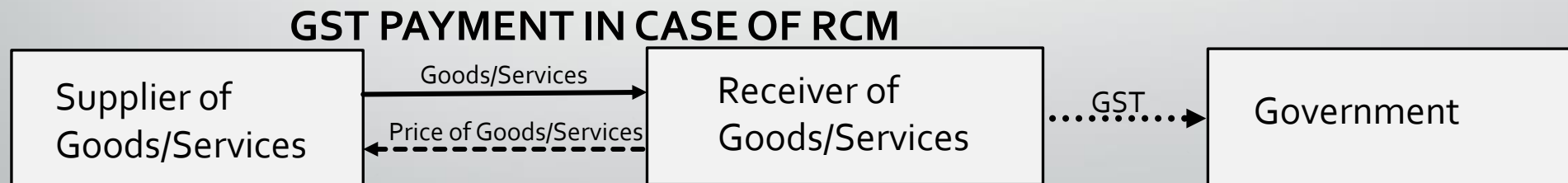
Subject for Discussion:

- ✓ What is RCM?
- ✓ Sec 9(3) and Sec 9(4) URD purchase under RCM
- ✓ Sec 9(5) E-commerce operator
- ✓ Time of Supply under RCM- Sec 12(3) and 13(3)
- ✓ Registration requirement under RCM- Sec 24
- ✓ RCM on real estate sector
- ✓ RCM on renting of Motor Vehicles
- ✓ RCM regarding Government services
- ✓ Advocate services under RCM
- ✓ Ocean Freight under RCM
- ✓ RCM on services rendered by Directors
- ✓ ITC under RCM and How to claim credit of RCM which is paid after 20.10.2019 (if any) for the year ended 31.03.2019 – Debatable Issue

What is Reverse Charge Mechanism under GST?

Section 2(98) of CGST Act, 2017:

- ✓ The liability to pay tax by the recipient of supply of goods or services or both.
- ✓ Instead of the supplier of such goods or services under sub-section (3) or sub-section (4) of section 9 of the CGST Act, 2017 or under sub-section (3) or sub-section (4) of section 5 of the IGST Act, 2017.



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GST Registration Under RCM

Section 24 of the CGST Act, 2017:

- ✓ A person who is required to pay tax under RCM has to compulsorily register under GST irrespective of threshold limit* of registration.

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*Threshold limit

Aggregate Turnover	Registration Required	Applicability
Earlier Limits – For the sale of Goods/Providing Services		
Exceeds Rs.20 lakh	Yes – For Normal Category States	Up to 31st March 2019
Exceeds Rs.10 lakh	Yes – For Special Category States	Up to 31st March 2019
New Limits – For Sale of Goods (Notification No. 10/2019- Central Tax Dated 07.03.2019)		
Exceeds Rs.40 lakh	Yes – For Normal Category States	From 1st April 2019
Exceeds Rs.20 lakh	Yes – For Special Category States	From 1st April 2019
New Limits – For Providing Services		
There has been no change in Threshold limits for Service Providers.		
Special Category States:		
Arunachal Pradesh, Assam, Jammu & Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh, Uttarakhand.		

Situations where RCM will apply



Section 9(3)
CBEC has issued a list of goods and services on which RCM is applicable



Section 9(4)
Refer Notification no. 07/2019.
Shortfall from 80% Cement, Capital goods



Section 9(5)
Services through an e-commerce operator

Sec 12(3) CGST ACT, Time of Supply for Goods Under RCM

In case of RCM, the time of supply shall be the earliest of the following dates:

The Date of Receipt of Goods OR

The Date of Payment OR

The Date Immediately After 30 Days from the Date of Issue of Invoice by the Supplier.

If it is not possible to determine the time of supply from the above dates, the time of supply shall be the date of entry in the books of account of the recipient.

Sec 13(3) CGST ACT, Time of Supply for Services Under RCM

In case of RCM, the time of supply shall be the earliest of the following dates:

The date of
Payment

OR

The Date
Immediately After 60
Days from the Date
of Issue of Invoice by
the Supplier.

If it is not possible to determine the time of supply from the above dates, the time of supply shall be the date of entry in the books of account of the recipient.

If the supplier is located outside India, then the time of supply shall be the earliest of 'When the amount is paid i.e. the date of payment' OR 'When the recipient records the payment in his books of account'.

Section 9(3) List of Goods under RCM Notification No. 04/2017- Central Tax (Rate)

Sl. No.	List of Goods	Effective Date	Applicable Rates @
1.	Cashew nuts, not shelled or peeled	01/07/2017	5%
2.	Bidi wrapper leaves (tendu)	01/07/2017	18%
3.	Tobacco leaves	01/07/2017	5%
4.	Silk yarn	01/07/2017	5%
5.	Supply of lottery	01/07/2017	28%
6.	Used vehicles, seized and confiscated goods, old and used goods, waste and scrap from Government or local authority	13/10/2017	18%
7.	Raw Cotton	15/11/2017	5%
8.	Priority Sector Lending Certificate	28/05/2018	18%

Section 9(3) List of Services under RCM Notification No. 13/2017- Central Tax (Rate)

Sl. No	List of Services	Effective Date	Applicable Rate @
1.	Supply of service by GTA	01/07/2017	5%
2.	Advocacy Services	01/07/2017	18%
3.	Service by Arbitral Tribunal	01/07/2017	18%
4.	Sponsorship Services	01/07/2017	18%
5.	Services by Central Government, State Government, Union territory or local authority	01/07/2017	18%
6.	Services by Director (Except as an employee)	01/07/2017	18%
7.	Services by insurance agent	01/07/2017	18%
8.	Service by Recovery agent	01/07/2017	18%
9.	Services by an author, music composer, photographer, artist	01/07/2017	18%

Section 9(3) List of Services under RCM

Notification No. 03/2018- Central Tax (Rate)			
Sl. No.	List of Services	Effective Date	Applicable Rates @
5A	Renting of immovable property by Government or local authority	25/01/2018	18%
Notification No. 05/2019- Central Tax (Rate)			
5B	Services supplied by any person by way of transfer of development rights or Floor Space Index (FSI)	01/04/2019	18%
5C	Long term lease of land (30 years or more) by any person against consideration in the form of upfront amount	01/04/2019	18%

Section 9(3) List of Services under RCM

Notification No. 33/2017- Central Tax (Rate)			
Sl. No.	List of Services	Effective Date	Applicable Rates @
10.	Supply of services by the members of Overseeing Committee to Reserve Bank of India	13/10/2017	18%
Notification No. 15/2018- Central Tax (Rate)			
11.	Services supplied by individual Direct Selling Agents (DSAs)	27/07/2018	18%

