

Chapter 12: Reverse Charge Mechanism (RCM)

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12.0 Person liable to pay GST

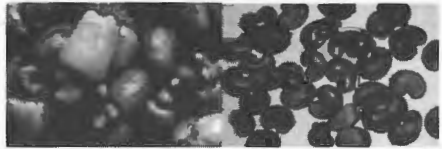


Generally, the supplier of goods or services is liable to pay GST. However, in specified cases like imports and other notified supplies, the liability may be cast on the recipient under the reverse charge mechanism. Reverse charge means the liability to pay tax is on the recipient of supply of goods or services instead of the supplier of such goods or services in respect of notified categories of supply.

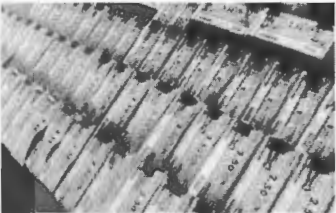

GST Council, in its 22nd Meeting dated 6 October 2017, has recommended that the reverse charge mechanism (RCM) under Section 9(4) of the CGST Act, 2017/Section 5(4) of the IGST Act, 2017 shall remain deferred/suspended till 31.03.2018 and will be reviewed by a committee of experts. **This provision further deferred/suspended till 30th June 2018 as per Notification No. 10/2018-Central Tax (Rate), dated 23rd March, 2018.**

Section 9(3) of CGST/Section 5(3) of IGST: Govt. will decide who is liable to pay GST under Reverse Charge.

Note: Not applicable for CA Final May 2019 examination.

12.1 The following goods on which GST shall be levied under Reverse Charge have been notified (*vide* Notification No. 04/2017, dated 28th July 2017):

S.No.	Description of supply of goods	Supplier of goods	Recipient of Goods
1	Cashew nuts not shelled or peeled. 	Agriculturist	Any registered person. Recipient of goods is liable to pay GST.
2	Bidi wrapper leaves (tendu) 	Agriculturist	Any registered person. Recipient of goods is liable to pay GST.
3	Tobacco leaves 	Agriculturist	Any registered person. Recipient of goods is liable to pay GST.

S.No.	Description of supply of goods	Supplier of goods	Recipient of Goods
3A	Following essential oils other than those of citrus fruit namely: a) Of peppermint (<i>Mentha piperita</i>); b) Of other mints: Spearmint oil (<i>ex-mentha spicata</i>), Water mint-oil (<i>ex-mentha aquatic</i>), Horsemint oil (<i>ex-mentha ylvestries</i>), Bergamont oil (<i>ex-mentha citrate</i>).	Any un-registered person	Any registered person, recipient is liable to pay GST.
4	Supply of lottery 	State Government, Union Territory or any local authority	Lottery distributor or selling agent. Distributor or selling agent is liable to pay GST.
5	Silk yarn 	Any person who manufactures silk yarn from raw silk or silkworm cocoons for supply of silk yarn.	Any registered person. Recipient of goods is liable to pay GST.
6	Used vehicles, seized and confiscated goods, old and used goods, waste and scrap. Notification No. 36/2017-Central Tax (Rate), dated 13.10.2017 Notification No. 37/2017-Integrated Tax (Rate), dated 13.10.2017	Central Government, State Government, Union territory or a local authority.	Any registered person. Recipient of goods is liable to pay GST.
7	Raw Cotton Notification No. 43/2017-Central Tax (Rate), dated 14th November 2017. Notification No. 45/2017-Integrated Tax (Rate), dated 14th November 2017.	Agriculturist	Any registered person
8	w.e.f. 25th May 2018: Priority Sector Lending Certificate <i>vide</i> Notification No. 11/2018-Central Tax (Rate), dated 28th May 2018.	Any registered person	Any registered person

12.2 Reverse Charge Mechanism in case of supply of goods

12.2.1 Cashew nuts not shelled or peeled

Example 1: Mr. X being a farmer cultivated cashew nuts not shelled or peeled in the State of Kerala. These goods are sold to M/s Raj Industries for ₹2,50,000, a registered person in the State of Kerala. Applicable rate of GST 5%. M/s Raj Industries has input tax credit CGST ₹5,250 and SGST ₹5,250.

You are required to answer the following:

- Who is liable to pay GST?
- Net liability of GST.

Answer:

- GST is liable to pay by recipient. In the given case M/s Raj Industries is liable to pay GST.

(b) Net liability of GST:

Particulars	CGST (₹)	SGST (₹)	Remarks
Output tax	6,250	6,250	ITC is not allowed to utilize by recipient while paying GST under RCM.
Less: Input Tax Credit (ITC) CGST SGST	NA	NA	
Net tax liability of M/s Raj Industries	6,250	6,250	

Example 2: Mr. X being an agent of cashew nuts (peeled) in the State of Kerala registered under GST. These goods are sold to M/s Raj Industries for ₹2,50,000 a registered person in the State of Kerala. Applicable rate of GST 5%. Mr. X has input tax credit CGST ₹5,250 and SGST ₹7,250.

You are required to answer the following:

- Who is liable to pay GST?
- Net liability of GST.

Answer:

- GST is liable to pay by supplier of goods. In the given case Mr. X is liable to pay GST.
- Net liability of GST:

Particulars	CGST (₹)	SGST (₹)	Remarks
Output tax	6,250	6,250	Excess credit of SGST is not allowed to adjust against CGST and vice versa
Less: Input Tax Credit (ITC) CGST SGST	(5,250)	(7,250)	
Net tax liability of Mr. X	1,000	nil	
Excess credit c/f	Nil	2,000	

12.2.2 Bidi wrapper leaves (tendu)

Example 3: Mr. X being a farmer cultivated Bidi wrapper leaves (tendu) in the State of Telangana. These goods are sold to M/s Sri Vijaya Industries for ₹2,12,500 a registered person in the State of Kerala. Applicable rate of GST 5%.

You are required to answer the following:

- Who is liable to pay GST?
- Net liability of GST.

Answer:

(a) GST is liable to be paid by recipient of goods, in the given case M/s Sri Vijaya Industries.

(b) Net liability of M/s Sri Vijaya Industries:

Particulars	IGST (₹)	Remarks
Output tax	10,625	ITC is not allowed to utilize by recipient while paying GST under RCM.
Less: Input Tax Credit (ITC)	NA	
Net tax liability of M/s Sri Vijaya Industries	10,625	

12.2.3 Tobacco leaves

Example 4: Mr. Raj being an agriculturist cultivated tobacco leaves in the State of West Bengal and also registered under GST. These goods are sold to M/s RR Industries for ₹5,75,000 a registered person in the State of Andhra Pradesh. Applicable rate of GST 5%. M/s RR Industries has input tax credit CGST ₹3,250 and SGST ₹3,250.

You are required to answer the following:

- Who is liable to pay GST?
- Net liability of GST.

Answer:

- GST is liable to pay by recipient of goods. In the given case M/s RR Industries is liable to pay IGST.
- Net liability of M/s RR Industries:

Particulars	IGST (₹)	Remarks
Output tax	28,750	ITC is not allowed to utilize by recipient while paying GST under RCM.
Less: Input Tax Credit (ITC)	NA	
Net tax liability of M/s RR Industries	28,750	

12.2.4 Supply of lottery (i.e. Supply of Goods):

Supply of lottery has been treated as supply of goods under the Central Goods and Services Tax (CGST) Act, 2017.

It has been decided that supply of lottery shall attract GST rates as under:

Nature of transaction	Rate of GST
Lottery run by State Governments	12% of face value of lottery ticket sold. w.e.f. 25.1.2018 value of taxable supply shall be 100/112 of the price of lottery ticket.
Lottery authorized by State Governments	28% of face value of lottery ticket sold. w.e.f. 25.1.2018 value of taxable supply shall be 100/128 of the price of lottery ticket.

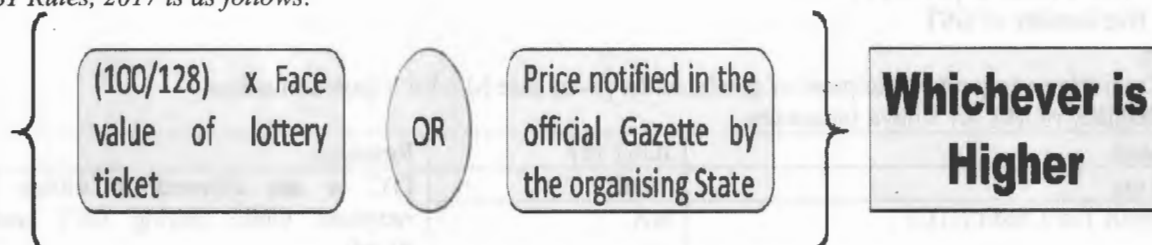
Example 5: M/s Martin Pvt. Ltd. is a distributor or selling agent of lottery tickets, authorized by the State of Kerala. Who is liable to pay GST and also find GST liability from the following:

Particulars	Maha Lakshmi (Printed) (Lottery run by State Govt.)	Bhaghya Lakshmi (Online) (Lottery authorized by State Govt.)
No. of tickets proposed	2,50,000	3,00,000
Face value of ticket	₹10 each	₹500 each
Guaranteed prize payout	@60%	@90%
No. of tickets sold	2,00,000	2,35,000
Price notified by the State of Kerala	₹8 per ticket (exclusive of tax)	₹380 per ticket (exclusive of tax)
No. of tickets proposed	2,50,000	3,00,000
Face value of ticket	₹10 each	₹500 each
Guaranteed prize payout	@60%	@90%
No. of tickets sold	2,00,000	2,35,000
Price notified by the State of Kerala	₹8 per ticket (exclusive of tax)	₹380 per ticket (exclusive of tax)

Answer:

(a) M/s Martin Pvt. Ltd. is liable to pay GST.

w.e.f. 1-3-2020 Value of supply in case of lottery run by the State or authorised by the State as per Rule 31A of the CGST Rules, 2017 is as follows:



GST is liable to pay by M/s Martin Pvt. Ltd. under reverse charge.

Face value	Price notified by the State	Value of supply (Maha Lakshmi (Printed))
₹19,53,125 (i.e. 2,50,000 x ₹10) x 100/128	₹20,00,000 (i.e. 2,50,000 x ₹8)	₹20,00,000
CGST 14%	₹2,80,000 (i.e. ₹ 20 Lac x 14/100)	
SGST 14%	₹2,80,000 (i.e. ₹ 20 Lac x 14/100)	

GST is liable to pay by M/s Martin Pvt. Ltd. under reverse charge.

Face value	Price notified by the State	Value of supply (Bhaghya Lakshmi (Online))
₹9,17,96,875 (i.e. 2,35,000 x ₹500) x 100/128	₹8,93,00,000 (i.e. 2,35,000 x ₹380)	₹9,17,96,875
CGST 14%	₹1,28,51,563 (i.e. ₹ 9,17,96,875 x 14/100)	
SGST 14%	₹1,28,51,563 (i.e. ₹ 9,17,96,875 x 14/100)	

Note: In case of Maha Lakshmi (printed) State Govt. sold to agent 2,50,000 tickets. In case of Bhaghya Lakshmi (online) tickets will be printed at the time of payment by buyer.

12.5.5 Silk Yarn

Example 6: M/s Dinesh Industries (registered person under GST) manufacturer cum seller of silk yarn in Coimbatore. In the month of Oct 2017 supplied 2000 kgs of silk yarn at ₹250 per kg. to M/s Annapoorna Pvt. Ltd. located in Chennai. Applicable GST rate @ 5%.

You are required to answer

- Who is liable to pay GST?
- Net liability of GST.

