

GST NEWSLETTER

ISSUE 07 | DECEMBER 2021

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**GST Newsletter:
Compiled And Edited By**

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ARTICLE

Concept Of Pure Agent Under GST & Whether GST Is Payable On Reimbursements

Introduction


The GST Act defines an Agent as a person including a factor, broker, commission agent, arhatia, del credere agent, an auctioneer, or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another. In other words, an agent is a person who supplies goods or service or both on behalf of its principal whether disclosed or not. Under the GST law, any person who makes a taxable supply of goods or services or both on behalf of other taxable persons, whether as an agent or otherwise, is compulsorily required to obtain GST registration without any basic exemption limit. He is also required to pay GST on all taxable supplies made by him.

✔ Who Is A Pure Agent, And What Is Its Relevance?

A pure agent is a person who acts as an intermediary between various suppliers and his customer. He is the one who while making a main supply to his customer, also incurs expenditure on some other supply on behalf of the customer and claims reimbursement for such supplies from his customer. He claims reimbursement at actuals without adding it to the value of his own supply.

While the relationship between the pure agent and customer is on a principal-to-principal basis for the main service, the relationship between them is that of a principal- pure agent for other incidental services. The actual liability to pay should be of the person who reimburses the money to the original payer.





The liability should be clearly determined. It should not be an approximate or varying amount. The liability should have crystallised. There should be a clear ascertainable relationship between the paying and reimbursing parties. Therefore, alleged reimbursement by an unconnected person may not qualify. The payment should first be made by somebody whose liability it never was, and the repayment should then be made to that person to square off the account.

Take a hypothetical illustration wherein Airpro Ltd is an importer and VV Clearing Agency Pvt Ltd is a Customs Broker. Airpro Ltd approaches VV Clearing Agency Pvt Ltd for customs clearance work in respect of an import consignment, and they enter into a contract for the same. The contract is only with respect to custom clearance of goods. Now once the goods are cleared from customs, Airpro Ltd makes another contract with VV Clearing Agency Pvt Ltd, to incur expenditure on his behalf for procuring the services of a transporter and agrees to reimburse him for the transportation cost at actuals so that goods are received at its godown. In the given illustration, VV Clearing Agency Pvt Ltd provides Customs Brokers service to Airpro Ltd, which would be on a principal-to-principal basis. The ancillary service of transportation is procured by the custom broker on behalf of importer, as a pure agent and expenses incurred by custom broker on transportation should not form part of the value of Customs Broker service. This, in sum and substance, is the relevance of the pure agent concept in GST.

✔ **As Per Explanation To Rule 33 Of The GST Valuation Rules 2017, "Pure Agent" Is Defined As A Person Who –**

- Enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both.
- Neither intends to hold nor holds any title to the goods or services or both so procured or provided as pure agent of the recipient of supply.
- Does not use for his own interest such goods or services so procured; and
- Receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.

