WIRC

MEGA SERIES ON IMPACT OF GST ON SECTORS

ISSUES IN INPUT TAX CREDIT

Preamble:

GST is a biggest indirect tax revolution in our nation. One year is almost over after its implementation. Many legal and practical issues have surfaced in last one year. The tax payers, tax professionals and tax administrators all are still struggling to cope up with this new legislation.

WIRC has organized 'Mega series on impact of GST on Sectors' for participants having reasonable knowledge on Goods and Service Tax (GST) to deliberate on Input Tax Credit issues for various sectors. This being advanced course, I intend to deal with the subject allotted to me in case studies format.

This paper consists of case studies on issues in input tax credit faced by some sectors. There could be several dimensions and many view points on case studies under deliberation. These issues/controversies might come up for testing by judicial forums at later date.

The case studies are now put up for deliberation:

<u>General</u>

1. ABC Private Limited ('ABC') is a start-up company incorporated in **April 2018**. It registered itself under GST in **July 2018** as aggregate turnover crossed Rs. 20 lakhs. It had incurred heavy research and marketing expenditure during the period **April to June 2018** on which it had paid GST of Rs. 50 lakhs. ABC did not avail the ITC in the period April to June 2018 as it was not registered. Can ABC avail the ITC of Rs. 50 lakhs in **July 2018** upon registration?

2. A proprietary concern (dealing in chemicals) is registered in Maharashtra.

- The proprietor has sold plot of land at Bhiwandi adjacent to his go-down for Rs. 1.5 crore which was acquired by proprietor in his personal name. Even sales proceeds are deposited in personal saving account.
- Proprietor also does trading in shares and income from share trading of shares is reflected in books of proprietary concern.

Whether reversal of ITC of common expenses is required in above cases?

Manufacturing

3. A dealer in oil purchased 25000 liters of oil from manufacturer. The manufacturer raised invoice for 25000 liters. There was an evaporation and normal loss of about 500 liters in transit. The stock records of dealer shows actual receipt of 24500 liters. The purchase invoice of 25000 liter is fully booked in the accounts and input tax credit charged by manufacturer in its invoice has been claimed.
Whether the dealer would be eligible to claim credit of GST on entire invoice i.e., 25000 liters or the same would be restricted to 24500 liters i.e actual receipt in the factory?
4. In FMCG sector it is very common to give sales linked incentives to dealers/ wholesalers in kind (gold coins, durables, etc.). This has been loosely termed as 'gifts' in official communications. What will be the ITC implications of the transaction?
5. A partnership firm engaged in manufacturing has:

- Acquired transport motor vehicle for transportation of goods for Rs. 17,00,000. It has paid Rs. 3,00,000 for body work and Rs. 90,000 as insurance at the time of purchase.

- Purchased bus for Rs. 12,00,000 for transportation of its workers from city to factory.
- One of the partners, a registered person, has acquired motor vehicle & given the same on hire to Firm. The car is used for the purpose of business.
- Purchase new car to be used by partner or senior executive of the firm.
- Repairs & maintenance of all the above vehicles.

What are the ITC implications of each of the above transactions for firm as well as partners (wherever applicable)?

<u>Real Estate</u>

6. Builder enters into joint development agreement with land owner on revenue sharing basis where the land owner is entitled to receive 40% of the sale proceeds of the flats sold by builder.
   Owner has charged GST to builder on transfer of Development rights. Whether builder will be entitled to take input tax credit of the same? If yes, at what point of time he can avail the credit?

7. If some flats remain unsold at the time of receipt of Occupancy Certificate (OC) / Building Completion Certificate (BCC), whether developer is obliged to reverse input tax credit? Please mention mechanism of reversal.

   <u>Illustration:</u>

   A developer started project in July 2016. Anticipated date for project completion is June 2020. The project consists of 200 flats. Developer intends to sell 150 flats under construction and 50 flats after completion.