Section 9(3) List of Services under RCM

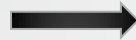
Notification No. 29/2018- Central Tax (Rate)			
Sl. No.	List of Services	Effective Date	Applicable Rates @
12.	Services provided by business facilitator(BF)	01/01/2019	18%
13.	Services provided by an agent of business correspondent (BC)	01/01/2019	18%
14.	Security Services	01/01/2019	18%
Notification No. 22/2019- Central Tax (Rate)			
15.	Services provided by way of renting of a motor vehicle provided to a body corporate	01/10/2019	18%
16.	Services of lending of securities under Securities Lending Scheme, 1997 Are you doing stock lending?	01/10/2019	18%

Section 9(3) List of Services under RCM

Notification No. 29/2019- Central Tax (Rate)			
Sl. No	List of Services	Effective Date	Applicable Rate @
15.	Services provided by way of renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged (clf)	01/01/2020	18%
Notification No. 10/2017- Integrated Tax (Rate)			
1.	Any service supplied by any person who is located in a non-taxable territory to any person other than non-taxable online recipient	01/07/2017	18%
10.	Services supplied by a person located in non- taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India	01/07/2017	18%

Reporting Under RCM

Reporting RCM
Details in GSTR-1



Invoice level information in respect of all supplies attracting RCM rate wise, are to be furnished separately in Table 4B of GSTR-1.

Reporting RCM
Details in GSTR-3B



The recipient has to report in Table 3.1 (D) of GSTR-3B (inward supplies liable to RCM). The recipient has to discharge the liability through electronic cash ledger while filing his GSTR-3B

Availing ITC by
the Recipient



The Recipient can Avail ITC of GST amount paid under RCM on receipt of goods and services. In case of Real Estate Sector, as per Notification No. 03/2019 dated 29.03.2019 **ITC cannot be claimed and if any credit is available same should be shown as Ineligible ITC.**

'Self Invoice' under RCM

Tax invoice (section 31)

- (3) (f) if a regd person who is liable to pay tax under sub-section (3) or sub-section (4) of section 9 shall issue an invoice in respect of goods or services or both received by him from the supplier who is not registered on the date of receipt of goods or services or both;

Payment Voucher (Section 31)

- (g) a registered person who is liable to pay tax under sub-section (3) or sub-section (4) of section 9 shall issue a payment voucher at the time of making payment to the supplier.

RCM for Real Estate Sector w.e.f. 01.04.2019

Applicability:

- ✓ If promoter (Builder/developer) fails to purchase at least 80% of the value of input and input services, from registered suppliers.
- ✓ On TDR or floor space index supplied on or after 01-04-2019.
- ✓ Differential tax arising on procurement of works contract services in relation to construction of affordable residential apartments, if 50% criteria mentioned therein is not met.

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If promoter fails to purchase 80% from Registered supplier

In case of a project developer or construction of apartment by the developer:

- ✓ 80% of inputs and input services [other than capital goods, TDR/JDA, FSI, long-term lease (premium), electricity, high speed diesel, motor spirit, natural gas] shall be purchased from registered persons.
- ✓ On shortfall of purchases/services from 80%, tax shall be paid by the builder @18% on RCM basis.
- ✓ Tax on cement purchased from unregistered person shall be paid @28% under RCM, and on capital goods under RCM at applicable rates in terms of Section 9(4) the CGST Act, 2017.

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Examples of Real Estate Sector under RCM

Example 1 : A promoter purchased 55% of input and input services from registered supplier. 20% Cement & 25 % other input & input services received from unregistered person, during financial year 2019-20

(a)	Promoter is required to purchase at least 80% from registered person.	80%
(b)	His purchases from registered supplier is	55%
(c)	He is liable to pay under RCM for total purchase of Cement from unregistered person (irrespective of % total purchase)	20%
(d)	Other purchases from unregistered person	25%
(e)	Liable to pay under RCM on shortfall $a-(b+c)$ $80\% - (55\% + 20\%)$	5%

In the above example, even if purchases from registered supplier is 80%, promoter is still liable to pay on purchase of cement i.e. 20% under RCM.

Inputs and input services on which tax is paid by promoter under RCM under sec 9(3) shall be deemed to have been procured from registered person.

Example 2 :

(a)	Promoter is required to purchase at least 80% from registered person.	80%
(b)	His purchases from registered supplier is	60%
(c)	He is liable to pay under RCM for total purchase of Cement from unregistered person (irrespective of % total purchase)	15%
(d)	Input services on which tax is paid under reverse charge under sec 9(3)	13%
(e)	Other purchases from unregistered person	12%
(e)	Liable to pay under RCM on shortfall $a-(b+c+d)$ $80\% - (60\% + 15\% + 13\%)$ No shortfall as total of $(b+c+d)$ is 88% that crossed limit of 80%	NIL

Purchase from Composition Dealers : Input & input services from composition dealer shall be considered as purchase from registered person paying taxes under composition scheme .

Example 3 :

(a)	Promoter is required to purchase at least 80% from registered person.	80%
(b)	His purchases from registered supplier is	82%
(c)	He is liable to pay under RCM for total purchase of Cement from unregistered person (irrespective of % total purchase)	5%
(d)	Other purchases from unregistered person	13%
(e)	Liable to pay under RCM – Promoter is liable to pay GST under RCM on purchase of cement and Capital Goods in spite of his purchases from registered supplier exceeds	80%

Inward supplies of exempted goods/services shall be included in the value of supplies from unregistered persons while calculating threshold of 80%

On TDR or floor space index supplied on or after 01-04-2019

In case of TDR, on what tax needs to be paid?

- ✓ Builders/developers shall be liable to pay tax on RCM basis, on supply of TDR on or after 01-04-2019, which is attributable to the residential/commercial apartments/shops/offices/flats that remain un-booked on the date of issuance of completion certificate or first occupation of the project.

When promoter should discharge GST liability on TDR/Lease?

- ✓ The liability to pay GST on development rights shall arise on the date of completion or first occupation of the project, whichever is earlier.

Differential tax arising on procurement of works contract services in relation to construction of affordable residential apartments, if 50% criteria mentioned therein is not met

- ✓ A supplier providing works contract services in relation to construction of affordable residential apartment would charge GST @ 12% instead of 18%, if the project fulfils the specified conditions.
- ✓ One of the condition specified therein is that more than 50% carpet area of the project should qualify as affordable residential apartments.