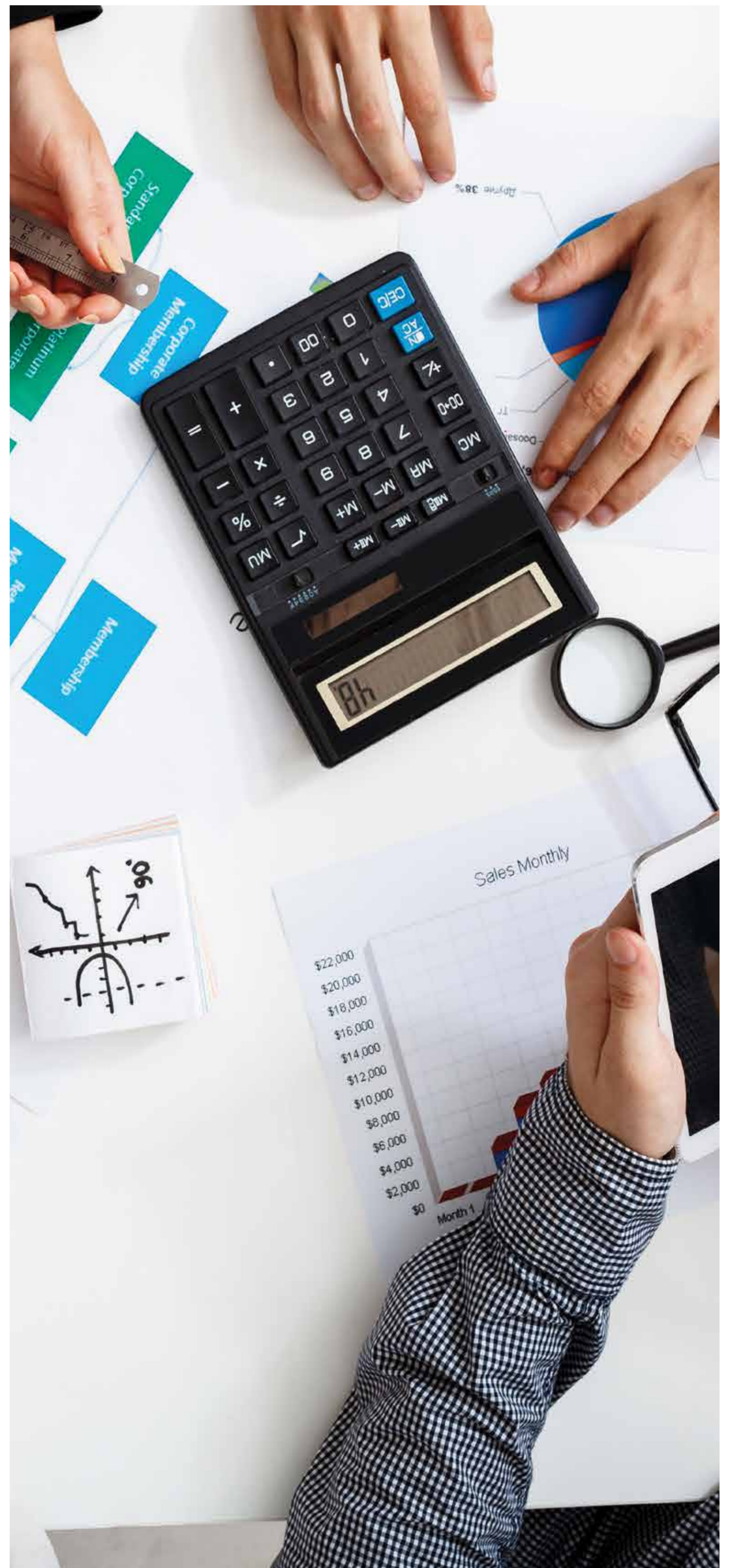
The important thing to note is that a pure agent does not use the goods or services procured for his own interest and this fact must be determined from the terms of the contract.


Let's consider the above illustration wherein Airpro has an agreement for clearance of goods and delivery of such goods to the importer at the price agreed upon in the same contract. In such case, the Customs Broker would be first, clearing the goods for Airpro as agreed and second, be required to transport the goods of Airpro to their warehouse.

The customs broker would also quote the price for the entirety of the services. Here, the Customs broker would be incurring the transport service for his own interest (as the agreement requires him to deliver the goods at the importer's place) along with carrying out the clearance of goods as well. Therefore, in this case, the transport services would not be in the nature of pure agent and the customs broker would invoice both the services to Airpro.

Another important fact is that the person who provides any service as a pure agent receives only the actual amount for the services provided. Coming back to our example of Importer and Customs Broker, the agreement provides reimbursement of transport services utilised at actuals. In this case, let's say the value of transport service was Rs. 10,000/-+1200/- for GST. Here, if the transportation invoice is the name of Airpro Ltd (Principal), Input tax credit of the same will be received by the principal and the amount shall be paid by the VV Clearing Agency Pvt Ltd (Pure Agent), which shall be reimbursed at a later stage by Airpro Ltd. Now, suppose the transportation invoice is in the name of VV Clearing Agency Pvt Ltd, then GST credit shall be availed by itself and VV Clearing Agency Pvt Ltd shall further bill the same amount on Airpro Ltd with GST so that chain of ITC is not broken and Airpro Ltd is able to avail ITC on transportation charges.