Answer:

- GST is liable to pay by recipient of goods. In the given case M/s Annapoorna Pvt. Ltd. is liable to pay GST.
- Net liability of GST:

Particulars	2.5% CGST (₹)	2.5% SGST (₹)
Output tax	12,500	12,500
Less: Input Tax Credit (ITC)	NA	NA
Net tax liability of M/s Annapoorna Pvt. Ltd.	12,500	12,500

12.2.6 Used vehicles, seized and confiscated goods, old and used goods, waste and scrap

Example 7: The customs authority confiscated the gold from Mr. Rafi, at the time of import from Dubai. Subsequently sold these goods through auction to M/s C Ltd. of Chennai for ₹22,25,000. Applicable rate of GST 18%. You are required to answer the following:

- Person liable to pay GST.
- GST liability.

Answer: (a) the person liable to pay GST is M/s C Ltd.

(b) GST liability is ₹4,00,500/-.

12.3 Reverse Charge Mechanism in case of supply of services

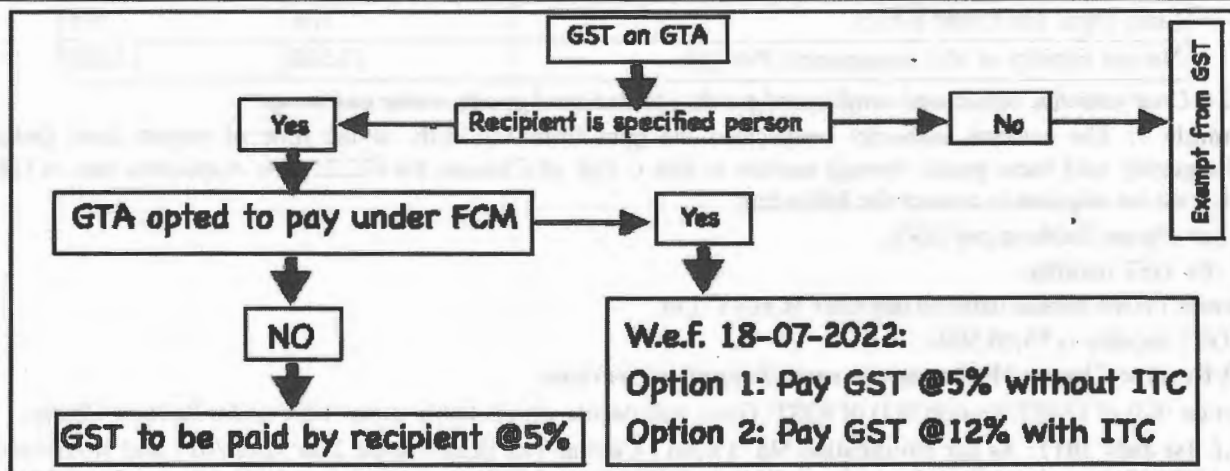
Section 9(3) of CGST/Section 5(3) of IGST: Govt. will decide who is liable to pay GST under Reverse Charge.

w.e.f. 1st July 2017: As per Notification No. 13/2017 Central Tax (Rate) dated 28th June 2017 and Notification No. 10/2017- Integrated Tax (Rate), dated 28th June, 2017 the following 9 services (are identical under CGST & IGST) on which GST shall be levied under Reverse Charge have been notified.

S.No.	Services covered under RCM u/s 9(3) of CGST Act, 2017 or u/s 5(3) of IGST Act, 2017
1	Goods Transport Agency (GTA) Services
2	Arbitral Tribunal or Advocate Services
3	Sponsorship Services
4	Government or Local Authority Services
5	TDR's or FSI or Long Term Lease of Land
6	Director of a Company
7	Insurance Services supplied by an Insurance Agent
8	Recovery Agent Services
9	Supply of services by music composer, photographer, artist or the like
10	Supply of service by an author
11	Import of service
12	Transportation of goods by a vessel from a place outside India up to the customs station of clearance in India
13	Services by business facilitator to a banking company
14	Services provided by an agent of business correspondent to business correspondent
15	Security services
16	Renting of a motor vehicle
17	Services of lending of securities
18	Supply of services by the members of overseeing committee to Reserve Bank of India
19	Services supplied by Individual Direct Selling Agent (DSAs) to bank or NBFC
20	w.e.f. 18-07-2022 services by way of renting of residential dwelling to a registered person
S.No.	Services covered under RCM u/s 9(4) of CGST Act, 2017 or u/s 5(4) of IGST Act, 2017
	Already covered under Chapter 9: Levy and Collection
S.No.	Services covered under RCM u/s 9(5) of CGST Act, 2017 or u/s 5(5) of IGST Act, 2017
1	Transportation of passengers by a radio-taxi, motor cab, maxi cab and motor cycle; w.e.f. 1-1-2022, Omnibus and any other motor vehicle.
2	Providing accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes
3	Services by way of house keeping, such as plumbing, carpentering etc.
4	W.e.f 1-1-2022 Supply of Restaurant Services (i.e. Cloud Kitchen) other than the services supplied by restaurant, eating joints etc., located at specified premises.

1. Goods Transport Agency (GTA) Services

S. No.	Description of supply of service	Supplier of service	Recipient of service	Person liable to pay GST
1	GTA Services	Goods Transport Agency (GTA)	Any factory, society, co-operative society, registered person, body corporate, partnership firm, casual taxable person; located in the taxable territory.	Recipient



The option by GTA to pay GST under Forward Charge Mechanism (FCM) on the services supplied by it during a Financial Year shall be exercised by making a declaration in Annexure V on or before the 15th March of the preceding Financial Year. However, for the Financial Year 2022-2023 option shall be exercised on or before the 16th August 2022.

The option once chosen would be valid for a financial year and a GTA cannot shift to a different option in a same financial year.

Specified person includes:

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

2. Arbitral Tribunal or Advocate Services

S.No.	Description of supply of service	Supplier of service	Recipient of service	Person liable to pay GST
2.	Services supplied by an arbitral tribunal to a business entity	An arbitral tribunal	Any business entity located in the taxable territory	Recipient

Example: Mr. X and Mr. Y paid fee to an arbitrator to appoint a panel of three arbitrators for settlement of their personal dispute as per the Arbitration and Conciliation Act, 1996.

Fee received by the arbitrator on appointment of Arbitral Tribunal is exempt from GST and fee received by the three arbitrators for the services provided to the tribunal shall also be exempt.

However, Arbitral Tribunal services to a business entity are taxable supply of service is liable to tax in the hands of recipient (namely business entity), provided previous year turnover of the entity is more than ₹40 lakh or ₹20 Lakh or ₹10 lakh as the case may be.

S. No.	Description of supply of service	Supplier of service	Recipient of service	Person liable to pay GST
2	Legal Services by advocate	An individual advocate, including a senior advocate or a firm of advocates	Any business entity located in the taxable territory	Recipient

Example 1: Senior Advocate supplied services of ₹1,50,000/- to business entity for Legal services. Business entity has ITC of ₹7,000. Senior Advocate has registered office in Chennai. Business entity is located in Madurai.

Find the following:

- (a) Who is liable to pay GST?
- (b) Net GST liability?

Note:

- (i) all services rendered in the month of Oct 20XX.
- (ii) Turnover of business entity in the previous year ₹43 lakh.
- (iii) Applicable rate of GST @18%

Answer:

- (a) Business entity being recipient of service is liable to pay GST.
- (b) Net GST liability of the business entity:
CGST 9% on ₹1,50,000 = ₹13,500/-
SGST 9% on ₹1,50,000 = ₹13,500/-

Note: recipient is not allowed to utilize ITC against his GST liability. However, after payment of GST under RCM, the same can be availed as ITC against his outward supplies.

Example 2: With reference to the provisions of GST law (w.e.f. 1-7-2017), briefly explain as to who is the person responsible to pay GST in the following:

- (i) Legal services are provided by Senior Advocates to business entities.
- (ii) Representation services are provided by Senior Advocates to any business entity.
- (iii) Were contracts for representation service provided by the Senior Advocates to any business entity has been entered into through another advocate or firm of advocates.

Answer:

Service provider	Service recipient	Nature of service	Taxability	Person responsible to pay service tax
(i) & (ii) Senior Advocate	Business Entity (whose turnover exceeds ₹40 lakh or ₹20 Lakh or ₹10 lakh as the case may be in P.Y.)	Representation services	Taxable supply of service	Recipient of service, which is the business entity, who is litigant, applicant or petitioner.

(iii) Recipient of service that is the business entity, who is the litigant, applicant or petitioner, is liable to pay GST.

Note: Previous year turnover more than ₹40 lakh or ₹20 Lakh or ₹10 lakh as the case may be.

S. No.	Description of supply of service	Supplier of service	Recipient of service	Person liable to pay GST
3	Services provided by way of sponsorship to any body corporate or partnership firm.	Any person	Any body corporate or partnership firm located in the taxable territory.	Recipient.

Note: If the above conditions are not satisfied then the GST is payable by the supplier of service (i.e. Forward Charge)

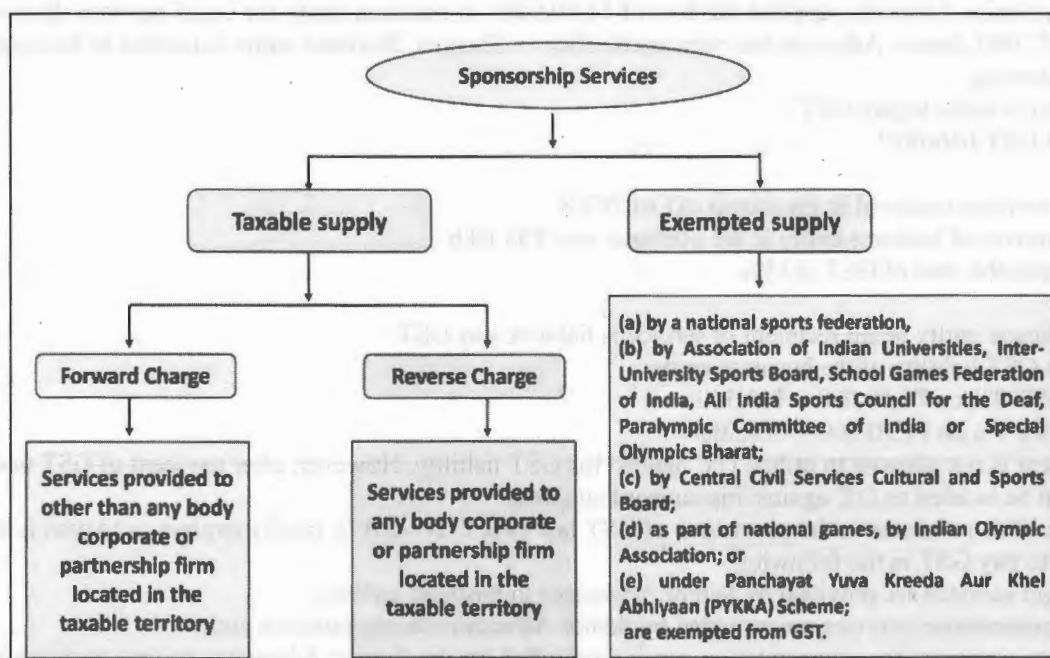
Entry No. 53: Services by way of sponsorship of sporting events organized,—

- by a national sports federation,
- by Association of Indian Universities, Inter-University Sports Board, School Games Federation of India, All India Sports Council for the Deaf, Paralympic Committee of India or Special Olympics Bharat;
- by Central Civil Services Cultural and Sports Board;
- as part of national games, by Indian Olympic Association; or
- under Panchayat Yuva Kreedha Aur Khel Abhiyaan (PYKKA) Scheme;

are exempted from GST.

