

**CASE STUDY**

**Part I – Issues pertaining to Input Tax Credit (“ITC”) under Goods and Services Tax Act (“GST”)**

**Case No. 01 – The issue of availment and utilization of compensation cess paid on procurement**

1. Utilization of compensation cess paid on procurement of coal when no compensation cess is payable on the output supply
  - ABC Limited is engaged in manufacture of aluminium at its plant located in the State of Madhya Pradesh. Output supply of aluminium by Madhya Pradesh branch is exigible to GST.
  - For manufacturing aluminium, ABC requires power which is generated captively. In order to produce power, ABC requires coal which is supplied to it from ABC’s own branch located in the State of Chhattisgarh. Thus, resulting in a supply between distinct person in terms of Section 25 of Central Goods and Services Tax Act, 2017 (“CGST Act”).
  - On supply of coal from Chhattisgarh branch to Madhya Pradesh branch, in addition to IGST, compensation cess of Rs. 400/ tonne is charged in accordance with Section 8(1) of the Goods and Services Tax (Compensation to States) Act, 2017 (“Compensation Cess Act”) read with Notification No. 01/2017 – Compensation Cess (Rate) dated 28<sup>th</sup> June, 2017. However, on output supply of aluminium from the Madhya Pradesh branch, no compensation cess is charged. Accordingly, in terms of proviso to Section 11(2) of the Compensation Cess Act, credit of input tax paid towards compensation cess cannot be utilized.

*In light of the factual matrix in this case, ABC Limited seeks to understand the following:*

- 1.1. How will valuation provisions apply in relation to inter-branch transfer between Chhattisgarh and Madhya Pradesh? Given that credit of compensation cess is not available to the Madhya Pradesh branch, whether second proviso to Rule 28 of Central Goods and Service Tax Rules, 2017 (“CGST Rules”) can be applied in the present case?

**Relevant legal provisions**

- Rule 28 provides for value of supply of goods between distinct persons.
- Proviso to Rule 28 reads as under:

*“Provided further that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services.”*

- Section 11 of the Compensation Cess Act provides for applicability of all provisions relating to ITC under the CGST and Integrated Goods and Services Tax Act, 2017 (“IGST Act”) and the rules made under both the Acts, *mutatis mutandis* to Compensation Cess Act

- 1.2. Can the factor that levy is not on the basis of value (but on the basis of quantity) be considered for non-applicability of valuation rules?

**Relevant legal provisions**

- Section 8(2) of the Compensation Cess Act is the charging provision:

*“Levy and collection of cess.*

*(2) The cess shall be levied on such supplies of goods and services as are specified in column (2) of the Schedule, on the basis of value, quantity or on such basis at such rate not exceeding the rate set forth in the corresponding entry in column (4) of the Schedule, as the Central Government may, on the recommendations of the Council, by notification in the Official Gazette, specify:*

*Provided that where the cess is chargeable on any supply of goods or services or both with reference to their value, for each such supply the value shall be determined under section 15 of the Central Goods and Services Tax Act for all intra-State and inter-State supplies of goods or services or both:*

*Provided further that the cess on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 (51 of 1975), at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962 (52 of 1962), on a value determined under the Customs Tariff Act, 1975.*

2. Utilization of compensation cess paid on procurement of soft drinks when no compensation cess is payable on the output supply
  - Break Inn being a 5-star hotel is engaged in providing restaurant services to its guests. To meet the demands and expectation of the guests, Break Inn also procures soft drinks as well as tobacco products such as cigarettes, cigars, etc.
  - In accordance with Section 8(1) of the Compensation Cess Act read with Notification No. 01/2017 – Compensation Cess (Rate) dated 28<sup>th</sup> June, 2017, compensation cess is levied on supply of soft drinks as well as tobacco products.
  - Soft drink which is procured by Break Inn upon payment of GST and compensation cess is served by the Restaurant on which GST at the rate of 18% (i.e. rate applicable on restaurant service by 5-star hotels) is levied and collected by Break Inn. Soft drink is also mixed for preparing cocktails at the bar on which Value Added Taxes (“VAT”) is charged by Break Inn. No compensation cess is charged and collected by Break Inn.
  - Similarly, the tobacco is procured by Break Inn however, sold by charging GST. No compensation cess is charged and collected by Break Inn on sale of tobacco.