We can also take an illustration from the service industry point of view, wherein Incorp Advisory Pvt Ltd has received a contract to provide Trademark Registration services to Airpro Ltd, clearly mentioning that any governmental fees/deposit shall be collected at actuals.





Thus, while applying for Trademark registration, Incorp shall also be paying Government Registration Fees directly on government portal on behalf of Airpro Ltd. This Government Registration Fees is compulsorily levied on Airpro Ltd, and Incorp has merely acted as a pure agent in making payment of the fees. Therefore, while raising invoice to Airpro Ltd, Incorp shall be charging GST on only Trademark Registration services and Government fees reimbursement shall be separately mentioned in invoice without charging GST on it.

✔ **What Are The Conditions Under Which An Expenditure By A Pure Agent Is Excluded From Valuation?**

As per Rule 33 of CGST Rules, expenditure incurred by Pure Agent will be excluded from value of supply if all the following conditions are satisfied: -

- The supplier acts as a pure agent of the recipient of the supply when he makes the payment to the third party on authorisation by such recipient.
- The payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and
- The supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.

In case the conditions are not satisfied, such expenditure incurred shall be included in the value of supply under GST. Hence expenditure incurred as a pure agent becomes relevant when it comes to determining the value of a supply for levy of GST.

Further, it is recommended that the contract should be in writing, and the clauses of the agreement should clearly satisfy all the conditions of Rule 33. It also acts as strong evidence against any form of query raised by the department in the future. However, even if the contract is not in writing, there should be substantial evidence that clearly demonstrate the nature of pure agent such as name in the invoice/receipt of ancillary services shall be that of the principal who is the ultimate beneficiary, and the agent has only made payment to the supplier for convenience purpose.

Recent Advance Ruling On Subject Matter In A Recent Advance Ruling By The Karnataka Advance Ruling Authority (KAR ADRG 44/2021 Dated 30/07/2021) It Was Ruled That

The contract entered between the applicant and the recipient is for the hiring of DG Set and is a comprehensive contract with the consideration having a fixed component and a variable component. The fixed component is the monthly fixed rent charged in the invoice for the DG Set and the variable charge is the charge for diesel used. Both are the part of the same consideration and are for the contract of supplying DG Set on hire. Though it appears that the applicant is receiving the reimbursement of the diesel cost, the recipient is not paying for the diesel but for the services of the DG Set, which is an integral part of the supply of DG Set rental service. There is no separate contract for supply of diesel and the invoice issued for the reimbursement of diesel is nothing, but a supplementary invoice issued for the supply of rental service of DG Set. Hence, consideration for reimbursement of expense as cost of the diesel for running of the DG Set is nothing but the additional consideration for the renting of DG Set and attracts CGST @9% and KGST @9%

Consequently, the reimbursement of diesel in above case has to be included in rental value of DG Set as reimbursement is considered as an integral part of providing the rental service of DG Set.





Further In Case Of Karnataka AAR Of Karnataka State Warehousing Corporation

The applicant viz Karnataka State Warehousing Corporation is a State Government Undertaking, establishment during 1957. The applicant provides the services in relation to facilitation of handling & transport, loading & unloading of agricultural produce through Handling & Transport (H & T) contractors to the depositors such as Food Corporation of India (FCI). They use the services of the applicant, for storing of agricultural produce and collects supervisory charges from its depositors an amount equivalent to the actuals charged by the said H&T contractors plus 8% on the said charges towards the said service.