In case it finally turns out at the end of the project that 50% criterion is not met, the developer will have to pay differential GST under RCM.

Definition of Gross Amount:

As per **Notification no.3/2019**- Gross amount shall be the sum total of:

- A. Consideration charged for the services specified at item (i) and (ic) in column (3) against sl. No. 3 in the Table;
- B. Amount charged for the transfer of land or undivided share of land, as the case may be including by way of lease or sub lease; and
- C. Any other amount charged by the promoter from the buyer of the apartment including preferential location charges, development charges, parking charges, common facility charges etc.

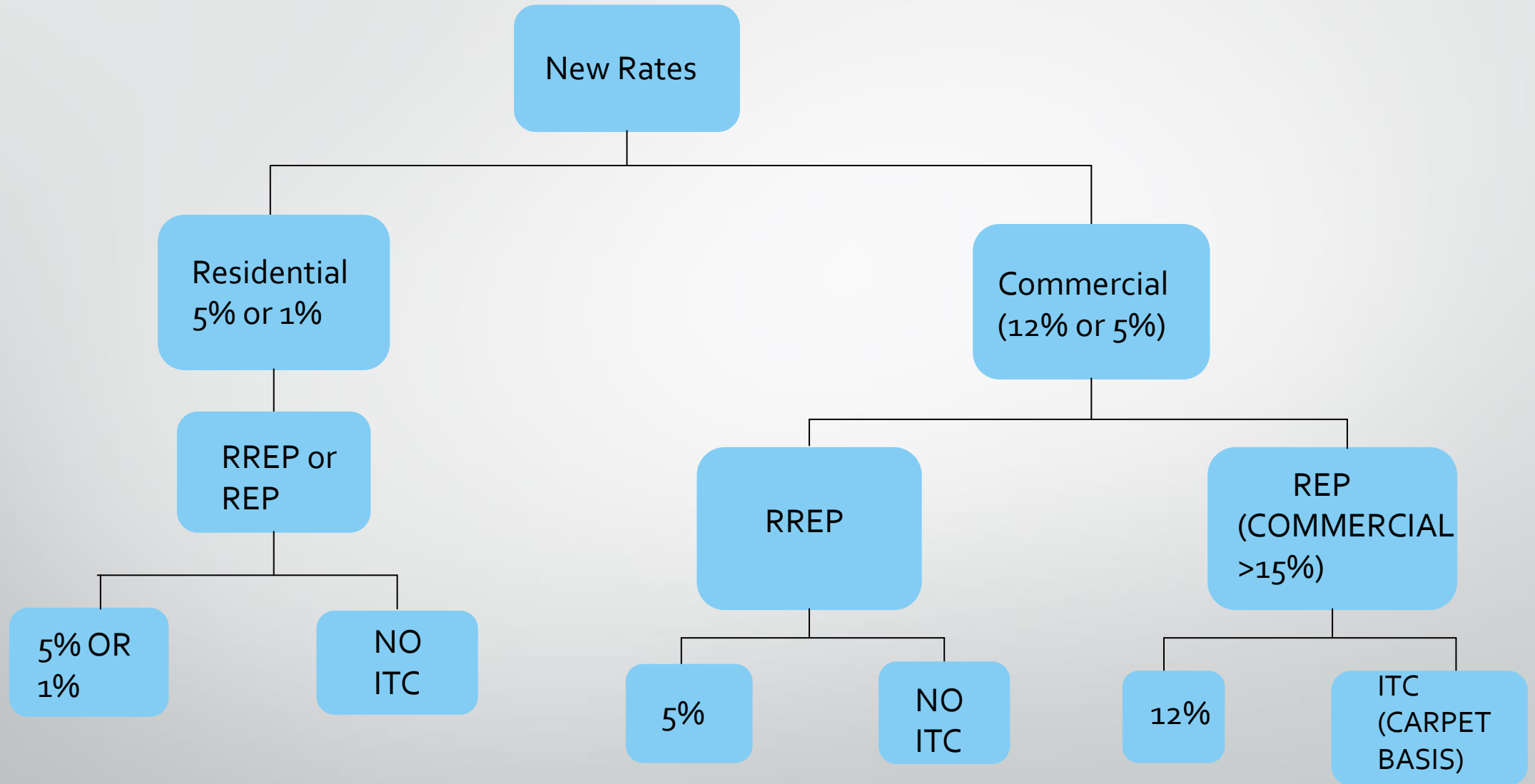
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✓ Definition of Affordable Housing:

Affordable housing comprises units with a carpet area as defined under RERA that **do not exceed 60 square meters** in the metros and ninety square meters elsewhere.

✓ For the purpose of this clause:

Metropolitan cities are Bengaluru, Chennai, Delhi NCR (limited to Delhi, Noida, Greater Noida, Ghaziabad, Gurgaon, Faridabad), Hyderabad, Kolkata and Mumbai (whole of MMR) with their respective geographical limits prescribed by an order issued by the Central or State Government in this regard.



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GST liability on JDA Post 01.04.2019

- ✓ NaviMumbai developers (hereinafter referred to as 'Developer') and Mr.Land Bank (hereinafter referred to as the 'Landowner') have entered into a Joint Development Agreement (JDA) ON 20.04.2019 for construction of 200 apartments wherein 100 apartments are allocated to Landowner and 100 apartments are allocated to Developer.
- ✓ The carpet area of each apartments would be 1500 sq ft.
- ✓ Out of the 100 apartments, developer sells 50 apartments prior to the OC
- ✓ Landowner sells all apartments before OC
- ✓ The value of apartments sold to independent buyers nearest to the date of JDA is Rs. 1 Crore.
- ✓ The value of apartments sold to independent buyers nearest to the OC date is Rs. 1.5 Crore

What is the liability under GST w.r.t. the above JDA entered?

When liability under Income Tax arises for Mr.Land Bank?

a) With respect to the construction services provided by Developer to Landowner, GST @5% shall be discharged as per notification 3/2019 on Rs. 1 crore * 100 apartments * 5% = Rs. 5 crores

b) With respect to development rights transferred by Landowner to Developer, GST is not applicable to the extent of 50 apartments which are sold prior to OC, as the same is exempted vide notification No.4/2019

c) However, w.r.t. 50 flats un-sold after cut off date, the Developer would be liable to pay GST under RCM in terms of notification No.4/2019

The liability would be lower of the following:

(i) Value of un-booked apartments as on JDA date * 18%

50 apartments * 1 Crore * 18% = 9 Cr

ii. Value of un-booked apartments as on OC date * 5%

1.5 crore * 50 apartments * 5% = Rs. 3.75 Cr.