*In light of the factual matrix in this case, Break Inn seeks to understand the following:*

- 2.1. Whether Break Inn is appropriately charging and collecting GST on soft drinks and tobacco served at the hotel as ‘restaurant service’ on which GST at the rate of 18% is levied? If yes, what should be the treatment of credit of compensation cess paid on procurement of soft drink and tobacco?

- 2.2. Can Break Inn supply tobacco products by applying GST rate as per the schedule along with compensation cess and utilize the ITC of compensation cess paid on soft drink (in addition to the ITC of compensation cess on tobacco)? Can this supply be above MRP in terms of the Legal Metrology Act and the Standards of Weights and Measures Act, 1976?

**Relevant legal provisions**

- Section 11 of the Compensation Cess Act for applicability of all provisions relating to ITC under the CGST Act and IGST Act and rules made under both the Acts, *mutatis mutandis* to Compensation Cess Act
- Proviso to Section 11(2) of Compensation Cess Act – where compensation cess is not applicable on outward liability, ITC of compensation cess cannot be utilized
- In a Special Leave Petition (“SLP”) filed by the Federation of Hotel and Restaurant Associations of India against the Union of India, the Apex court held that when hotels and restaurants sell food and drinks, they also render a service, making it a composite transaction with composite billing and MRP rates cannot be insisted upon for such entities. The relevant extract of the judgement passed by the learned Single Judge is reproduced hereunder for reference:

*“In the above analysis I hold that charging prices for mineral water in excess of MRP printed on the packaging, during the service of customers in hotels and restaurants does not violate any of the provisions of the SWM Act as this does not constitute a sale or transfer of these commodities by the hotelier or Restaurateur to its customers. The customer does not enter a hotel or a restaurant to make a simple purchase of these commodities. It may well be that a client would order nothing beyond a bottle of water or a beverage, but his direct purpose in doing so would clearly travel to enjoying the ambience available therein and incidentally to the ordering of any article for consumption.”*

- It was further clarified that neither the Standards of Weights and Measures Act, 1976 read with the enactment of 1985, or the Legal Metrology Act, 2009, would apply so as to interdict the sale of mineral water in hotels and restaurants at prices which are above the MRP.

**Case No. 02 – The issue of eligibility of input tax credit on CSR expenditure**

- Seva Limited is a company incorporated under the Companies Act, 2013. As per Companies Act, 2013, it has to spend specific amount of profits towards Corporate Social Responsibility (“CSR”) activities.
- Accordingly, in furtherance of its CSR obligations, it incurred expenses worth INR 2 Crores in relation to floor training to underprivileged children enrolled with a charitable organization. These expenses were towards providing proper uniforms and equipment to the children, supervision of children, canteen services etc.

In light of the factual matrix in this case, Seva Limited seeks to understand the following:

- 1.1. Whether Seva Limited is eligible to avail and utilize ITC towards expenses incurred in relation to the floor training to the underprivileged children being expenses incurred in the course or furtherance of business?

**Relevant Legal Provisions**

- Section 16 of CGST Act provides that ITC can be claimed on tax charged on *any supply of goods or services or both to him which are used or intended to be used ‘in the course or furtherance of his business’*
- Section 2(17) of CGST Act defines the term “business” which reads as follows:  
*“(17) “business” includes—*  
*(a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;*  
*(b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);*  
*(c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;*  
*(d) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;*  
*(e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members; (f) admission, for a consideration, of persons to any premises;*  
*(g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;*  
*(h) services provided by a race club by way of totalisator or a licence to book maker in such club ; and*  
*(i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities; “*
- Section 17(1) of the CGST Act provides for reversal of credit availed on non-business activities.