The applicant furnished a copy of the letter issued by the FCI, wherein the FCI communicated that the applicant can't be a pure agent as there is no contractual agreement between them and the applicant is principally providing the H&T services to the FCI

AAR observed that the applicant has furnished the copy of letter No E-4(20)/02/Stg.VII/Vol.III dated 9-8-2004, issued by the recipient FCI, on the basis of Ministry of Consumer Affair, Food & Public Distribution's letter No. 6-21/2003 SG dated 27-7-2004, wherein at para 1(c) it is communicated that the supervisory charges have been increased from 5% to 8% w.e.f. 1-4-2004, payable by FCI to CWC and the said rates have been extended to the SWCs (applicant is one of the SWC) subject to certain conditions, at para 4 of the said letter. Accordingly, the letter of FCI contains all the ingredients required for a contract and hence the said letter is nothing but contractual agreement between the applicant and FCI for the applicant to be acting as pure agent of FCI, for the purpose of supervision of handling and transportation of agriculture produce. Further, the applicant procures the services of H&T contractors for and on behalf of the FCI and charges actuals separately in the invoice along with their supervisory charges, separately. Thus, the applicant squarely qualifies to be a pure agent of FCI in the instant case.

Conclusion

A pure agent concept has its own relevance for businesses as it directly impacts the value of taxable supplies and consequently on the amount of GST liability of the business. Whenever the intention is to act as a pure agent, care should be taken to ensure that the conditions specified for such pure agent are satisfied in totality. To avoid litigations, contracts should be properly drafted and should meet all the stringent conditions of Pure Agent as per Rule 33 of CGST Rules.

CASE LAWS

Uttaranchal Cable Network Vs Commissioner Of C,CE &ST (STA No. 50294 Of 2021) – New Delhi

Facts Of The Case

Appellant was registered under the Service Tax regime; however, he did not chose to carry forward or migrate CENVAT credit to the GST regime, i.e., the closing balance lying in their books as on 30.06.2017.

It appeared to Revenue that appellant has misdeclared their turnover and furnished incomplete information in their ST-3 returns, with intent to evade payment of service tax on examination of data on ACES portal

Demand was raised through SCN for the said difference and requested that the amount lying in the CENVAT credit be adjusted against the said demand.

Provision Of Law

The Appellant contested that carry forward is on the condition precedent - of the assessee opting to file application for transfer in the prescribed Form TRAN-1, and the same is not mandatory. Further, Section 142 of the CGST Act does not mandate any disability in the adjustment of tax liability out of the CENVAT credit available during that period (earlier period), which has not been carried forward to the CGST regime.

Accordingly, the appellant prays for allowing the appeal with consequential benefits.

Decision By CESTAT

There is no bar or disability under section 140(1) read with section 142 of CGST Act, 2017 on an Assessee for claiming adjustment of tax demand from unutilized CENVAT credit (lying to credit as on 30-6-2017), which has not been carried forward to GST regime.

Adjudicating Authority was directed by the CESTAT to grant adjustment of the un-utilized amount of CENVAT credit against service tax demand payable by Assessee.



M/s. Bharat Oman Refineries Ltd – AAR Madhya Pradesh (Order No. 02/2021)

Facts Of The Case

The Applicant has raised the following questions before AAR authorities for chargeability of GST on the following items:

- Payment of Notice pay by an employee to applicant-employer in lieu of notice period
- Recovering of insurance policy for family members of employees at actuals
- Recovery of nominal value for availing of Canteen facility
- Recovery of telephone charges over and above the fixed rental amount of charges to the service provider
- Canteen services to all the employees without charging any amount (free of cost) will fall under provisions of GST law.
- Availability of ITC on above services for the part which is to the extent borne by the applicant employee.

Provisions Of Law

- As per Section 15(1) of GST Act, the value of supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply where the supplier and the recipient of the supply are not related, and the price is the sole consideration for the supply. However, if the transactions are between related persons, then the value of supply is to be determined as per Rule 28.
- The employer and employee are related persons as per Section 15.
- Canteen Services has been discussed in detail in notification 20/2019, AAR placed reliance on the said notification for clarification.