Example: GT Jewellers Ltd. paid ₹50 lakhs for sponsorship of Miss India beauty pageant in Mumbai to a Stylish & Co., a partnership firm. It is taxable supply, if so who is liable to pay GST.

Answer: Yes. It is taxable supply of service. GST is liable to pay recipient of supply of service namely GT Jewellers Ltd. under RCM.



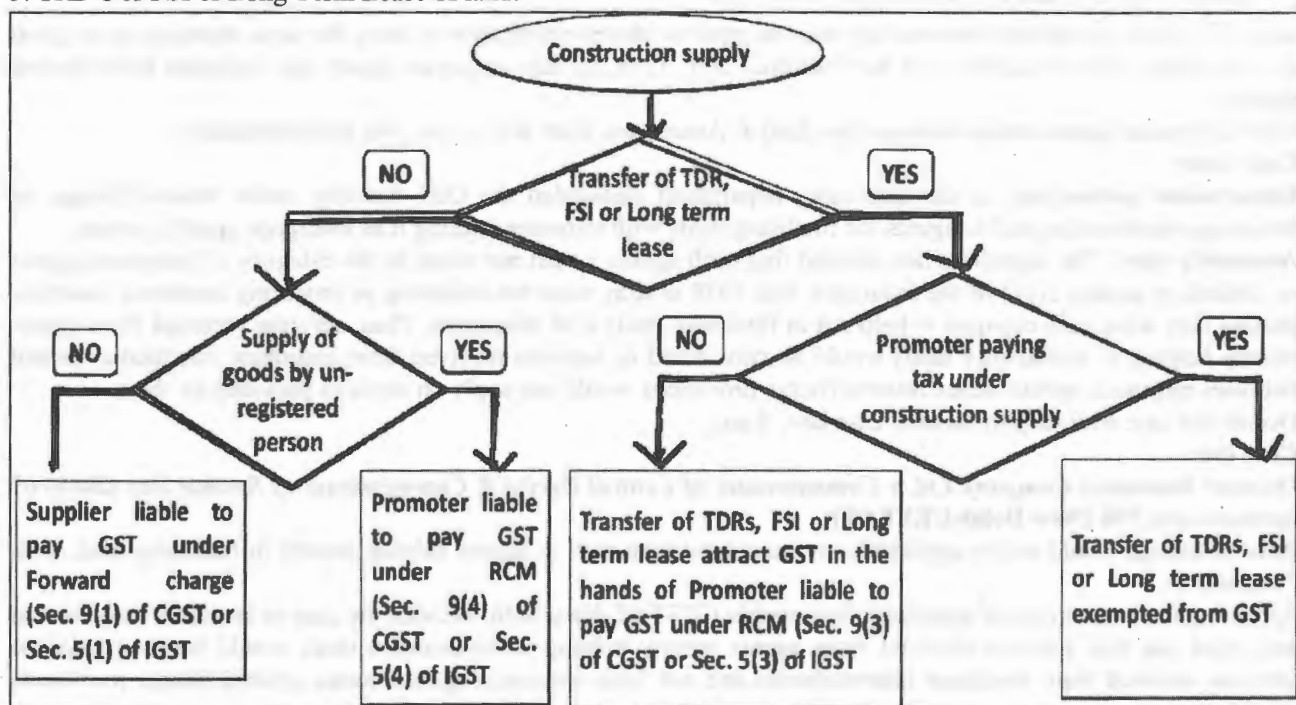
4. Government or Local Authority to Business Entity

Already covered under exemptions.

w.e.f. 25.1.2018, Reverse Charge Scheme on Renting services provided by Government Notification No. 3/2018-CT, dated 25.1.2018.

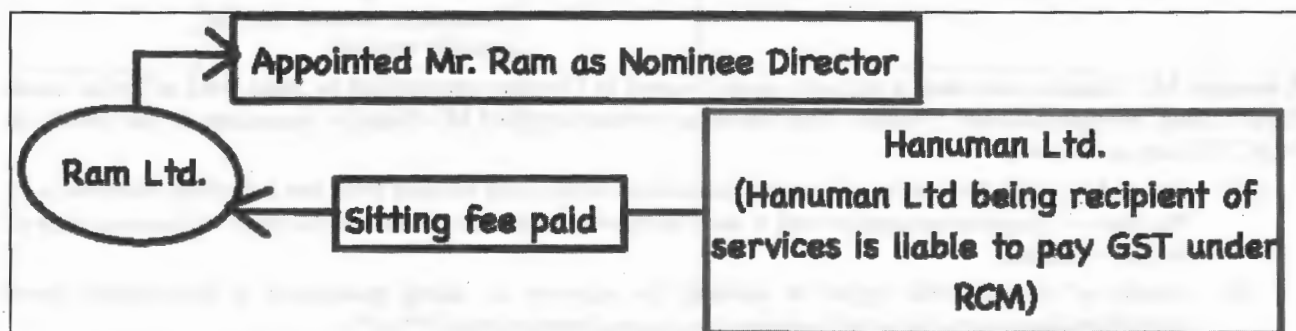
S.No	Description of supply of service	Supplier of service	Recipient of service	Person liable to pay GST
4	Services supplied by the Central Government, State Government, Union territory or local authority by way of renting of immovable property to a person registered under the Central Goods and Services Tax Act, 2017 (12 of 2017).	Central Government, State Government, Union territory or local authority	Any person registered under the Central Goods and Services Tax Act, 2017.”;	Recipient.

Note: Renting of immovable property by government or local authority to un-registered person shall continue under forward charge.

5. TRD's or FSI or Long Term Lease of land:

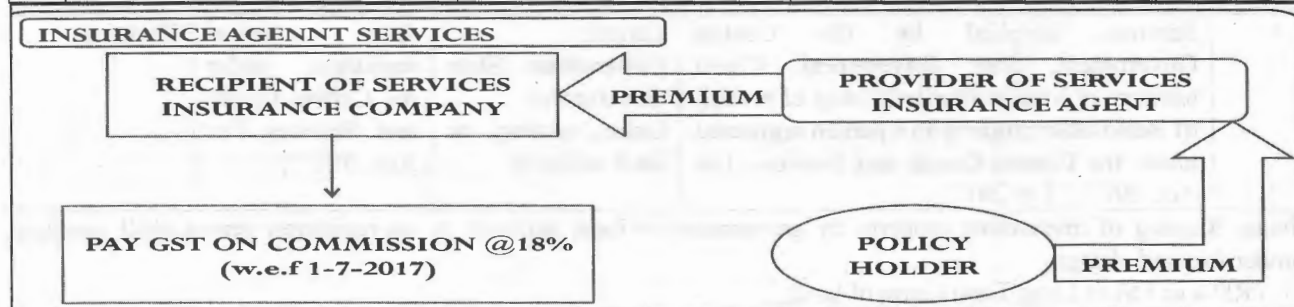
* Further, on shortfall of purchases from 80%, tax shall be paid by the builder @ 18% on RCM basis.

- However, Tax on cement purchased from unregistered person shall be paid @ 28% under RCM, and on capital goods under RCM at applicable rates.

6. A director of a company or a body corporate to company or a body corporate

7. Insurance Services supplied by an insurance agent:

S. No.	Description of supply of service	Supplier of service	Recipient of service	Person liable to pay GST
7	Services supplied by an insurance agent to any person carrying on insurance business.	An insurance agent	Any person carrying on insurance business, located in the taxable territory	Recipient



w.e.f 25.1.2018, To define insurance agent in the reverse charge notification to have the same meaning as assigned to it in clause (10) of section 2 of the Insurance Act, 1938, so that corporate agents get excluded from reverse charge.

Note: Corporate agents means brokers (like Rafi & Associates, Ram & Co., etc., but not individuals)

Case Law:

Department contention: In the said case, department demanded the GST liability under reverse charge on brokerage/commission paid to agents for finalising deals with reinsurer treating it as insurance agent's service.

Assessee's view: The Appellant has pleaded that such agents would not come in the category of Insurance agents as defined in section 2(10) of the Insurance Act, 1938 as they were not soliciting or procuring insurance business, instead they were only engaged to help out in finalising deals with reinsurers. Thus, services received from agents merely helping in reinsurance deals would be considered as services received from insurance intermediaries and not from insurance agents; hence reverse charge provisions would not apply on services provided by them.

Decide the case with help of decided case law, if any.

Case law:

Oriental Insurance Company Ltd. v Commissioner of Central Excise & Commissioner of Service Tax (2016) 67 taxmann.com 376 (New Delhi-CESTAT):

Reverse charge would not be applicable on the commission paid to agents helping merely in finalising deals with "reinsurers".

Affirming the contentions of appellant, Honourable CESTAT-New Delhi decided the case in favour of the assessee and ruled out that services received from agents merely helping in reinsurance deals would be considered as services received from insurance intermediaries and not from insurance agents; hence reverse charge provisions would not apply on services provided by them.

8. Recovery Agent Services:

S.No.	Description of supply of service	Supplier of service	Recipient of service	Person liable to pay GST
8	Services supplied by a recovery agent to a banking company or a financial institution or a non-banking financial company.	A recovery agent	A banking company or a financial institution or a non-banking financial company, located in the taxable territory.	Recipient

Example: M/s Shakshi Associates a recovery agent (located in Chennai) empanelled by State Bank of India, Local Head Office, Nungambakkam, Chennai. The following service supplied M/s Shakshi Associates in the month of Nov 20XX are as follows:

- (1) Fee of ₹2,25,825 for supply of services in relation to recovery of dues from the defaulting Borrowers at the place of business/occupation and if such Borrowers is/are unavailable at the place of business then at his/her residence.
- (2) Supply of services with regard to demand for recovery or taking possession of the security from defaulting Borrowers, for which separate fee charge from the bank ₹55,175/-

Find the following:

- Is it supply of service.
- If so, who is liable to pay GST.
- Find the GST liability

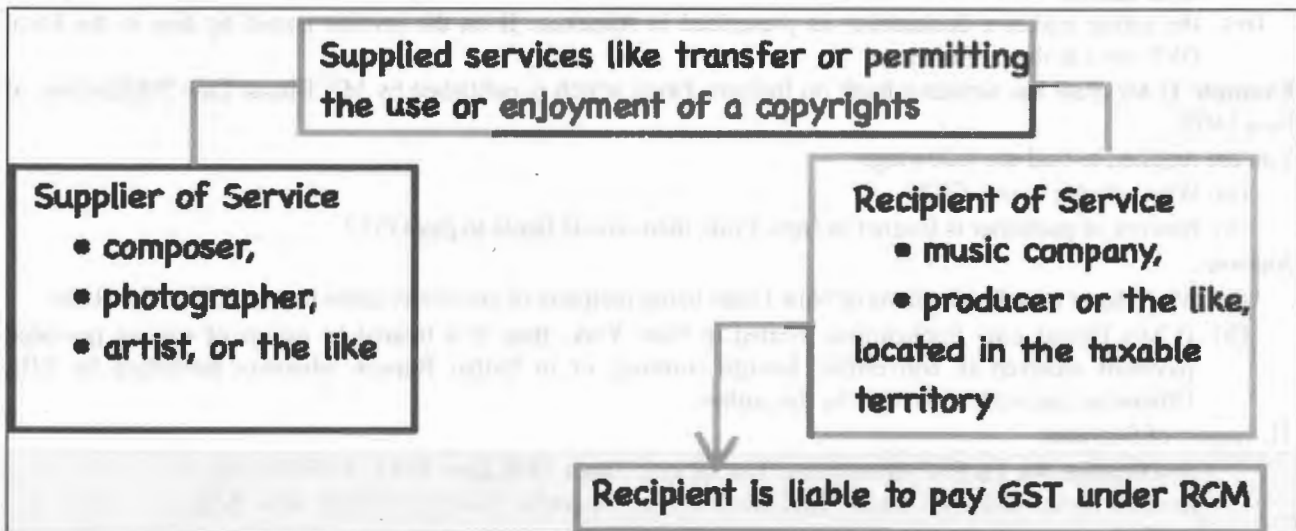
Note: Assume applicable rate of GST for recovery agent services @18%.