- Undertaking CSR is a statutory requirement under Companies Act, 2013. Companies (Corporate Social Responsibility Policy) Rules, 2014 clarifies that CSR spends exclude 'activities undertaken in pursuance of the normal course of business of the Company'
- Section 17(5) of the CGST Act does not restrict credit on CSR activities specifically
- Section 17 of the Income Tax Act, 1961 specifically disallows claiming of deduction of expenses incurred towards CSR as business expenditure. However, there is no specific restriction under GST law for availing ITC on expenses towards CSR

**Case No. 03 – The issue of reversal of ITC *vis-à-vis* outward supply of service where GST is payable on reverse charge basis**

- ABC Ltd. is a sporting company, engaged in conceptualizing and orchestrating football matches at various locations. ABC Ltd. is registered as a supplier under GST and its major revenues flow from: (i) sale of tickets for admission to the football matches (comprises approx. 40% revenue) and, (ii) supply of sponsorship service to body corporates (comprises approx. 60% revenue). For the purpose of rendering these services, ABC Ltd. procures various goods and services which are either commonly used for the business or, are directly used for making specific outward supply.
- ABC Ltd. avails ITC of GST paid on input goods and services which are used in the course and furtherance of its business i.e. which are used as input goods and service in supply of services mentioned above.
- In terms of Sr. No. 4 of Notification No. 13/2017- Central Tax (Rate) dated 28.06.2017, GST on supply of sponsorship service by any person to a body corporate or partnership firm (in the taxable territory) is to be paid on reverse charge basis by the recipient of the service i.e. the sponsors in the present case. It deserves attention that supply of sponsorship service is not exempt from levy of GST and tax is payable on such supply by the respective sponsors on reverse charge basis, and accordingly, no GST is payable in the hands of ABC Ltd. on such supplies.
- In terms of Section 17(2) of the CGST Act, a registered who is engaged in supply of both taxable as well as exempt supplies, shall only avail ITC which is attributable to taxable supplies.

In light of the factual matrix in this case, ABC Ltd. seeks to understand the following:

1. Whether supply of sponsorship service by ABC Ltd. would be considered as 'exempt supply' in the hands of ABC Ltd.?
2. Whether ABC Ltd. is required to reverse proportionate common ITC of GST paid on input goods and services which are used in supplying sponsorship service?
3. Whether ABC Ltd. is obliged to forgo the ITC of GST paid on input goods or services which are directly attributable to supply of sponsorship service?

**Relevant legal provisions**

Section 17(2) of the CGST Act:

*"Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Service Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies."*

Section 17(3) of the CGST Act:

*“The value of exempt supply under sub-section (2) shall be such as may be prescribed, and shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.*

*Explanation.- For the purposes of this sub-section, the expression "value of exempt supply" shall not include the value of activities or transactions specified in Schedule III, except those specified in paragraph 5 of the said Schedule.”*

Section 2(47) of the CGST Act:

*“**exempt supply** means supply of any goods or services or both which attract nil rate of tax or which may be exempt from tax under section 11 or under section 6 of the Integrated Goods and Services Tax Act, and includes non taxable supply”*

Section 2(78) of the CGST Act:

*“**non-taxable supply** means a supply of goods or services or both which is not leviable to tax under this Act or under the Integrated Goods and Services Tax Act;”*

Section 2(108) of the CGST Act:

*“**taxable supply** means a supply of goods or services or both which is leviable to tax under this Act;”*