Thereby, liability would be Rs. 3.75 Cr

d) Further, the date on which Developer is required to pay under RCM is the OC date.

Renting of motor vehicles under RCM:

Notification 29/2019 CT (Rate), dt. 31-12-2019 W.e.f. 31.12.2019

(to notify Services provided by way of renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration under RCM)

- ✓ When any service is placed under RCM, the supplier shall not charge any tax from the service recipient as this is the settled procedure in law under RCM.
- ✓ There are only two rates applicable on the service of renting of vehicles, 5% with limited ITC and 12% with full ITC.

The only interpretation of the notification entry in question would be that –

(i) where the supplier of the service charges GST @ 12% from the service recipient, the service recipient shall not be liable to pay GST under RCM; and,

(ii) where the supplier of the service doesn't charge GST @ 12% from the service recipient, the service recipient shall be liable to pay GST under RCM.

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Though a supplier providing the service to a body corporate under RCM may still be paying GST @ 5% on the services supplied to other non-body corporate clients.

To bring in greater clarity, serial No. 15 of the notification No.13/2017-CT (R) dated 28.6.17 has been amended vide notification No. 29/2019-CT (R) dated 31.12.2019 to state that RCM shall be applicable on the service by way of renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient only if the supplier fulfils all the following conditions:—

- (a) is other than a body-corporate;
- (b) does not issue an invoice charging GST @12% from the service recipient;
- (c) supplies the service to a body corporate.

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Government Services under RCM

Notification No. 13/2017-CT (R) dated 28.06.2017

- ✓ Government services taxable on RCM basis.
- ✓ Nature of services:
 - Royalty
 - Cidco and NMMC charges paid by any person other than lease rent.
 - Parking rent paid to NMMC
 - Transfer of development rights or Floor Space Index for construction of a project by a promoter(Notification No. 05/2019 CT Rate)
 - Long term lease of land (30 years or more) by any person against consideration in the form of upfront amount w.e.f. 1.4.2019(Notification No. 05/2019 CT Rate)
 - Renting of immovable property (**Notification 03/2018 CT (Rate), dt. 25-01-2018 W.e.f. 25.01.2018**)

(to specify services supplied by the CG, SG, Union territory or local authority by way of renting of immovable property to a registered person under CGST Act, 2017)

Advocate Services under RCM

- ✓ Services supplied by an individual advocate including a senior advocate.
- ✓ By way of legal services and representational services before any court, tribunal or authority, directly or indirectly.
- ✓ “legal service” means any service provided in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representational services before any court, tribunal or authority.
- ✓ To any business entity located in the taxable territory, including where contract for provision of such service has been entered through another advocate or a firm of advocates, or by a firm of advocates, by way of legal services, to a business entity.

Input Tax Credit under RCM

A supplier cannot take Input Tax Credit of GST paid on goods or services used to make supplies on which the recipient is liable to pay tax under RCM.

The recipient can avail Input Tax Credit of GST amount that is paid under RCM on receipt of goods or services by him.

GST paid on goods or services under RCM is available as ITC to the registered person provided that such goods or services are used or will be used for business or furtherance of business.

The ITC availed by recipient cannot be used towards payment of output tax on goods or services under RCM, the payment of tax under RCM will be only through cash ledger.

Current Legal position- Tax on Royalty

- **Royalty is a Tax:-**India Cement Ltd. & Ors. v. State of Tamil Nadu & Ors. – [(1990) 1 SCC 12]
 - A 7 judge Bench held that royalty is a tax and royalty is separate and distinct from land revenue and that it is not related to land as a unit ,hence tax cannot be levied on tax.
- **Royalty is not a tax:-**State of West Bengal v. Kesoram Industries Ltd. & Ors. [(2004) 10 SCC. 201]
 - A 5 judge Bench held that Royalty on mineral rights is not a tax on land but a payment for the user of land. Royalty is paid to the owner of land who may be a private person and may not necessarily be state.
- **Mineral Area Development Authority v. Steel Authority of India, (2011) 4 SCC 450**
 - In view of conflict between a five-Judge Bench and seven-Judge Bench the matter is referred to a nine bench judge and pending
- **Udaipur Chamber of Commerce and Industry v. Union of India 2018(8) GSTL 170(Raj.)**
 - Mining lease – Contract to undertake mining operations in the leased mining area subject to payment of royalty in respect of any mineral removed or consumed.
 - Royalty – ‘Consideration’ as per Sec 2(d) of Indian Contract Act, 1872 for services of assignment of right to use natural resources deposited in the leased area.
 - There is a stay by Supreme court on above decision of Rajasthan High Court.

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Ocean Freight Under RCM

In accordance with Serial Number 10 of [Notification no. 10/2017](#) – IGST Act, 2017:

- ✓ With respect to services supplied by a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India.

The liability to discharge GST under reverse charge would be on the importer, located in the taxable territory.

- ✓ The rate of GST needs to be discharged on the freight amount is 5% in accordance with [Notification 8/2017 – IGST \(Rate\)](#).
- ✓ The value of ocean freight would be deemed as 10% of the CIF Value, when the freight amount not known.

Mohit Minerals Pvt. Ltd v. UOI [2020-VIL-36-GUJ]

- ✓ The petitioner is an importer of non-cooking coal and on such imports, the petitioner pays Custom duty, the value of which includes Ocean Freight.
- ✓ On the same valuation, the petitioner also pays tax under the IGST Act, 2017.
- ✓ The petitioner's grievance is that under the impugned Notifications, the petitioner is asked to pay tax at the prescribed rate all over again on the ocean freight.
- ✓ The petitioner's challenge has principally three elements viz
 - having paid the tax under IGST Act on the entire value of imports; inclusive of the ocean freight, the petitioner cannot be asked to pay tax on the ocean freight all over again under a different notification;
 - In case of CIF contracts, the service provider and service recipient both are outside the territory of India. No tax on such service can be collected even on reverse charge mechanism and
 - In case of High Sea sales, the burden is cast on the petitioner as an importer whereas, the petitioner is not the recipient of the service at all. It is the petitioner's seller of goods on high sea basis who has received the services from the exporter/ transporter.