Answer:

- Yes. It is taxable supply of service
- State Bank of India being recipient of service is liable to pay GST under RCM.
- GST liability = ₹50,580 [i.e. ₹2,25,825 + 55,175) x 18%]

9. Supply of services by music composer, photographer, artist or the like

S. No.	Description of supply of service	Supplier of service	Recipient of service	Person liable to pay GST
9	Supply of services by music composer, photographer, artist or the like by way of transfer or permitting the use or enjoyment of a copyright covered under section 13(1)(a) of the Copyright Act, 1957 relating to original literary, dramatic, musical or artistic works to a publisher, music company, producer or the like	music composer, photographer, artist, or the like	music company, producer or the like, located in the taxable territory	Recipient



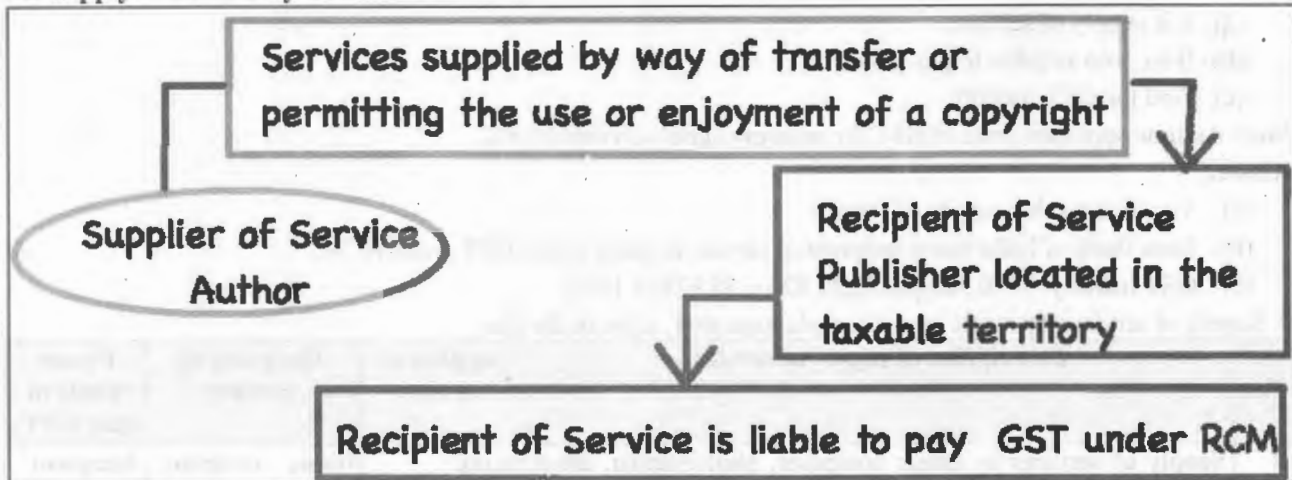
Example 1: Mr. A.R. Rehaman being a music director (registered person under GST). He made following supplies:

- Indigenous handmade musical instruments for ₹2,00,000.
- Composted hello tune and transferred permanently for ₹30,00,000.
- Pianos for ₹1,50,000
- Percussion musical instruments (like drums, xylophones) for ₹5,00,000.

Find the GST liability. Applicable rate GST 28%. All transactions took place within the state of Tamil Nadu.

Answer:

Particulars	Value in ₹	Remarks
Indigenous handmade musical instruments	Nil	Exempted supply of goods.
Composted hello tune and transferred permanently	30,00,000	Taxable supply of goods
Sale of Pianos	1,50,000	Taxable supply of goods
Sale of Drums, xylophones	5,00,000	-do-
Total taxable supply of goods	36,50,000	
CGST 14%	5,11,000	(36,50,000 x 14%)
SGST 14%	5,11,000	(36,50,000 x 14%)

10. Supply of services by an author:

Provided that nothing contained in this entry shall apply (i.e. Forward Charge) where,-

- the Author has taken registration under the CGST and filed a declaration, in the form at Annexure I,
- the Author exercises the option to pay GST (i.e. copyright by author) under forward charge
- the Author shall not withdraw the said option within a period of ONE year from the date of exercising such option;
- the author makes a declaration, as prescribed in Annexure II on the invoice issued by him in the Form GST Inv-I to the publisher.

Example 1: Mr. Rafi has written a book on Indirect Taxes which is published by M/s Bharat Law Publications of New Delhi.

You are required to find the following:

- Who is liable to pay GST?
- Rework, if publisher is located in New York, then who is liable to pay GST?

Answer:

- M/s Bharat Law Publications of New Delhi being recipient of service is liable to pay GST under RCM.
- If M/s Bharat Law Publications located in New York, then it is treated as export of service provided payment received in convertible foreign currency or in Indian Rupees wherever permitted by RBI. Otherwise, tax will be payable by the author.

11. Import of Services:

Notification No. 10/2017-Integrated Tax (Rate), dated 28th June 2017, the following 2 services under IGST on which GST shall be levied under Reverse Charge have been notified:				
S. No.	Description of supply of service	Supplier of service	Recipient of service	Person liable to pay GST
11	<p>Any service supplied by any person who is located in a non-taxable territory to any person other than non-taxable online recipient.</p> <p>Non-taxable online recipient means: As per Section 2(16) of the Integrated Goods and Services Tax (IGST) Act, 2017,</p> <ul style="list-style-type: none"> any Government, local authority, governmental authority, an individual or any other person not registered <p>and receiving online information and database access or retrieval services in relation to any purpose other than commerce, industry or any other business or profession, located in taxable territory.</p>	Any person located in a non-taxable territory	Any person located in the taxable territory other than non-taxable online recipient.	Recipient

TDS under Income Tax vs GST

CBDT has clarified through Circular No. 23/2017, dated 19th July 2017 that if GST on services has been indicated separately in the invoice, then no tax would be deducted on GST component.

In the light of the fact that even under the new GST regime, the rationale of excluding the tax component from the purview of TDS remains valid, the Board hereby clarifies that wherever in terms of the agreement or contract between the payer and the payee, the component of 'GST on services' comprised in the amount payable to a resident is indicated separately, tax shall be deducted at source under Chapter XVII-B of the Act on the amount paid or payable without including such 'GST on services' component.

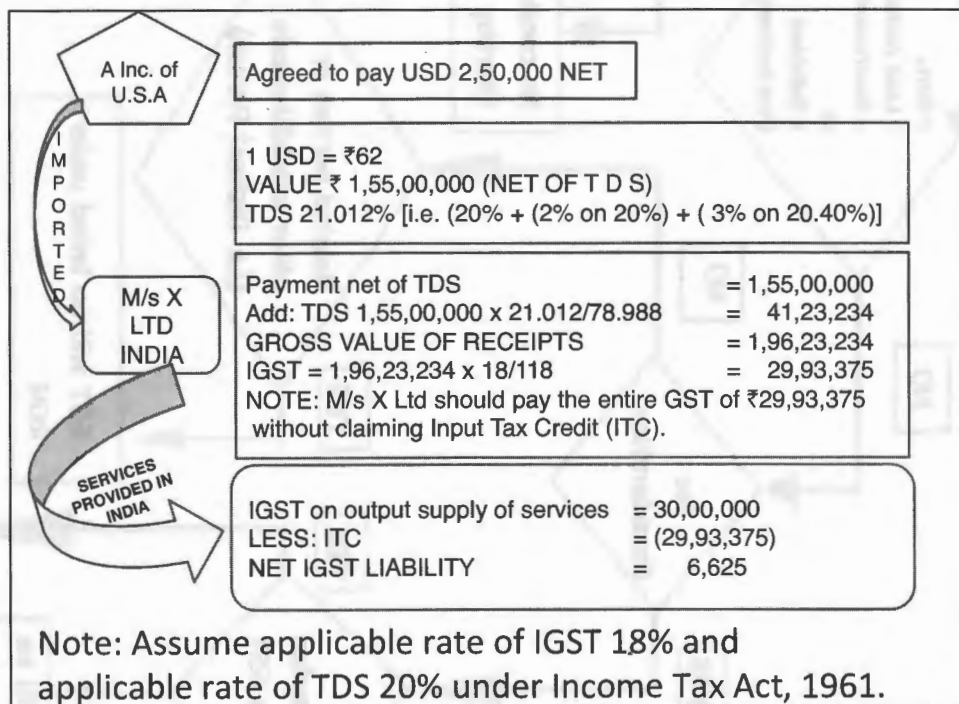
Example: CA. Ram received ₹2,05,200 (after TDS @10%) from client on 1st Nov. 20XX for taxable services rendered in the month of July 20XX. Find the GST liability. Applicable rate of CGST 9% and SGST 9%.

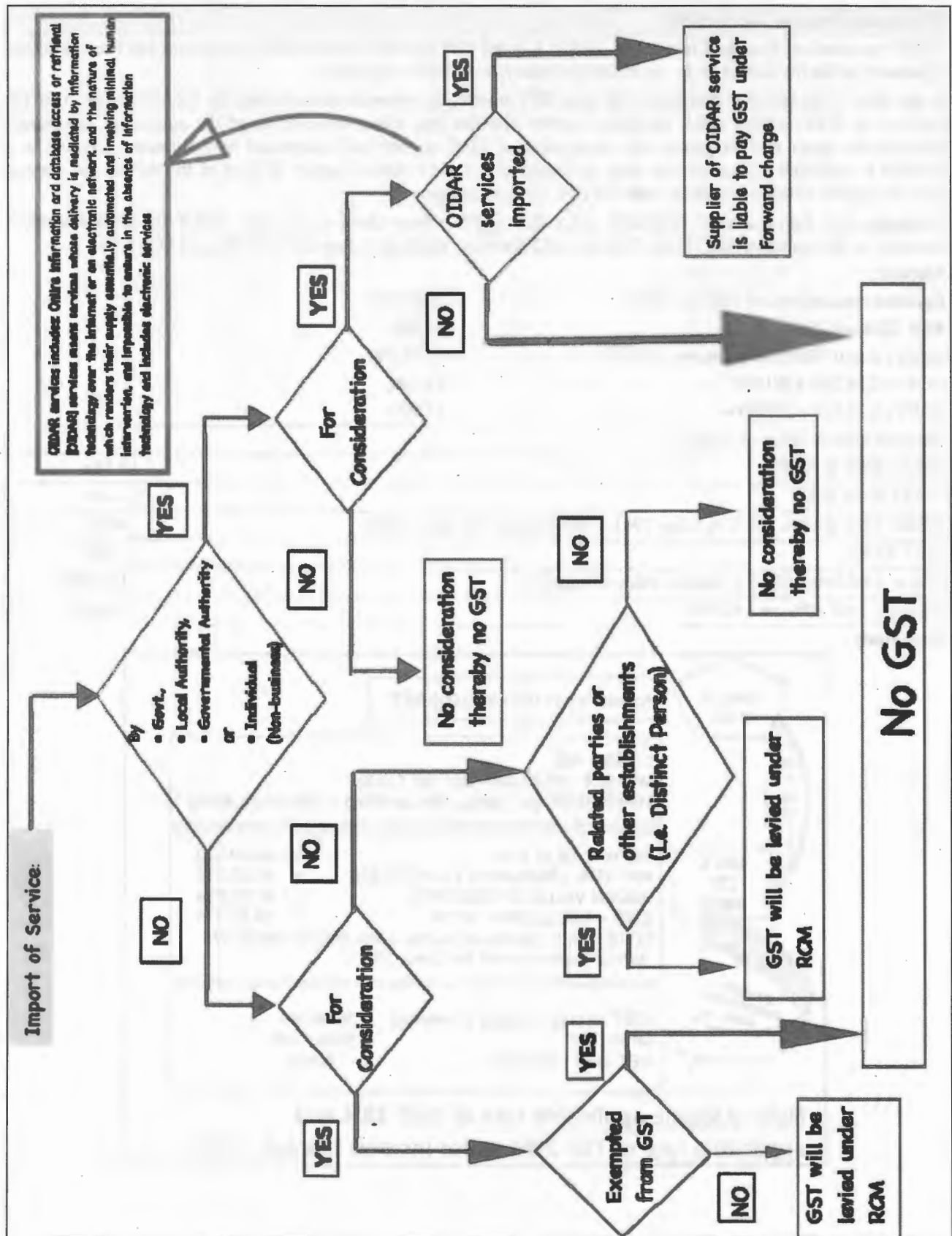
Answer:

Payment received net of TDS u/s 194J	= 2,05,200
Add: TDS u/s 194J	= 19,000
Gross value of Bill (i.e. inclusive of GST)	= 2,24,200
CGST (2,24,200 x 9/118)	= 17,100
SGST (2,24,200 x 9/109)	= 17,100

Assume taxable value of supply	X
Add: CGST & SGST	0.18x
VALUE OF BILL	1.18x
LESS: TDS @10% ON X (u/s Sec 194J of the Income Tax Act, 1961)	-0.1X
NET PAID	1.08X
X (i.e. 2,05,200/1.08) [i.e. taxable value of supply]	1,90,000
TDS u/s 194J 10% on 1,90,000	19,000

Case study:





12. Transportation of goods by a vessel from a place outside India up to the customs station of clearance in India:

Notification No. 10/2017-Integrated Tax (Rate), dated 28 th June, 2017, the following 2 services under IGST on which GST shall be levied under Reverse Charge have been notified:				
S. No.	Description of supply of service	Supplier of service	Recipient of service	Person liable to pay GST
12	Services supplied by a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India upto the customs station of clearance in India	A person located in non-taxable territory	Importer, as defined in clause (26) of section 2 of the Customs Act, 1962(52 of 1962), located in the taxable territory.	Importer

Practical theory:

Department contention:

Assessee being an importer of goods from Indonesia is liable to pay GST on Ocean Freight. Since, place of supply of service is destination of goods as per section 13(9) of IGST Act, 2017.

Assessee's view:

Since, goods imported into India, paid customs duty on such ocean freight which is inclusive of Cost, Insurance and Freight (CIF value). Therefore, question of levying of GST would not arise at all.

Decide the case with the help of decided case, if any.

Answer:

Facts of the Case: Import of goods into India completed when goods are landed on land mass of India (as per the Garden Silk Mills Ltd. Of the Hon'ble Supreme Court of India). Ocean freight on import of goods into India is subject to customs duty. As per the Department contention Ocean Freight is subject to GST again.

Grounds on Appeal:

In the case of *United Shippers Ltd.* 2015 (37) STR 1043 (Tri-Mumbai) has held that when the value of transportation charges has been added in CIF value on which customs duty is paid. Service Tax again cannot be recovered on the same value.

The department's appeal against the order of Tribunal to the Hon'ble Supreme Court of India has been dismissed as reported in 2015(39) STR J369 (SC). It means the judgment of Hon'ble Tribunal-Mumbai has been confirmed as whole good.

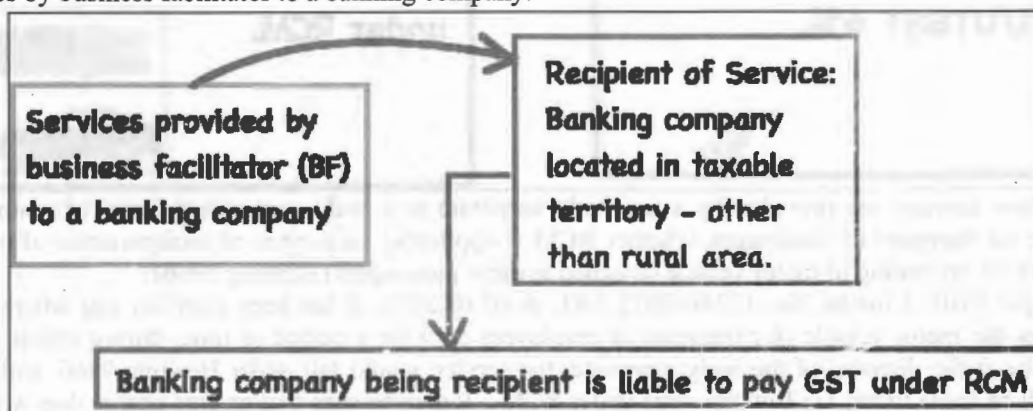
The ratio of this judgment is equally applicable to Goods and Services Tax Law also.

Therefore, payment of GST on Ocean Freight does not arise.

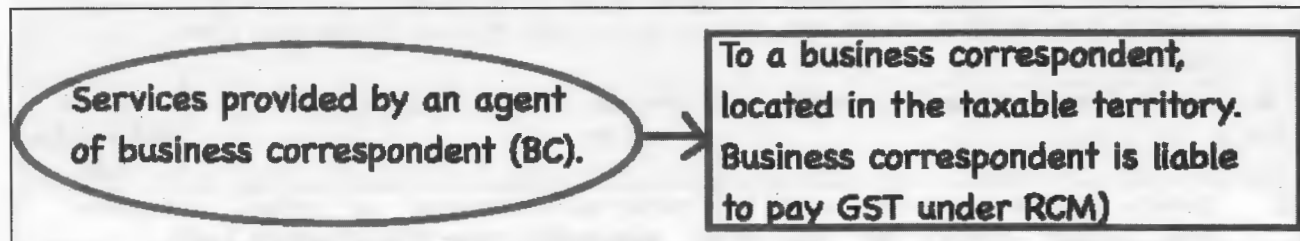
Case Law:

Hon'ble Gujarat High Court in case of *Mohit Minerals (P.) Ltd.* [2020 (33) GSTL 321 (Guj.)] held that no IGST under RCM is payable 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 GST is not permissible in law. Levy of IGST on such ocean freight declared to be un-constitutional.

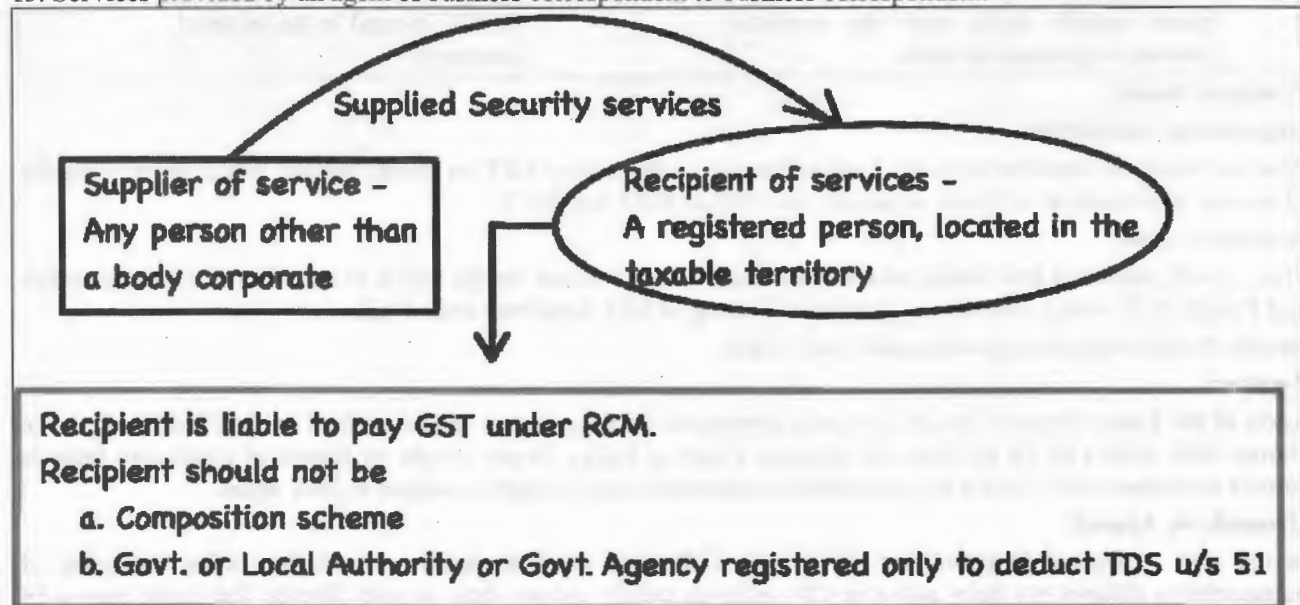
13. Services by business facilitator to a banking company:



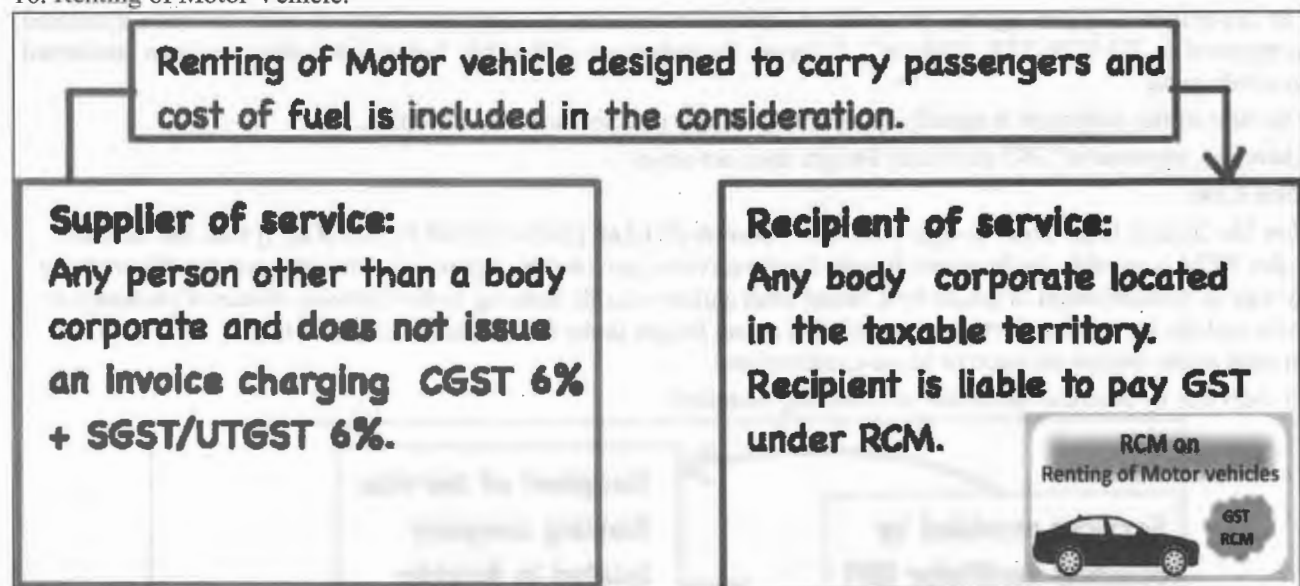
14. Services provided by an agent of business correspondent to business correspondent:



15. Services provided by an agent of business correspondent to business correspondent:



16. Renting of Motor Vehicle:



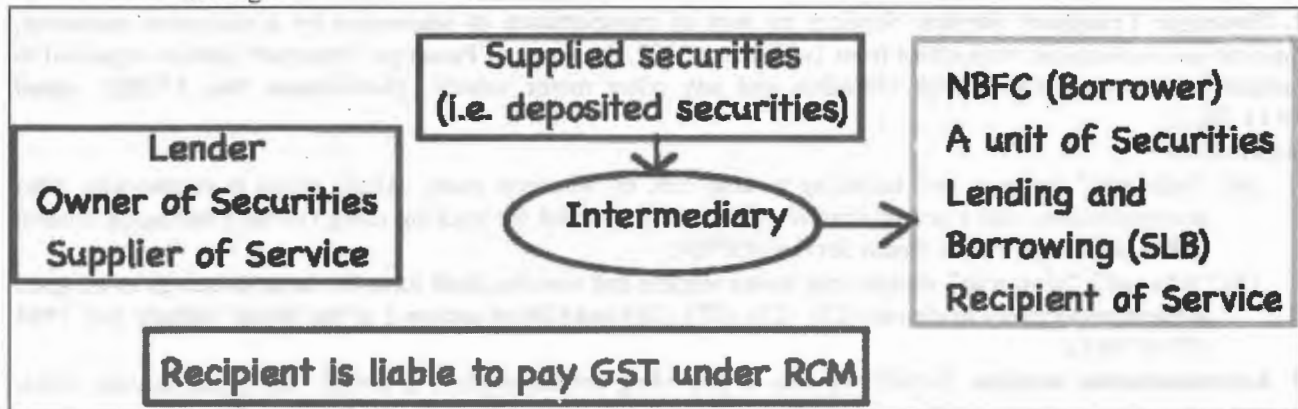
Question: When services are provided by a non-body corporate to a body corporate by way of renting of any motor vehicle for transport of passengers, whether RCM is applicable on service of transportation of passengers (Heading 9964) or on renting of motor vehicle designed to carry passengers (Heading 9966)?

Answer: As per CBIC Circular No. 177/09/2022 TRU dt 03.08.2022, It has been clarified that where the body corporate hires the motor vehicle (for transport of employees etc.) for a period of time, during which the motor vehicle shall be at the disposal of the body corporate, the service would fall under Heading 9966, and the body corporate shall be liable to pay GST on the same under RCM. It may be seen that reverse charge thus would apply

on act of renting of vehicles by body corporate and in such a case, it is for the body corporate to use in the manner as it likes subject to agreement with the person providing vehicle on rent.

However, where the body corporate avails the passenger transport service for specific journeys or voyages and does not take vehicle on rent for any particular period of time, the service would fall under Heading 9964 and the body corporate shall not be liable to pay GST on the same under RCM.

17. services of lending of securities:



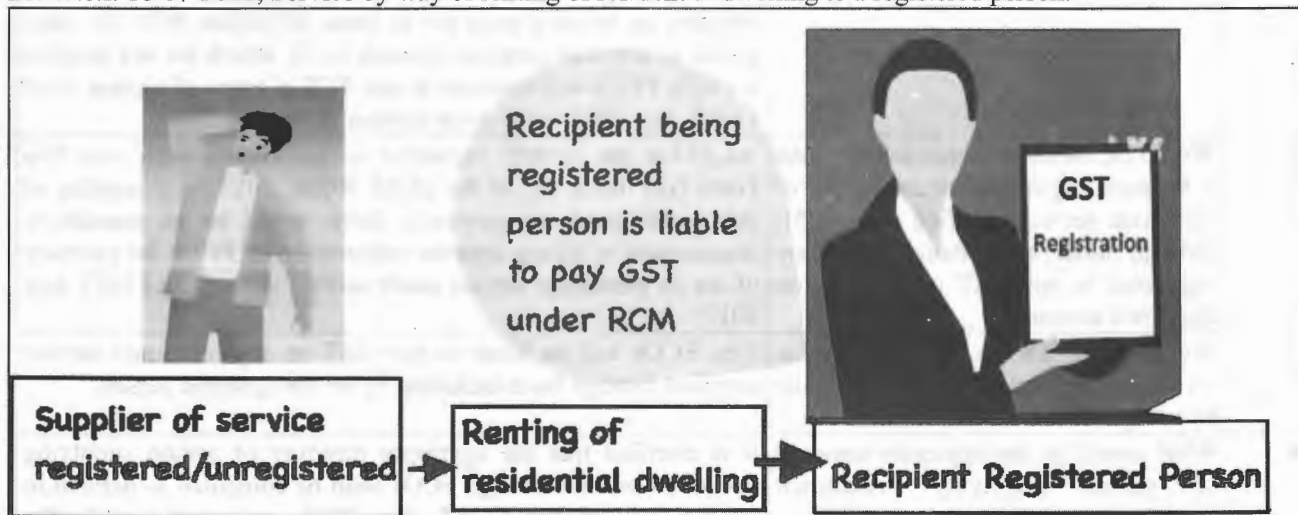
18. Supply of services by the members of Overseeing Committee to Reserve Bank of India:

Notification No. 33/2017-Central Tax (Rate), dated 13th October, 2017				
S.No	Description of supply of service	Supplier of service	Recipient of service	Person liable to pay GST
18	Supply of services by the members of Overseeing Committee to Reserve Bank of India	Members of Overseeing Committee constituted by the Reserve Bank of India	Reserve Bank of India.	Recipient

19. Services supplied by Individual Direct Selling Agent (DSAs) to bank or NBFC:

w.e.f. 27th July 2018: Notification No. 15/2018-Central Tax (Rate), dated 26th July, 2018				
S. No.	Description of supply of service	Supplier of service	Recipient of service	Person liable to pay GST
19	Services supplied by individual Direct Selling Agents (DSAs) other than a body corporate, partnership or limited liability partnership firm to bank or non-banking financial company (NBFCs).	Individual Direct Selling Agents (DSAs) other than a body corporate, partnership or limited liability partnership firm.	A banking company or a non-banking financial company, located in the taxable territory.	Recipient

20. W.e.f. 18-07-2022, Service by way of renting of residential dwelling to a registered person:



Section 9(5) of CGST Act, 2017/Section 5(5) of IGST Act, 2017 deals with taxability of supply of services:

Output tax of which shall be paid by e-commerce operator even though e-commerce operator is not the actual supplier. E-commerce liable to comply with GST provisions as if he is supplier of services and liable to pay tax. In case services are notified u/s 9(5), actual supplier of services need not required to get registration even if turnover exceeds threshold limit unless stated other wise.

List of services notified under section 9(5):

1. Passenger Transport Service: Services by way of transportation of passengers by a radio-taxi, motorcab, maxicab and motorcycle; with effect from 1st January 2022, the scope of Passenger Transport Service expanded to include service provided through Omnibus and any other motor vehicle. (Notification No. 17/2021, dated 18.11.2021).

Explanations:

(a) "radio taxi" means a taxi including a radio cab, by whatever name called, which is in two-way radio communication with a central control office and is enabled for tracking using Global Positioning System (GPS) or General Packet Radio Service (GPRS);

(b) "maxicab", "motorcab", motorcycle, motor vehicle and omnibus shall have the same meanings as assigned to them respectively in clauses (22), (25), (27), (28) and (29) of section 2 of the Motor Vehicle Act, 1988 (59 of 1988).

2. Accommodation Services: Services by way of providing accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes, except where the person supplying such service through electronic commerce operator is liable for registration under sub-section (1) of section 22 of the said CGST Act.

3. Housekeeping Services: Services by way of house-keeping, such as plumbing, carpentering etc, except where the person supplying such service through electronic commerce operator is liable for registration under sub-section (1) of section 22 of the said CGST Act.

4. w.e.f 1-1-2022 Restaurant Services (i.e. Cloud Kitchen): Supply of restaurant service other than the services supplied by restaurant, eating joints etc. located at specified premises.

"Specified premises means premises providing hotel accommodation service having declared tariff of any unit of accommodation above seven thousand five hundred rupees per unit per day or equivalent (i.e. $\geq ₹7500/-$ per unit)" vide Notification No. 17/2021 dated 18.11.2021.

Note: Restaurant is supplying services through E-COM only, he is not required to get registered under GST. In case, he is already registered, he may continue with such registration or get them de-registered under GST.

GST on service supplied by restaurants through e-commerce operators (CBIC Circular No. 167/23/2021-GST Dated 17th December 2021):

S.No.	Issue	Clarification
1	Would ECOs have to still collect TCS in compliance with section 52 of the CGST Act, 2017?	As 'restaurant service' has been notified under section 9(5) of the CGST Act, 2017, the ECO shall be liable to pay GST on restaurant services provided, with effect from the 1st January, 2022, through ECO. Accordingly, the ECOs will no longer be required to collect TCS and file GSTR 8 in respect of restaurant services on which it pays tax in terms of section 9(5). On other goods or services supplied through ECO, which are not notified u/s 9(5), ECOs will continue to pay TCS in terms of section 52 of CGST Act, 2017 in the same manner at present
2	Would ECOs have to mandatorily take a separate registration w.r.t supply of restaurant service [notified under 9(5)] through them even though they are registered to pay GST on services on their own account?	As ECOs are already registered in accordance with rule 8(in Form GST-REG 01) of the CGST Rules, 2017 (as a supplier of their own goods or services), there would be no mandatory requirement of taking separate registration by ECOs for payment of tax on restaurant service under section 9(5) of the CGST Act, 2017.
3	Would the ECOs be liable to pay tax on supply of restaurant service made by unregistered business entities?	Yes. ECOs will be liable to pay GST on any restaurant service supplied through them including by an unregistered person.
4	What would be the aggregate turnover of person supplying 'restaurant service' through ECOs?	It is clarified that the aggregate turnover of person supplying restaurant service through ECOs shall be computed as defined in section 2(6) of the CGST Act, 2017 and shall include the

S.No.	Issue	Clarification
		aggregate value of supplies made by the restaurant through ECOs. Accordingly, for threshold consideration or any other purpose in the Act, the person providing restaurant service through ECO shall account such services in his aggregate turnover.
5	Can the supplies of restaurant service made through ECOs be recorded as inward supply of ECOs (liable to reverse charge) in GSTR 3B?	No. ECOs are not the recipient of restaurant service supplied through them. Since these are not input services to ECO, these are not to be reported as inward supply (liable to reverse charge).
6	Would ECOs be liable to reverse proportional input tax credit on his input goods and services for the reason that input tax credit is not admissible on 'restaurant service'?	ECOs provide their own services as an electronic platform and an intermediary for which it would acquire inputs/input service on which ECOs avail input tax credit (ITC). The ECO charges commission/fee etc. for the services it provides. The ITC is utilised by ECO for payment of GST on services provided by ECO on its own account (say, to a restaurant). The situation in this regard remains unchanged even after ECO is made liable to pay tax on restaurant service. ECO would be eligible to ITC as before. Accordingly, it is clarified that ECO shall not be required to reverse ITC on account of restaurant services on which it pays GST in terms of section 9(5) of the Act. It may also be noted that on restaurant service, ECO shall pay the entire GST liability in cash (No ITC could be utilised for payment of GST on restaurant service supplied through ECO)
7	Can ECO utilize its Input Tax Credit to pay tax w.r.t 'restaurant service' supplied through the ECO?	No. As stated above, the liability of payment of tax by ECO as per section 9(5) shall be discharged in cash.
8	Would supply of goods or services other than 'restaurant service' through ECOs be taxed at 5% without ITC?	ECO is required to pay GST on services notified under section 9(5), besides the services/other supplies made on his own account. On any supply that is not notified under section 9(5), that is supplied by a person through ECO, the liability to pay GST continues on such supplier and ECO shall continue to pay TCS on such supplies. Thus, present dispensation continues for ECO, on supplies other than restaurant services. On such supplies (other than restaurant services made through ECO) GST will continue to be billed, collected and deposited in the same manner as is being done at present. ECO will deposit TCS on such supplies.
9	Would 'restaurant service' and goods or services other than restaurant service sold by a restaurant to a customer under the same order be billed differently? Who shall be liable for raising invoices in such cases?	Considering that liability to pay GST on supplies other than 'restaurant service' through the ECO, and other compliances under the Act, including issuance of invoice to customer, continues to lie with the respective suppliers (and ECOs being liable only to collect tax at source (TCS) on such supplies), it is advisable that ECO raises separate bill on restaurant service in such cases where ECO provides other supplies to a customer under the same order.
10	Who will issue invoice in respect of restaurant service supplied through ECO - whether by the restaurant or by the ECO?	The invoice in respect of restaurant service supplied through ECO under section 9(5) will be issued by ECO.
11	Clarification may be issued as regard reporting of restaurant services, value and tax liability etc in the GST return.	A number of other services are already notified under section 9(5). In respect of such services, ECO operators are presently paying GST by furnishing details in GSTR 3B. The ECO may, on services notified under section 9 (5) of the CGST Act, 2017, including on restaurant service provided through ECO, may