**Case No. 4 – GST on transfer of land development rights by landowner**

- Buildco is a private limited company which is intending to enter into a profit share basis deal with a landowner located in Mumbai. The landowner owns contiguous land parcel of approximately 50 acres.
- Buildco and the landowner are planning plotted development on the land parcel which will be sold in the open market. For this purpose, Buildco and the landowner are intending to create an SPV, to which the development rights of the land parcel shall be transferred. Buildco and landowner will hold x% and y% in the SPV, respectively.
- Buildco is required to pay interest free refundable security deposit through Special Purpose Vehicle (“SPV”) to the landowner, which will be recoverable from the landowner’s profit share.
- Buildco will play the active role in developing the plots, through the SPV. SPV, being developer of the project, shall develop the property with specified infrastructure development activities including putting in place sewerage line, electricity line, etc. SPV may bifurcate the consideration amount in the sale agreement entered between SPV and the customers into consideration for the sale of the plot and consideration for infrastructure charges. Alternately, the SPV may also charge a single unified consideration for the sale of the plot and for the infrastructure activities.

*In light of the factual matrix in this case, Buildco seeks to understand the following:*

1. Whether transfer of development rights from landowner to SPV will be subject to GST? If yes, whether SPV will be eligible to avail ITC of the GST paid on transfer of development rights?

- Notification No. 04/2019 – Central Tax (Rate) dated 29<sup>th</sup> March 2019 has amended Notification No. 12/2017 – Central Tax (Rate) (“Notification”) dated 28<sup>th</sup> June, 2017, which prescribes services that are exempt from GST. As per Serial No 41A of the Notification, the following is exempt from GST:

*“Service by way of transfer of development rights (herein refer TDR) or Floor Space Index (FSI) (including additional FSI) on or after 1st April, 2019 for construction of residential apartments by a promoter in a project, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier”.*

- As per para 5 of Schedule III of the CGST Act, sale of land is neither a supply of goods nor supply of services.

2. Whether ITC can be availed in relation to GST charged on input services availed in relation to infrastructure work undertaken in the project where a single unified consideration is charged by the SPV for sale of the plot?
3. In case SPV bifurcates the sale agreement with the customer by charging land value and infrastructure charges separately, whether SPV will be able to utilize ITC of GST charged on input



service in relation to infrastructure work towards output liability of infra charges, if infra charges are subject to GST?

- Section 16. (1) Every registered person shall, subject to such conditions and restrictions as may be prescribed<sup>75</sup> and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

.....

- Section 17. (1) Where the goods or services or both are used by the registered person partly for the purpose of any business and partly for other purposes, the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business.

(2) Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.

(3) The value of exempt supply under sub-section (2) shall be such as may be prescribed, and shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.

[Explanation.—For the purposes of this sub-section, the expression "value of exempt supply" shall not include the value of activities or transactions specified in Schedule III, except those specified in paragraph 5 of the said Schedule.]

**Part 2 – Issues pertaining to valuation under CGST Act**

**Case No. 5 – Valuation in case of renting of machinery to related entity**

- Alfa is a company located in the State of Maharashtra and is engaged in export of polished diamonds (“Goods”) manufactured by Beta who is located in the State of Gujarat and is acting as a job worker for cutting and polishing of rough diamonds for Alfa which activity is chargeable to GST at the rate of 1.5%. Both Alfa and Beta are related in terms of the *Explanation* to Section 15 of the CGST Act.
- In order to manufacture Alfa’s goods as a job worker, Beta is using certain machineries which are owned by Alfa and has been provided to it for manufacturing activity. Alfa is not charging consideration for renting the machinery to Beta. Apart from export of goods, Alfa is also engaged in supplies which are exempt under GST law.
- For undertaking job work activities, Beta is charging Alfa a consideration which is calculated on a cost plus basis.
- Beta also owns certain machinery which it has rented to Alfa for undertaking manufacturing activity. Beta is not charging any consideration from Alfa for renting of such machinery. However, cost of job work activities provided by Beta to Alfa also includes the depreciation calculated on the machinery provided by Beta to Alfa as per the Companies Act, 2013.