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Facts of the case:

IGST on Ocean Freight for services supplied by a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India.

The importer in India was made liable to pay tax in RCM via notification no. 8/2017 IGST . The importer was liable to pay tax @5% in RCM.

Held by Court:

The writ-applicant has already paid the 'Integrated Tax' (Known as the IGST) under the IGST Act, 2017, on the imported coal, which includes the value of the Freight (FOB basis), whereas in the case of goods purchased on the CIF basis, the cost includes the sum of cost, insurance and freight.

The impugned Notifications again seek to levy the 'Integrated Tax' under the IGST Act, 2017, on freight components (Ocean Freight) on the reverse charge basis. In such circumstances, to levy and collect once again the Integrated Tax under the same Act on the 'supply' (same aspect) amounts to double taxation under the same Act, which is impermissible under the law.

Therefore, the impugned Notifications are illegal and unconstitutional.

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Conclusion:

- ✓ In view of the aforesaid discussion, we have reached to the conclusion that no tax is leviable under the IGST Act, 2017, on the ocean freight for the services provided by a person located in a non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India and the levy and collection of tax of such ocean freight under the impugned Notifications is not permissible in law.
- ✓ In the result, this writ-application along with all other connected writ-applications is allowed. The impugned [Notification No.8 of 2017 – ITax \(Rate\) dated 28th June 2017](#) and the Entry 10 of the [Notification No.10 of 2017 – Integrated Tax \(Rate\) dated 28th June 2017](#) are declared as ultra vires the IGST Act, 2017, as they lack legislative competency. Both the Notifications are hereby declared to be unconstitutional. Civil Application, if any, stands disposed of.

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RCM on services rendered by Directors

Clay Craft India Pvt. Ltd. has filed an application before the Rajasthan bench of the AAR to sought clarification on whether GST is payable under RCM on the salary paid to Director of the company who is paid salary as per contract and whether the situation would change if the Director is also a part time Director in other company.

Company's key points:

- The company said its directors are working as employees for which they are being compensated by way of a regular salary and other allowances. They are the employees of the company and are working as such besides being Director of the company.
- The company is deducting TDS on their salary and PF laws are also applicable to their service.

Remarks by Authority for Advance Ruling

- The consideration paid to the directors by the applicant company **will attract GST under RCM.**
- Director is the supplier of services and the applicant of the company is the recipient of the services.

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Held by AAR

- ✓ (a) Whether GST is payable under RCM on the salary paid to Director of the company who is paid salary as per contract?

The consideration paid to the Directors by the applicant company will attract GST under RCM as it is covered under entry No. 6 of [Notification No. 13/2017 Central Tax \(Rate\) dated 28.06.2017](#) issued under Section 9(3) of the [CGST Act, 2017](#).

- ✓ (b) Whether the situation would change from (a) above if the Director also is a part time Director in other company?

Situation will remain same as (a) above and will attract GST under RCM.

Circular No: 140/10/2020 – GST dt. 10.06.2020 – Clarification in respect of levy of GST on Director's remuneration

Category 1: GST on remuneration paid by companies to the independent directors or those directors who are not the employees of the said company:

- ✓ Therefore, in respect of such directors who are not the employees of the said company, the services provided by them to the Company, in lieu of remuneration as the consideration for the said services, are clearly outside the scope of Schedule III of the CGST Act and are therefore taxable.
- ✓ In terms of entry at Sl. No. 6 of the Table annexed to [notification No. 13/2017 – Central Tax \(Rate\) dated 28.06.2017](#), the recipient of the said services i.e. the Company, is liable to discharge the applicable GST on it on reverse charge basis.
- ✓ Accordingly, it is hereby clarified that the remuneration paid to such independent directors, or those directors, by whatever name called, who are not employees of the said company, is taxable in hands of the company, on reverse charge basis.

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Category 2: GST on remuneration paid by companies to the whole-time directors including the managing director who are employees of the said company:

- ✓ Accordingly, it is clarified that the part of Director's remuneration which is declared as "Salaries" in the books of a company and subjected to TDS u/s 192 of the Income Tax Act are not taxable being consideration for services by an employee to the employer in the course of or in relation to his employment in terms of Schedule III of the CGST Act, 2017.
- ✓ It is further clarified that the part of employee Director's remuneration which is declared separately other than 'Salaries' in the Company's accounts and subjected to TDS under Section 194J of the IT Act as Fees for professional or Technical Services shall be treated as consideration for providing services which are outside the scope of Schedule III of the CGST Act, and is, therefore, taxable.
- ✓ Further, in terms of [notification No. 13/2017 –Central Tax \(Rate\) dated 28.06.2017](#), the recipient of the said services i.e. the Company, is liable to discharge the applicable GST on it on reverse charge basis.

- One of the major concerns of companies since the introduction of **GST** laws in India has been the taxability of remuneration paid by them to their directors.
- Directors, based on their role and relationship with the company, can be categorised as:
 - (a) executive directors,
 - (b) non-executive directors, and
 - (c) independent directors.

While all three categories except executive directors are considered agents and trustees of a company, only the latter additionally share an employer-employee relationship with the company.

- Under GST laws, services rendered by an employee to an employer in the course of employment are not taxable. However, services provided by a director to a body corporate are treated as a taxable supply under GST laws, and is expressly recognized under [Notification no. 13/2017-Central Tax \(Rate\) dated 28 June 2017](#). In terms of the Notification, the services provided by a director to a company are taxable on reverse charge basis i.e. the tax would be payable by the company, who is the recipient of the service.

Therefore, there is an **apparent contradiction** between the two sets of provisions of GST. The provisions seeking to tax services rendered by a director does not take cognizance of various types of directorship which exist in companies. Consequently, it purports to tax even such activities of directors that are carried out in the capacity of an employee of a company, which are otherwise not taxable.

➤ **Now, the question arises whether the services provided by the director would be treated as supply and consequently the payment made by company would be liable to tax under reverse charge?**

- Recently, in M/s. Alcon Consulting Engineers (India) Pvt. Ltd. [2019 (10) TMI 793] – AAR, Karnataka and M/s Clay Craft India Private Limited [RAJ/AAR/2019-20/33] – AAR, Rajasthan both the aforementioned rulings held that Directors are not employees of the Company and GST should be paid under reverse charge on any payment to the directors.
- In a contradictory ruling in the case of M/s. ANIL KUMAR AGRAWAL [2020 (5) TMI 221]- AAR Karnataka, has classified the payments received as Director into two parts. Two possibilities may arise with regard to the instant issue of amount received by the applicant. The **first possibility that the applicant is the employee** of the said company (**Executive Director**), in which case the services of the applicant as an employee to the employer are neither treated as supply of goods nor as supply of services, in terms of Schedule III of CGST Act 2017.