Ruling Of AAR

GST is applicable on payment of notice pay by an employee to applicant employer in lieu of notice period under clause 5 (e) of Schedule II of CGST Act

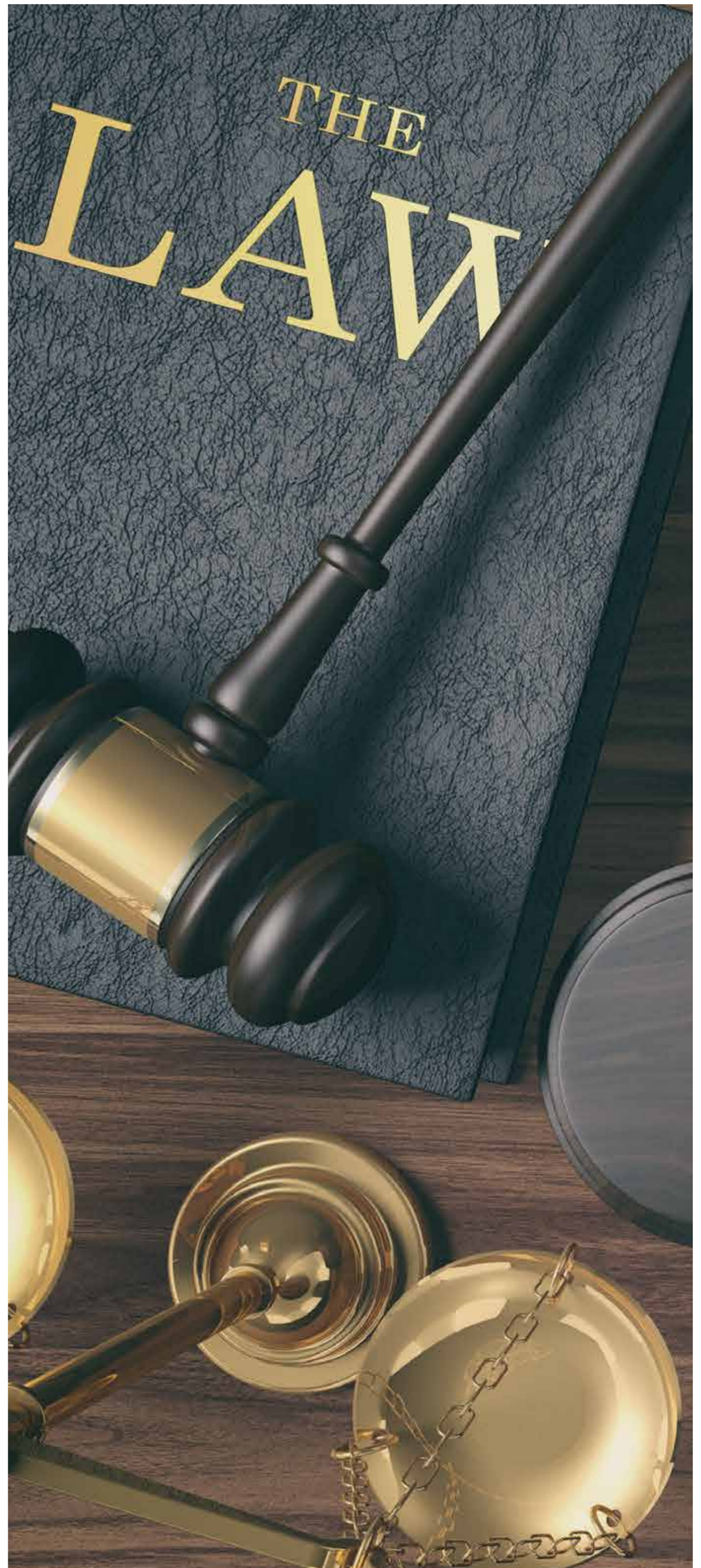
The premium of Group Medical Insurance Policy recovered by the applicant from the non-dependent parents of employees & retired employees will fall within the ambit of supply and is liable to GST.

The employer and employee are related persons as per Section 15, and therefore, the valuation of canteen facility provided by the applicant to its employees shall be as per Rule 28 and not at the nominal amount recovered by the applicant from its employees.

Applicant-company is liable to pay GST on the amount recovered from its employees towards telephone charges at actuals.