   Anticipated ITC credit would be as under:

Financial Year	**ITC of**	**Amount (in Rs.)**
2016-17	Service Tax	20,00,000
April 17 to June 17	Service Tax	3,00,000
July 17 to March 18	GST	40,00,000
2018-19	GST	20,00,000
2019-20	GST	12,00,000
April 20 to June 20	GST	5,00,000
	Total	**1,00,00,000**

Developer is confused about the reversal.

a) Should he reverse 25% of Cenvat/ITC credit as 25% of the flats will be sold after completion?

b) Law provides for reversal in the proportion of value of exempted supply to total supply. Whether taking unsold area as a base is right method of reversing the ITC?

c) Whether the reversal should be 25% of Rs. 1 crore or only 25% of Rs. 5,00,000 i.e. ITC of the year in which project was completed?

d) At what stage ITC should be reversed, i.e. date on which construction is completed or when flats are sold?

8. 'A' Limited is constructing a mall. Whether it will be entitled to credit of following:

a) Installation of capsule lifts and elevators;

b) Installation of Centralised Air Conditioning System (compressor fixed to the floor by way of foundation) and carrying out incidental ducting and piping activities.
c) Underground water tank, water pumps, external plumbing and overhead tanks
d) Electricity transformer, cabling and wiring
e) Fire fighting system
f) Landscaping expenses
g) Concealed electrical work in the premises
h) Concealed plumbing work in the premises

Service

9. A Software Company has a corporate house at Andheri.

a) The said company incurs huge expenses on providing food and beverages to its employees.

b) Bus hire charges for pick up and drop of its employees.

c) The corporate house building being old, a company has carried out certain alterations/repairs/additions within its corporate house viz.,

i. Construction of partitioning walls so as to make cabins for its corporate personnel.
ii. Putting up flexible cubicles within the rooms for providing seating space to its employees.
iii. Change of flooring
iv. Painting of building

What are the ITC implications of above?

Import/Export

10. An importer is engaged in high sea sale, bonded warehouse sales and third party exports (drop shipments / out and out exports). These are not taxable under present GST legislation as per clarifications given or advance rulings. Whether these need to be considered as exempt supply for working out reversal of ITC?

    Whether the importer is entitled to take ITC of all such expenses?

    Whether person exclusively dealing in third party exports is entitled to claim refund of ITC accumulation?

Retail and Distribution

11. An Electronic dealer has a scheme of giving juicer free to customer for purchase of TV. It also gives gift of iron to its staff on Diwali. What are the ITC implications for above?

Entertainment

12. A Film Production House (FP) registered in Maharashtra is producing a movie for which they have to visit different locations outside Maharashtra. They incur following expenses:

    a) Hire charges for Studios and locations outside Maharashtra.

    b) Hotel accommodations for artists and staff at different locations.

    c) Food procured for artists from various restaurants in different locations.

    d) Outdoor caterer for providing food to staff and others at different locations.

    e) Services of beauticians from Maharashtra, local places and also from abroad.

    f) Hire of Vanity vehicles for lead actor and actress.

    h) Dietician services for monitoring diet of his lead actor and actress.

    i) Travel agent arranging travel for staff from hotel to locations for staff and others such as extra, light man etc.

j) Accident insurance for their staff personnel and stunt masters. The said insurance is on group basis.

k) Services of local choreographer.

l) Supplier of junior artists and dancers.

m) Line production charges paid to foreign line producer.

Whether FP will be entitled to credit of GST charged in respect of above services?

Hospitality and restaurants:

13. A Welcome hotel is taken on conductorship basis by Ibis Hotel. This hotel consists of 100 rooms. The standard rent is Rs.5000/day and GST charged thereon is 18%. There are two restaurants in hotel premises (managed by Ibis only) which is charging GST at 5%.

    The Ibis is now concerned about ITC in respect of conducting charges, security charges, manpower supply charges and housekeeping charges which are common for both hotel and restaurant business. Kindly advice Ibis.