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- The **second possibility that the applicant is the nominated director (Non-Executive Director)** of the company and provides the services to the said company. In this case the remuneration paid by the company is eligible to GST in the hands of the company under reverse charge mechanism under section 9(3) of the CGST Act 2017, under entry no. 6 of [Notification No. 13/2017-Central Tax \(Rate\) dated 28.06.2017.](#)
- This ruling is a step in the right direction as it not only acknowledges the distinction between different types of directors but also lays down the correct guiding principles regarding the taxability of remuneration paid to directors. It is also indicative of the documentary evidence which companies or the directors may rely on to determine the treatment of the remuneration and also, for defending such treatment before the GST authorities, if required.

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RCM on Services by GTA

- ✓ As per Notification No. 11/2017-Central Tax (Rate) dated 28th June, 2017, “goods transport agency” or GTA means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called.

This means, while others might also hire out vehicles for goods transportation, only those issuing a consignment note are considered as a GTA. Thus, a consignment note is an essential condition to be considered as a GTA.

Services by way of transportation of goods are exempted:

- (a) by road except the services of:
 - (i) a goods transportation agency;
 - (ii) a courier agency
- (b) by inland waterways.

Therefore, the service of transportation of goods by road continue to be exempt even under the GST regime. GST is applicable only on goods transport agency, GTA.

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The service includes not only the actual transportation of goods, but other intermediate/ancillary service provided such as-

- Loading/unloading
- Packing/ unpacking
- Trans-shipment
- Temporary warehousing etc.
- If these services are included and not provided as independent activities, then they are also covered under GTA.

As per Notification No. 5/2017- Central Tax dated 19/06/2017, a person who is engaged in making only supplies of taxable goods/services on which RCM applies is exempted from obtaining registration under GST.

Thus, a GTA does not have to register under GST if he is exclusively transporting goods where the total tax is required to be paid by the recipient under RCM basis (even if the turnover exceeds 20 lakhs).

The following businesses (recipient of services) is required to pay GST under reverse charge:-

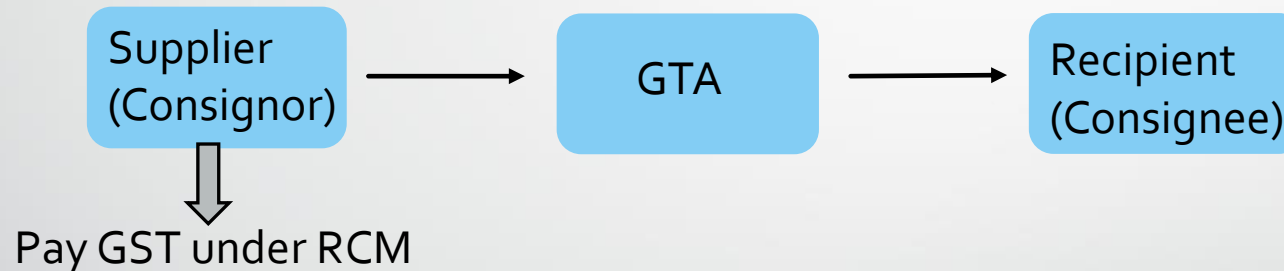
- ✓ Factory registered under the Factories Act, 1948;
- ✓ A society registered under the Societies Registration Act, 1860 or under any other law
- ✓ A co-operative society established under any law;
- ✓ A GST registered person
- ✓ A body corporate established by or under any law; or
- ✓ A partnership firm whether registered or not (including AOP)
- ✓ Casual taxable person

Who will pay under Reverse Charge?

As per Notification No. 13/2017- Central Tax dated 28/06/2017 the person who pays or is liable to pay freight for the transportation of goods by road in goods carriage, located in the taxable territory shall be treated as the receiver of service.

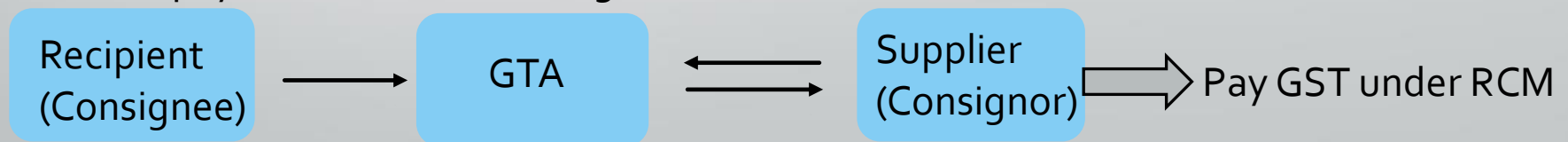
Payment is by sender:

If the supplier of goods (consignor) pays the GTA, then the sender will be treated as the recipient. If he belongs to the category of persons above then he will pay GST on reverse charge basis.



Payment by Receiver:

If the liability of freight payment lies with the receiver (Consignee), then the receiver of goods will be treated as a receiver of transportation services. If he belongs to any of the above category of persons, then he will pay GST on reverse charge basis.



Certain Questions Related to RCM

1) How RCM liability is to be Discharged?

- ✓ As per Rule 85 of the CGST Rules, 2017 liability under RCM shall be discharged or paid by way of debiting the electronic cash ledger and the tax paid under RCM shall be taken as Input Tax Credit.

2) Whether RCM liability can be paid through ITC or payment needs to be done in cash?

- ✓ As per section 49(4) of CGST Act'2017, ITC can be used for payment of output tax only. Therefore tax under RCM can be paid through cash only without availing the benefit of ITC. The supplier must mention in his tax invoice whether the tax is payable on RCM.

- 3) Whether the Composite Dealer has liability under RCM? Whether he can claim ITC?
- ✓ No, If the composite dealer falls under RCM then the dealer is ineligible to claim any credit of tax paid. The tax will be paid at the normal applicable rates and not at the composition rates.
- 4) When one can take ITC of RCM under GST paid?
- ✓ ITC on the GST that is paid under RCM will be available only after making payment. Hence it will be available in the month in which the RCM has been admitted and paid and filed the necessary return as per Section 39 as envisaged in Sec.16 of CGST Act, 2017.
- 5) If there is a late payment of GST under RCM-Whether there is a liability to pay interest?
- ✓ Yes, interest shall be applicable from the due date of payment till the date of payment of RCM @18%

6) What if RCM is not paid under regular GSTR-3B return?