Regarding ITC on above mentioned services:

- The applicant shall be eligible to claim Input Tax Credit in respect of premium paid to insurance company to the extent of its further supply.
- The Applicant shall not be eligible for the ITC in respect of canteen services.
- In respect of telephone charges paid to BSNL, the applicant shall be eligible to claim Input Tax Credit, as telephone charges are not covered by the provisions of Section 17 relating to blocked credit.
- The applicant shall not be eligible to claim Input Tax Credit regarding canteen services in view of specific provision of clause k (ii) of Si. No. 7 of Notification No. 11/2017-Central Tax (Rate), dt. 28.6.17, as substituted by Notification No. 20/2019-Central Tax (Rate), dt. 30.9.19 read with clause (xxxii) of Paragraph 4 relating to the explanation given in Notification No. 11/2017-Central Tax (Rate).



NOTIFICATIONS AND CIRCULARS FOR THE MONTH OF NOVEMBER 2021

- ✔ Four Central Tax (Rate) Notification. - [Click here](#)
- ✔ Four Integrated Tax (Rate) Notification. - [Click here](#)
- ✔ Two Central Tax Circular. - [Click here](#)

Sl. No	Subject	Notifications/Circulars No. Date of Issue
1.	Seeks to amend Notification No 17/2017- Central Tax (Rate) dated 28.06.2017	17/2021-Central Tax (Rate), dated 18-11-2021
2.	Seeks to amend Notification No 12/2017- Central Tax (Rate) dated 28.06.2017	16/2021-Central Tax (Rate) ,dated 18-11-2021
3.	Seeks to amend Notification No 11/2017- Central Tax (Rate) dated 28.06.2017	15/2021-Central Tax (Rate) ,dated 18-11-2021
4.	Seeks to further amend notification No. 01/2017-Central Tax (Rate) dated 28-06-2017	14/2021-Central Tax (Rate) ,dated 18-11-2021
5.	Seeks to amend Notification No 14/2017- Integrated Tax (Rate) dated 28.06.2017	17/2021- Integrated Tax (Rate) ,dated 18-11-2021
6.	Seeks to amend Notification No 9/2017- Integrated Tax (Rate) dated 28.06.2017	16/2021- Integrated Tax (Rate) ,dated 18-11-2021
7.	Seeks to amend Notification No 8/2017- Integrated Tax (Rate) dated 28.06.2017	15/2021- Integrated Tax (Rate) ,dated 18-11-2021
8.	Seeks to further amend notification No. 01/2017-Integrated Tax (Rate) dated 28-06-2017	14/2021- Integrated Tax (Rate) ,dated 18-11-2021
9.	Circular on Clarification on refund related issues	17-11-2021
10.	Clarification in respect of applicability of Dynamic Quick Response (QR) Code on B2C invoices and compliance of notification 14/2020- Central Tax dated 21st March, 2020	17-11-2021

DUE DATES OF GST FOR THE MONTH OF DECEMBER 2021

DECEMBER

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
			1	2	3	4
5	6	7	8	9	GSTR-7, GSTR-8 10	*GSTR-1 11
12	*IFF, GSTR-6 13	14	15	16	17	18
19	*GSTR 3B, GSTR-5/5A 20	21	*PMT-06/ GSTR-3B 22	23	*PMT-06/ GSTR-3B 24	25
26	27	28	29	30	*GSTR 9/ GSTR 9C 31	

2021

* Monthly returns for taxpayers with Annual Turnover more than Rs. 5 Crores or Taxpayer who has opted Monthly return option.

* Quarterly returns for taxpayers with Annual Turnover less than Rs. 5 Crores and opted for quarterly return option (QRMP); based on the State of the taxpayer.

* GSTR 9 of FY 2020-21 for taxpayers whose aggregate annual turnover of FY 2020-21 exceeds Rs. 2 Crores, GSTR 9C of FY 2020-21 for taxpayers whose aggregate annual turnover of FY 2020-21 exceeds Rs. 5 Crores.



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