*In light of the factual matrix in this case, Alfa and Beta seek to understand the following:*

1. GST on machinery provided by Alfa to Beta
  - 1.1. Whether Beta is required to determine and include the value for renting of machinery while determining the transaction value for supply of job work services i.e., should value for renting of machinery be added to the cost in terms of Section 15(2)(b) of the CGST Act? If yes, what will be the value of supply of machinery from Alfa to Beta especially when Alfa is also engaged in supply of exempt service?
2. GST on machinery provided by Beta to Alfa
  - 2.1. Where machinery owned by Beta is rented to Alfa, whether Beta is required to recover GST on the value of supply from Beta to Alfa, even though it is without any consideration?
  - 2.2. If Beta is already including the amount of depreciation on machinery to the transaction value for supply of job work service on which GST is computed, whether inclusion of depreciation on machinery would be deemed as recovery of consideration for renting of machinery by Beta to Alfa?

**Relevant legal provisions**

- Section 15 of the CGST Act – value of taxable supply

*“Section 15: (1) The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.*

*(2) The value of supply shall include—*

*(a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;*

*(b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both”*

- Rule 28 provides for value of supply of goods between distinct persons.

*“Value of supply of goods or services or both between distinct or related persons, other than through an agent.-The value of the supply of goods or services or both between distinct persons as specified in sub-section (4) and (5) of section 25 or where the supplier and recipient are related, other than where the supply is made through an agent, shall-*

*(a) be the open market value of such supply;*

*(b) if the open market value is not available, be the value of supply of goods or services of like kind and quality;*

*(c) if the value is not determinable under clause (a) or (b), be the value as determined by the application of rule 30 or rule 31, in that order:*

*Provided that where the goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to ninety percent of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person:*

*Provided further that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services.”*

- Schedule I in terms of Section 7 of the CGST Act:

**“ACTIVITIES TO BE TREATED AS SUPPLY EVEN IF MADE WITHOUT CONSIDERATION**

**1. ....**

**2. Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business”**

**Case No. 6 – GST on supply of moulds and dyes**

- Cam Co. is a manufacturer of camera and has entered into a contract with Insta Pvt. Ltd. to manufacture certain parts of cameras.
- As per the contract, Cam Co. would procure moulds and dies from third party and provide the same to Insta Pvt. Ltd. for manufacturing the parts of camera on free of cost basis.
- It has also been agreed that for a certain period, the parts of camera will be manufactured by Facebook Pvt. Ltd using its own moulds and dies, but, subsequently, the same will be supplied by Cam Co.

*In light of the factual matrix in this case, the following questions emerge:*

1. Whether providing of moulds and dies by Cam Co. to Insta Pvt. Ltd. on FOC basis constitutes a supply under GST? If your answer is negative, whether Cam Co. would be required to reverse input tax credit on such moulds and dies?
2. Whether the value of moulds and dies supplied by Cam Co. be included the value of supply made by Insta Pvt. Ltd. to Cam Co.?
3. As per the agreement, the parts were to be manufactured by Insta Pvt. Ltd. using its own moulds and dyes, but, subsequently, such moulds and dyes are replaced by Cam Co. for Insta Pvt. Ltd., would the value of moulds and dies be includible in the supply made by Insta Pvt. Ltd. to Cam Co. If yes, how will you determine the value of parts supplied by Insta Pvt. Ltd. to Cam Co.? Would Cam Co. be able to claim the credit of moulds and dyes supplied to Insta Pvt. Ltd.?

**Relevant legal provisions**

- Section 15 of CGST Act provides that value of services shall include any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both
- Rule 27 of CGST Rules deals with value of supply of goods or service where the consideration is not wholly in money and provides as follows:

*“Where the consideration is not wholly in money, the value of the supply shall be,*

*(i) Be the open market value of such supply;*

*(ii) if the open market value is not available under clause (a), be the sum total of consideration in money and any such further amount in money as is equivalent to the consideration not in money, if such amount is known at the time of supply;*

- (iii) if the value of supply is not determinable under clause (a) or clause (b), be the value of supply of goods or services or both of like kind and quality;*
- (iv) if the value is not determinable under clause (a) or clause (b) or clause (c), be the sum total of consideration in money and such further amount in money that is equivalent to consideration not in money as determined by the application of rule 30 or rule 31 in that order”*