- ✓ Aggregate value of all inward supplies (including advances and net of credit and debit notes) on which tax is to be paid by the recipient (i.e. by the person filing the annual return) on RCM basis need to be declared in Table 4G of GSTR-9. This shall include supplies received from registered persons, unregistered persons on which tax is levied on RCM basis.

Show the unpaid amount under table 4G of GSTR-9, this will create a difference between tax paid and payable and will be reflected in Table 9 of GSTR-9.

And the payable amount reflected in Table 9 is required to be paid through DRC-03??

What is the best way to pay RCM which is out of time so that credit can be claimed?

7) If transported goods are carrying exempted goods, then will recipient pay GST under RCM?

✓ If the goods that are transported are exempted goods, then there will not be any GST liability even if RCM is applicable on this transaction. However, if separate invoice issued with respect to transport charges, then GST shall be applicable and recipient needs to discharge GST liability under reverse charge accordingly.

8) What if an Input Service Distributor receives supplies liable to RCM?

- ✓ An ISD cannot make purchases liable to RCM. If the ISD wants to procure such supplies and take the RCM paid as credit, the ISD should register as a Normal Taxpayer.

9) Is Input Tax Credit allowed under RCM?

- ✓ Tax paid on RCM basis will be available for input tax credit if such goods and/or services are used, or will be used, for business. The recipient (i.e., who pays reverse tax) can avail input tax credit.

10) If there is no output liability, is RCM still needs to be paid?

- ✓ Yes, RCM liability is to be paid separately through cash ledger by the taxpayer.

11) A construction Co. is registered under GST and providing Road construction services mainly to PWD and other private entities. For road construction they extract stones from mines and they have paid Royalty to government for this. Company has also paid tender fee for online tender registration.

Following are the transaction during FY 18-19. GST under RCM not paid by Construction Co. till Feb 2020 in their GSTR_{3B}. Following expenses are there in their P&L account for the year ended 31.03.2019:

Royalty of Rs. 10,00,000 paid to government.

Tender fee of Rs. 1,00,000 paid against PWD contract.

- Whether GST under RCM is applicable on Royalty paid to government?
- If yes then whether company can pay RCM GST with interest in March 2020 GSTR_{3B} return and claim ITC for the same.
- What will be scenario if Royalty is paid during FY 17-18 and GST under RCM not discharged till Feb 2020?
- Whether credit of GST paid under RCM will be available as ITC in March 2020 GSTR_{3B}?
- Whether GST paid under RCM is applicable on Tender fee paid for PWD contract?

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12) M/s. ABC ('Taxpayer') is a registered Partnership firm engaged in the manufacture of only Compound Animal Feed (HSN Code: 2309). As per the CGST Act, the same is exempt from tax.

- The Taxpayer is not involved in any other kinds of supplies.
- The Taxpayer had availed services from transporters for carriage and transportation of goods, in the nature of Goods Transport Agency service ('GTA')

Question-Whether M/s ABC is liable to take Registration under GST and liable to pay GST under RCM?

✓ In re Jalaram Feeds (GST AAR Maharashtra), Appeal no. No. GST-ARA-110/2018-19/B-38, Date of Judgement/Order 10/04/2019, states that:

If the argument of the Taxpayer is accepted, Section 24 of the CGST Act would become redundant and fall outside the scope of Section 23 of the CGST Act.

The tax liability in respect of GTA services availed by the Taxpayer and otherwise subjected to tax under RCM would not be subject to tax at all.

By the combined application of two principles of jurisprudence – Rule of harmonious construction and Rule against redundancy, Sections 23 and 24 are to be read together and not independently.

While the Taxpayer would not be required to obtain registration under Section 23 of the CGST Act by virtue of making exempt supplies, registration in terms of Section 24 of the Act by virtue of availing GTA services would become applicable.

Hence, the taxpayer would be required to obtain registration under GST law in order to discharge its duty liability under RCM in respect of the GTA services.

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13) M/s. ABC ('Taxpayer') is a registered Partnership firm engaged in providing chartered accountants services.

- The Turnover from 01.04.2020 to 07.06.2020 is Rs. 12,00,000.
- The Taxpayer had availed services from transporters for carriage and transportation of goods, in the nature of Goods Transport Agency service ('GTA')

Question. Whether M/s ABC is liable to take Registration under GST and liable to pay GST under RCM?

✓ In re Jalaram Feeds (GST AAR Maharashtra), Appeal no. No. GST-ARA-110/2018-19/B-38, Date of Judgement/Order 10/04/2019, states that:

If the argument of the Taxpayer is accepted, Section 24 of the CGST Act would become redundant and fall outside the scope of Section 23 of the CGST Act.

The tax liability in respect of GTA services availed by the Taxpayer and otherwise subjected to tax under RCM would not be subject to tax at all.

By the combined application of two principles of jurisprudence – Rule of harmonious construction and Rule against redundancy, Sections 23 and 24 are to be read together and not independently.

While the Taxpayer would not be required to obtain registration under Section 23 of the CGST Act by virtue of making exempt supplies, registration in terms of Section 24 of the Act by virtue of availing GTA services would become applicable.

Hence, the taxpayer would be required to obtain registration under GST law in order to discharge its duty liability under RCM in respect of the GTA services.

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14) A person receives a supply from an unregistered person in another state. Whether he has to pay tax on reverse charge basis?

- ✓ No, the person supplying the inter-state supply will have to compulsorily register irrespective of his turnover and will be liable to pay tax, unless the supplier has been exempted from taking registration. Thus question of unregistered supplies making inter-state supplies does not arise.

15) Who will issue the tax invoice in case of reverse charge supplies?

- ✓ The recipient receiving supplies from unregistered supplier will have to issue invoice on self and pay tax. In other words, the recipient receiving supplies, which are subject to reverse charge, from a registered person need not issue a tax invoice.

16) Whether reimbursement of expenses to staff comes under RCM?

✓ Re-imbusement is an expense in the course or furtherance of business and if the same is against a taxable supply taken from an unregistered supplier, RCM will apply.

17) I am a single truck owner-operator and I ply my truck mostly between States, carrying the goods booked for my truck by an agent; aggregate value of service which I provide exceeds twenty lakh rupees during last year. Am I supposed to take registration?