S.No.	Issue	Clarification
		continue to pay GST by furnishing the details in GSTR 3B, reporting them as outward taxable supplies for the time being. Besides, ECO may also, for the time being, furnish the details of such supplies of restaurant services under section 9(5) in Table 7A(1) or Table 4A of GSTR-1, as the case maybe, for accounting purpose. Registered persons supplying restaurant services through ECOs under section 9(5) will report such supplies of restaurant services made through ECOs in Table 8 of GSTR-1 and Table 3.1(c) of GSTR-3B, for the time being.

Note:

- 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 person who receives the service for the purpose of this notification.
- "Body Corporate" has the same meaning as assigned to it in clause (11) of section 2 of the Companies Act, 2013.
- the business entity located in the taxable territory who is litigant, applicant or petitioner, as the case may be, shall be treated as the person who receives the legal services for the purpose of this notification.
- "radio taxi" means a taxi including a radio cab, by whatever name called, which is in two-way radio communication with a central control office and is enabled for tracking using Global Positioning System (GPS) or General Packet Radio Service (GPRS);
- "maxicab", "motorcab" and "motor cycle" shall have the same meanings as assigned to them respectively in clauses (22), (25) and (26) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988).

Transport of passengers by motor cab/renting of motor cab (vide Notification No. 31/2017-Central Tax (Rate), dated 13th October 2017):—

- GST of 5% without ITC and 12% with full ITC available to transport of passengers by motor cab/ renting of motor cab shall be extended to any motor vehicle (i.e. contract carriage or stage carriage);
- ITC of input services shall be allowed in the same line of business at GST rate of 5%.

Explanation: w.e.f. 1st January, 2019, provisions of this notification, in so far as they apply to the Central Government and State Governments, shall also apply to the Parliament and State Legislatures."

Important points:

(A) Registration: A person who is required to pay tax under reverse charge has to compulsorily register under GST and the threshold limit of ₹20 lakhs (₹10 lakhs for special category states except J & K) is not applicable to him.

(B) ITC: A supplier cannot take ITC of GST paid on goods or services used to make supplies on which the recipient is liable to pay tax.

The Central Government vide N. No. 06/2019-Central Tax(R), dated 29th March 2019 has notified time of supply provision for the following classes of registered persons:

- a promoter who receives development rights or Floor Space Index (FSI) (including additional FSI) on or after 1st April, 2019 for construction of a project against consideration payable or paid by him, wholly or partly, in the form of construction service of commercial or residential apartments in the project or in any other form including in cash;
- a promoter, who receives long term lease of land on or after 1st April 2019 for construction of residential apartments in a project against consideration payable or paid by him, in the form of upfront amount (called as premium, salami, cost, price, development charges or by any other name)

For such registered persons liability to pay central tax on the consideration paid in the form of:

- construction service,
- monetary consideration
- The upfront amount called as premium etc. paid for long term lease of land;

for supply of development rights or FSI

and consideration in the form of development rights or FSI for the supply of construction service

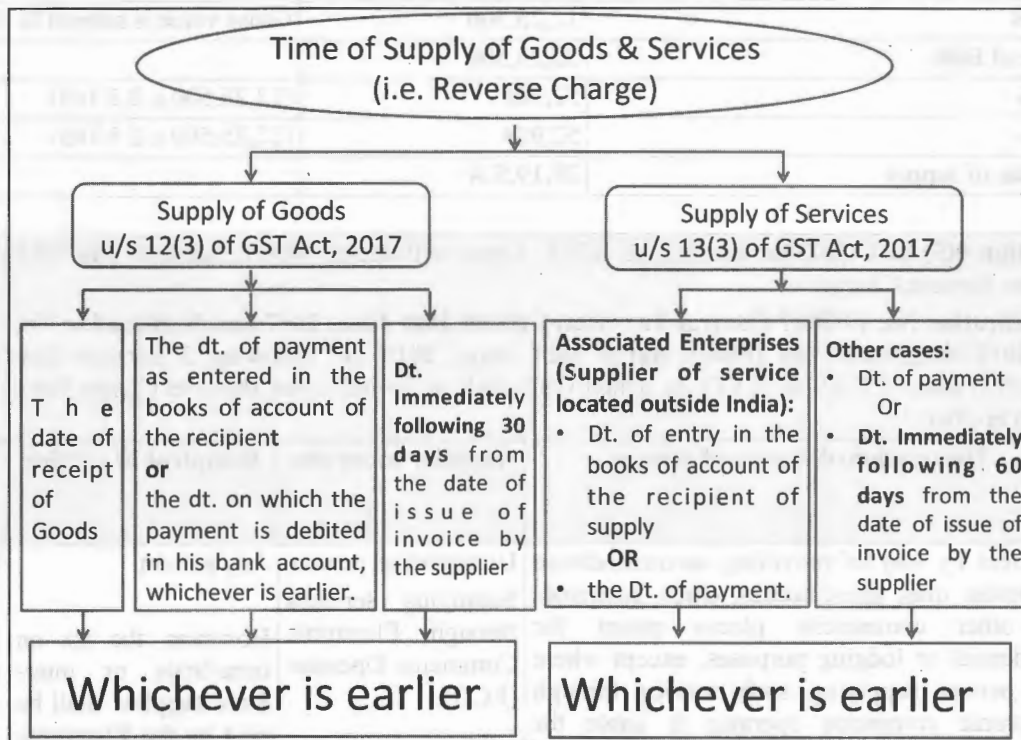
The liability to pay central tax shall arise on the date of issuance of completion certificate for the project, where required, by the competent authority or on its first occupation, whichever is earlier.

12.4 Compliances in respect of supplies under reverse charge mechanism

1. As per section 31 of the CGST Act, 2017 read with Rule 46 of the CGST Rules, 2017, every tax invoice has to mention whether the tax in respect of supply in the invoice is payable on reverse charge. Similarly, this also needs to be mentioned in receipt voucher as well as refund voucher, if tax is payable on reverse charge.
2. Maintenance of accounts by registered persons: Every registered person is required to keep and maintain records of all supplies attracting payment of tax on reverse charge
3. Any amount payable under reverse charge shall be paid by debiting the electronic cash ledger. In other words, reverse charge liability cannot be discharged by using input tax credit. However, after discharging reverse charge liability, credit of the same can be taken by the recipient, if he is otherwise eligible.
4. Invoice level information in respect of all supplies attracting reverse charge, rate wise, are to be furnished separately in the table 4B of GSTR-1.
5. Advance paid for reverse charge supplies is also leviable to GST. The person making advance payment has to pay tax on reverse charge basis.

12.5 Time of supply in case of reverse charge

The time of supply is the point when the supply is liable to GST. One of the factors relevant for determining time of supply is the person who is liable to pay tax. In reverse charge, the recipient is liable to pay GST. Thus, time of supply for supplies under reverse charge is different from the supplies which are under forward charge.



Note: If time of supply cannot be determined with the help of above provisions then the time of supply shall be the date on which entry in the books of the recipient of goods & services is made.

Sec. 9(5) of CGST/Section 5(5) if IGST: Govt. will decide who is liable to pay GST under Reverse Charge. Notification No. 17/2017-Central Tax (Rate), dated 28th June, 2017 and Notification No. 14/2017-Integrated Tax (Rate), dated 28th June, 2017 the following 2 services (are identical under CGST & IGST) on which GST shall be levied under Reverse Charge have been notified:				
S.No.	Description of supply of service	Supplier of service	Recipient of service	Person liable to pay GST
1	services by way of transportation of passengers by a radio-taxi, motorcab, maxicab and motor cycle;	Driver	Any person. However, the tax on intra-State or inter-State supplies shall be paid by the Electronic Commerce Operator (ECO).	ECO [Sec. 9(5) of CGST Act, 2017]

Example: Uber operating radio taxi services in India. In the month of Nov 20XX, the following services are rendered by it.

- (a) Free services provided to new customers who travelled for the first time. However, payment made to taxi drivers ₹10,00,000.
- (b) Hire charges collected from customers ₹12,25,500. Payment made to taxi drivers ₹11,00,000.

Uber appointed X Pvt. Ltd., as their representative in India.

You are required to find

- (a) Who is liable to pay GST?
- (b) Taxable value of supply.
- (c) Net GST liability

Note: charges include GST @5%.

Answer:

- (a) X Pvt. Ltd., being recipient of service is liable to pay GST.
- (b) & (c) Taxable value of supply:

Particulars	Value in ₹	Remarks
Free services provided to new customers. However, payment made to taxi drivers	10,00,000	Reverse charge applicable
Hire charges	12,25,500	Gross value is subject to GST.
Gross value of Bills	22,25,500	
CGST 2.5%	52,988	(22,25,500 x 2.5/105)
SGST 2.5%	52,988	(22,25,500 x 2.5/105)
Taxable value of supply	21,19,524	

Section 9(5) of CGST/Section 5(5) if IGST: Govt. will decide who is liable to pay GST under Reverse Charge. Notification No. 17/2017-Central Tax (Rate), dated 28th June, 2017 and Notification No. 14/2017-Integrated Tax (Rate), dated 28th June, 2017 the following 2 services (are identical under CGST & IGST) on which GST shall be levied under Reverse Charge have been notified:				
S. No.	Description of supply of service	Supplier of service	Recipient of service	Person liable to pay GST
2	services by way of providing accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes, except where the person supplying such service through electronic commerce operator is liable for registration under clause (v) of section 20 of the Integrated Goods and Services Tax Act, 2017 read with sub-section (1) of section 22 of the said Central Goods and Services Tax Act.	Unregistered person Supplying services through Electronic Commerce Operator (ECO).	Any person. However, the tax on intra-State or inter-State supplies shall be paid by the Electronic Commerce Operator (ECO).	ECO [Sec. 9(5) of CGST Act, 2017]

Electronic Commerce Operator:

Electronic Commerce Operator has been defined in section 2(45) of the CGST Act, 2017 to mean any person who owns, operates or manages digital or electronic facility or platform for electronic commerce.

As per section 22(1) of the CGST Act, 2017, person whose aggregate turnover in the previous financial year exceeds ₹20 lakh (₹10 lakh for specified States) shall be liable to obtain registration compulsorily.