**Case No. 7 – Cross Charge**

- XYZ Limited is engaged in the business of manufacturing and sale of goods and operates through a head office ('HO') in Maharashtra and manufacturing units across various states. XYZ Limited is registered under GST in each State where it has a manufacturing unit and the HO has obtained a registration in Maharashtra, including an input service distributor ("ISD") registration.
- At one of the branches, XYZ limited manufactures and supplies books which are exempt under GST. At other branches, all the supplies are taxable under GST.
- The HO generally undertakes centralized corporate functions relating to secretarial work, corporate taxation, corporate accounts, treasury and centralized procurements for furtherance of business of XYZ Limited. The expenses incurred by XYZ Limited on account of the functions undertaken by the HO can be broadly categorised into the following –
  - Internal expense – This majorly includes payroll expense of employees at HO discharging the above referred common centralized functions
  - External expense – Expense incurred by HO for procurement of services (viz. audit service, legal service, telephone charges, insurance fees and rent-a-cab fees) from third party vendors which are used by and for the benefit of the XYZ Limited as a whole
- The books of accounts recording the income and expenses is maintained at the HO and at each unit. Such separate books of accounts enable the management to evaluate the financial performance of the XYZ Limited at the unit level. The above referred expenses are generally recorded in the books of accounts maintained at the HO. However, for cost accounting/management accounts purposes. The same may be allocated to various units.
- Section 25(4) of CGST Act provides that each office/location having separate GST registration is a "distinct person" under GST law. Further, as per Entry 2 of Schedule I of CGST Act, supply between "distinct" person is taxable, even if it is without consideration.
- As per Rule 28 of CGST Rules, value of supply without consideration between distinct person shall be:
  - (a) Open market value
  - (b) If the open market value is not available, be the value of supply of goods or services of like kind and quality
  - (c) If value is not determinable under (a) or (b), the value shall be 110% of the cost of goods or provision of services or reasonable means consistent with principles and general provisions
- Further, second proviso to Rule 28 of CGST Rules which pertains to valuation of supply between distinct and related persons provide that where the recipient is eligible for full credit, the value declared in the invoice shall be deemed to be the open market value of goods or service

In light of the factual matrix in this case, the following questions emerge:

1. As regards internal expense and external expense, can it be considered that HO is providing services to other manufacturing units of XYZ Limited and therefore GST has to be paid on the value of such supply?
2. If the answer to above is affirmative, on which type of expenses cross charge would be applicable and on which the type of expenses does credit need to be transferred through ISD mechanism?
3. If cross charge is required to be undertaken, what basis has to be followed for undertaking cross-charge to various units?
4. What will be the case where cross charge is to be done to an entity with:
  - a. Taxable turnover
  - b. Exempted turnover
5. Is it possible to raise cross charge invoice only for payment of GST liability i.e. reflecting the value in the invoice only for GST purposes without recording the expense in books of accounts?
6. Is it a requirement for the manufacturing unit to make payment to HO for claiming ITC?

**Relevant Legal Provisions**

- Section 25(4) provides that each office/location having separate GST registration is a “distinct person” for GST
- As per Entry 2 of Schedule I of CGST Act, supply between “distinct” person is taxable, even if it is without consideration
- As per Rule 28 of CGST Rules, value of supply without consideration between distinct person shall be:
  - (a) Open market value
  - (b) If the open market value is not available, be the value of supply of goods or services of like kind and quality
  - (c) If value is not determinable under (a) or (b), the value shall be 110% of the cost of goods or provision of services or reasonable means consistent with principles and general provisions
- Further, second proviso to Rule 28 of CGST Rules which provides for valuation of supply between distinct and related persons, provide that where the recipient is eligible for full credit, the value declared in the invoice shall be deemed to be the open market value of goods or service