✓ You are not liable to registration, as services provided by way of transportation of goods by road are exempt. Notification number 12/2017-Central Tax (Rate), dated 28th June, 2017 refers.

18) I own a single truck and I rent it to a major player, who provides GTA service; should I take a registration? Does my monthly rental/lease income attract GST?

✓ Registration is not required since services by way of giving on hire, a means of transportation of goods to a GTA are exempt from tax vide entry no. 22 of Notification number 12/2017-Central Tax (Rate) dated 28th June, 2017.

19) Are intermediary and ancillary services, such as, loading/unloading, packing/unpacking, transshipment and temporary warehousing, provided in relation to transportation of goods by road to be treated as part of the GTA service, being a composite supply, or these services are to be treated as separate supplies?

✓ The GTA provides service to a person in relation to transportation of goods by road in a goods carriage, which is a composite service. The composite service may include various intermediary and ancillary services, such as, loading/unloading, packing/unpacking, transshipment and temporary warehousing, which are provided in the course of transport of goods by road. These services are not provided as independent services but as ancillary to the principal service, namely, transportation of goods by road. The invoice issued by the GTA for providing the said service includes the value of intermediary and ancillary services. In view of this, if any intermediary and ancillary service is provided in relation to transportation of goods by road, and charges, if any, for such services are included in the invoice issued by the GTA, such service would form part of the GTA service and would not be treated as a separate supply. In fact, any service provided along with the GTA service that is part of the composite service of GTA shall be taxed along with GTA service and not as separate supplies.

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20) Navi Mumbai developers (hereinafter referred to as 'Developer') and Mr. Land Bank (hereinafter referred to as the 'Landowner') have entered into a Joint Development Agreement (JDA) ON 20.04.2019 for construction of 200 apartments wherein 100 apartments are allocated to Landowner and 100 apartments are allocated to Developer.

The carpet area of each apartments would be 1500 sq ft.

Out of the 100 apartments, developer sells 50 apartments prior to the OC

Landowner sells all apartments before OC

The value of apartments sold to independent buyers nearest to the date of JDA is Rs. 1 Crore.

The value of apartments sold to independent buyers nearest to the OC date is Rs. 1.5 Crore

- What is the liability under GST w.r.t. the above JDA entered?
- When liability under Income Tax arises for Mr. Land Bank?

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With respect to the construction services provided by Developer to Landowner, GST @5% shall be discharged as per notification 3/2019 on Rs. 1 crore * 100 apartments * 5% = Rs. 5 crores

With respect to development rights transferred by Landowner to Developer, GST is not applicable to the extent of 50 apartments which are sold prior to OC, as the same is exempted vide notification No.4/2019

However, w.r.t. 50 flats un-sold after cut off date, the Developer would be liable to pay GST under RCM in terms of notification No.4/2019

The liability would be lower of the following:

(i) Value of un-booked apartments as on JDA date * 18%

50 apartments * 1 Crore * 18% = 9 Cr

ii. Value of un-booked apartments as on OC date * 5%

1.5 crore * 50 apartments * 5% = Rs. 3.75 Cr.

Thereby, liability would be Rs. 3.75 Cr

Further, the date on which Developer is required to pay under RCM is the OC date.

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✓ Sec 9(3) Notifications:

- **Notification 04/2017 CT (Rate), dt. 28-06-2017 W.e.f. 01.07.2017**
(Reverse charge on certain specified supplies of goods under section 9 (3))
- **Notification 13/2017 CT (Rate), dt. 28-06-2017 W.e.f. 01.07.2017**
(To notify the categories of services on which tax will be payable under RCM under CGST Act for Ex. GTA , Advocate Services, Sponsorship, CG , SG, LA, Director etc.)
- **Notification 33/2017 CT (Rate), dt. 13-10-2017 W.e.f. 13.10.2017**
(Regarding services provided by Overseeing Committee members to RBI under RCM.)
- **Notification 11/2018 CT (Rate), dt. 28-05-2018 W.e.f. 28.05.2018**
(to notify levy of Priority Sector Lending Certificate (PSLC) under Reverse Charge Mechanism (RCM))

- **Notification 15/2018 CT (Rate), dt. 26-07-2018 W.e.f. 27.07.2018**

(to specify services supplied by individual Direct Selling Agents (DSAs) to banks/ non-banking financial company (NBFCs) to be taxed under RCM.)

- **Notification 29/2018 CT (Rate), dt. 31-12-2018 W.e.f. 01.01.2019**

(to specify services (Business facilitator, An agent of business correspondent and supply of security personnel) to be taxed under RCM)

- **Notification 22/2019 CT (Rate), dt 30-09-2019 W.e.f. 01.10.2019**

(to notify services of (renting of a motor vehicle, lending of securities, services by an author by way of transfer and Music composer, photographer, artist, or the like) under RCM.)

✓ Sec 9(4) Notifications:

- **Notification 08/2017 CT (Rate), dt. 28-06-2017 W.e.f. 01.07.2017**
(CGST exemption from reverse charge upto Rs.5000 per day under section 11 (1))
- **Notification 38/2017 CT (Rate), dt. 13-10-2017 W.e.f. 13.10.2017**
(Seeks to exempt payment of tax under section 9(4) of the CGST Act, 2017 till 31.03.2018)
- **Notification 10/2018-CT (Rate), dt. 23-03-2018 W.e.f. 23.03.2018**
(Seeks to exempt payment of tax under section 9(4) of the CGST Act, 2017 till 30.06.2018.)
- **Notification 12/2018-CT (Rate), dt. 29-06-2018 W.e.f. 29.06.2018**
(Seeks to exempt payment of tax under section 9(4) of the CGST Act, 2017 till 30.09.2018)
- **Notification 05/2019 CT (Rate), dt. 29-03-2019 W.e.f. 01.04.2019**
(to specify services (transfer of development rights or FSI and Long term lease of land (30 years or more) under RCM for real estate sector.)
- **Notification 07/2019 CT (Rate), dt. 29-03-2019 W.e.f. 01.04.2019**
(to notify certain services (Shortfall of 80% , Cement and Capital Goods other than Development Rights under RCM under section 9(4) of CGST Act for real estate sector.)

An Opportunity
is like a
biscuit dipped
in tea...
A little delay
& it's gone!!!

Opportunity



time

Good Morning

IF YOU HAVE A STRONG PURPOSE
IN LIFE, YOU DON'T HAVE TO BE
PUSHED. YOUR PASSION WILL
DRIVE YOU THERE.

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