Thus, if the aggregate turnover in the previous financial year of any hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes not exceeds ₹20 lakh (or not exceeds ₹10 lakh for special category States) and such person exclusively makes supply of accommodation service through Electronic Commerce Operator (ECO), the liability to pay GST will be on the Electronic Commerce Operator (ECO).

On the other hand, if the person exclusively makes supply of accommodation service through Electronic Commerce Operator (ECO) and his aggregate turnover exceeds ₹20 lakh (or exceeds ₹10 lakh in case of special category States), the liability to pay GST will be on the person providing the service and not on the Electronic Commerce Operator (ECO).

Practical theory:

Whether a person supplying goods or services through e-commerce operator would be entitled to threshold exemption?

Answer: No. Section 24(ix) of the CGST Act, 2017 lays down that the threshold exemption is not available to such persons and they would be liable to be registered irrespective of the value of supply made by them. This requirement is, however, applicable only if the supply is made through such electronic commerce operator who is required to collect tax at source under section 52 of the CGST Act, 2017.

However, where the e-commerce operators are liable to pay tax on behalf of the suppliers under a notification issued under section 9(5) of the CGST Act, 2017, the suppliers of such services are entitled for threshold exemption.

Example: Raman Hotels supplying only accommodation services in Chennai. Turnover of Raman Hotels is less than 20 Lakhs. Raman Hotels listed hotel on online platform namely Makemytrip.

The following categories of rooms get booked by the Makemytrip company who pay to Raman Hotels after deducting their commission.

- Declared value per room (category 1), Non AC Room ₹950 per Night.
- Declared value per room (category 2), AC Room ₹1,800 per Night.
- Declared value per room (category 3), AC Room ₹7,000 per Night, where additional bed ₹1,800 per Night.
- Declare value per room (category 4), AC Room ₹10,000 per Night, but amount charged is ₹7000.

You are required to answer:

- who is liable to pay GST and (b) Net GST liability?

Answer:

- ECO namely MakeMyTrip is liable to pay GST

(b) Particulars	Value in ₹	GST ₹	Remarks
(a) Declared value ₹950	950	114	taxable supply w.e.f. 18-07-2022. GST 12%
(b) Declared value ₹1,800	1,800	216	Taxable supply. GST @12% is applicable
(c) Declared value ₹7,000	8,800	2,464	Taxable supply. Since, declared value exceeds ₹7,500, applicable rate is 28%. GST will be charged on transaction value.
(d) Declared value ₹10,000	7,000	1,260	Taxable supply. Since, declared value not exceeds ₹7,500, applicable rate is 18%. GST will be charged on transaction value.
Total		4,054	

3. Housekeeping services notified under Section 9(5) of the CGST Act, 2017:

The GST council on January 18th, 2018 announced, reduction of GST rate for housekeeping services from 18% to 5%. This comes as a big relief to Online housekeeping service providers.

Prior to this, the ecommerce platforms offering housekeeping services were mandated to discharge the GST liability of 18% on behalf of the service providers like electricians, plumbers etc making the services more expensive on the platform, as compared to offline services. This is because, services provided offline do not have to pay GST if the total revenue of the service provider is less than ₹20 lakhs and therefore there are no registration requirements.

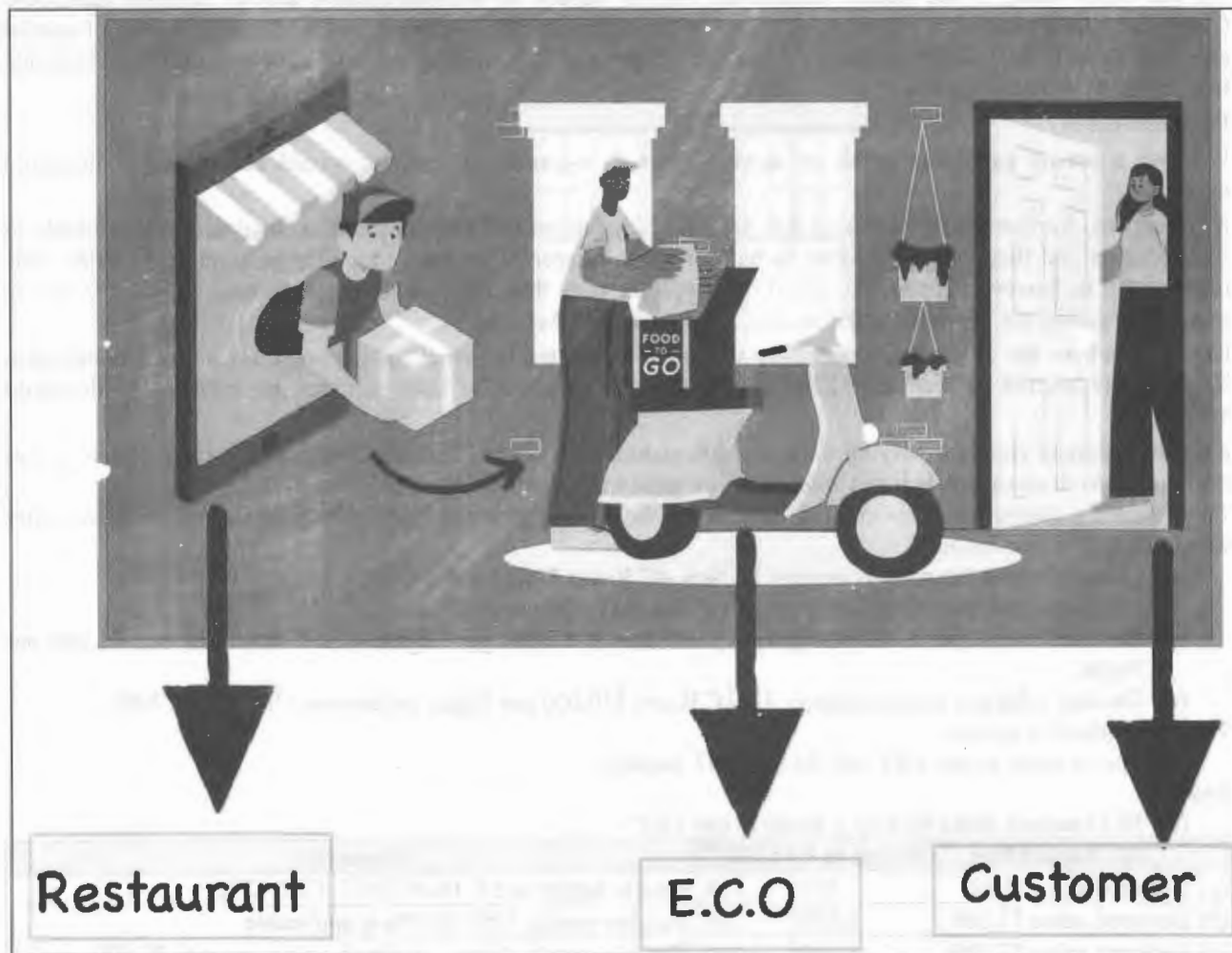
In November 2017, the benefit of revenue threshold limit of ₹20 lakhs was extended to persons providing services through e-commerce platforms.

w.e.f. 25.1.2018, Small housekeeping service providers such as plumbing, carpentering etc., notified under section 9(5) of CGST Act, who provide housekeeping services through ECO – GST rate of 5% without input tax credit.

4. W.e.f 1-1-2022 Supply of Restaurant Services (i.e. Cloud Kitchen) other than the services supplied by restaurant, eating joints etc., located at specified premises:

GST on service supplied by restaurants through e-commerce operators (CBIC Circular No. 167/23/2021-GST Dated 17th December 2021):

- U/s 9(5) of the CGST Act, 2017 E.C.O. is not required to collect TCS.
- As E.C.Os are already registered under GST and hence no separate registration is required to pay tax on restaurant services u/s 9(5).



3. ECOs will be liable to pay GST on any restaurant service supplied through them including by an unregistered person.

4. ECO would be eligible to ITC as before. Accordingly, it is clarified that ECO shall not be required to reverse ITC on account of restaurant services on which it pays GST in terms of section 9(5) of the Act. It may also be noted that on restaurant service, ECO shall pay the entire GST liability in cash.

5. The invoice in respect of restaurant service supplied through ECO under section 9(5) will be issued by ECO.

PRACTICAL THEORY:

Mr. A, a taxable service provider, provided taxable supply of services to Mr. B. The contract of service entered into between them stipulated that Mr. A will bear all the taxes, duties and other liabilities in connection with discharge of his obligations. While the service was being provided, an amendment in the law shifted the liability to pay GST in case of such taxable supply of services from service provider to service receiver retrospectively, i.e. reverse charge provisions were made applicable.

You are required to answer the following questions with the help of the decided case law(s), if any:

- (i) Can Mr. B, who is the person liable to pay GST under reverse charge, shift the burden of such GST on Mr. A by deducting the same from the payment made against the bills raised by Mr. A?
- (ii) Can Mr. B ask the Revenue to recover GST from Mr. A since the contract of service stipulates that Mr. A will bear all the taxes, duties and other liabilities in connection with discharge of his obligations?

(CA Final RTP May 2016 modified)

Answer:

- (ii) Yes. As per the *Rashtriya Ispat Nigam Ltd. v Dewan Chand Ram Saran* 2012 (260) STR 289 (SC), Mr. B can shift the burden of GST on Mr. A by deducting the same from the payment made against the bills raised by Mr. A.

- (ii) No. As per the **Delhi Transport Corporation v Commissioner Service Tax 2015 (038) STR 673 (Del)**, Mr. B cannot ask the Revenue to recover GST from Mr. A since the contract of service stipulates that Mr. A will bear all the taxes, duties and other liabilities in connection with discharge of his obligations.

CASE LAW:

Rashtriya Ispat Nigam Ltd. v Dewan Chand Ram Saran 2012 (260) STR 289 (SC):

Point of dispute: Whether the service tax liability created under law can be shifted by a clause entered in the contract?

DECISION: YES. ASSESSEE CAN CONTRACT TO SHIFT THEIR LIABILITY.

Regarding transferring of service tax liability by way of contract was correct. It means service provider will bear all the taxes, and service receiver can shift the burden of service tax payable by him to service provider by deducting the same from the bills raised by service provider.

CASE LAW:

Delhi Transport Corporation v Commissioner Service Tax 2015 (038) STR 673 (Del)

Facts of the Case: The appellants entered into contracts with seven various agencies for display of advertisements; inter alia, on bus-queue shelters and time-keeping booths. The terms of the contract clearly stated that it would be the responsibility of the contractors/advertisers to pay directly to the concerned authority the tax/levy imposed by such authority in addition to the license fee.

Department issued show cause notice asking the appellant (service provider) to pay service tax along with interest and penalties on the service of display of advertisements rendered by them.

Appellant's Contentions: The appellant argued that they were under a *bona fide* belief that the liability to remit service tax stood transferred to the recipient as per the agreements; this caused the failure to file returns and remit service tax. They relied upon *Rashtriya Ispat Nigam Limited v Dewan Chand Ram Saran 2012 (26) STR 289 (SC)* to urge that having entered into the contracts in the nature mentioned above, it was a legitimate expectation that the service tax liability would be borne by the contractors/advertisers and, thus, there was no justification for the appellant being held in default or burdened with penalties.

Decision: The High Court held that undoubtedly, the service tax burden could be transferred by contractual arrangement to the other party. However, on account of such contractual arrangement, the assessee cannot ask the Revenue to recover the tax dues from a third party (the other party) or wait for discharge of the liability by the assessee till it has recovered the amount from its contractors (the other party).

Therefore, the appellant was an assessee, and statutorily bound to not only get itself registered but also submit the requisite returns as per the prescription of law and rules framed thereunder.

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Quick Revision

