

**Q.1 What will be the GST implication on Recovery of Water charges at specified % of gross amount of work done from the bill of contractor as per Civil Engineering MTF?**

**Ans** As per the contract, contractor shall make his own arrangement for water required for the work and nothing extra will be paid by Department for the same. However, if water will be supplied to the contractor by the department then specified % of gross amount of work as “Water charges” shall be recovered from the contractor.

Recovery of Water charges is towards water supplied to the contractor by the FCI and Government vide Notification No. 02/2017 (CGST Rate) has exempted the supply of Water [other than aerated, mineral, purified, distilled, medicinal, ionic, battery, de-mineralized and water sold in sealed container] from the central GST.

In view of above, it would be pertinent to mention that there would be no liability of FCI to discharge GST on said recovery on account of water charges per se.

**Q.2 What are tax implications under GST regime on payment made to No-Work-No-Pay (NWNP) labor for handling in godowns for FCI?**

**Ans** Services by an employee to the employer in the course of or in relation to his employment has been exempted from GST.

NWNP labors are employee of FCI and their services are not taxable under GST.

**Q.3 What are tax implications under GST regime on payment made to Cost Executives posted in Ministry and rendering services to FCI?**

**Ans** Cost executive are engaged for definite period on fixed remuneration and are not the employee of FCI.

Hence, the same would be taxable under reverse charge and concerned FCI office would need to discharge the tax liability as the service provider (i.e. cost executive) would not be registered under GST, under Section 9(4) of CGST Act.

However, Section 9(4) of CGST Act has been suspended till 31.03.2018 for detail please refer Circular no. F-19 /GST/ 2016-17/Part- I/Fin/GST\_37 dated 17.10.2017.

**Q.4 In case of recovery of scrap value of old items in certain engineering works, in which new items are installed in Depots and old items are sold at Market rates to the same contractor and rates for both new & old items are mentioned separately in the contract :-**

**(i) Whether Recovery of Scrap value of old items is a taxable supply under GST?**

**(ii) Whether FCI needs to raise the invoice for such transaction/barter transaction and for what amount?**

**(iii) How the Engineering Contractor will raise the bill (for what amount) i.e. including the recovery value of scrap items (barter value) or not?**

**Ans** (i) GST tax is levied on supply of goods, services or both. Definition of supply under GST includes several kinds of transactions like transfer, barter, exchange etc. In the instant case FCI is recovering market value of scrap from the contractor and same tantamount to supply of scrap material, accordingly liable to tax under GST at the rates mentioned in the schedules appended to GST Act.

(ii) GST for each taxable supply dealer is required to issue a tax invoice to the recipient of goods and Bill of supply for exempted supply. Since, the goods being scrap supplied by FCI are taxable under GST; accordingly tax invoice would be required to be issued. Invoice would be issued considering open market value of scrap along with applicable taxes on it.

(iii) The Contractor would issue invoice for full agreed amount related to supply of new goods/services as per the contract. However, final payment to contractor may be released after deducting value for scrap.

**Q.5 What is the difference between Storage, Warehousing and Renting in GST Regime?**

**Ans** In this regard, we would like to mention that in general terms the storage or warehousing services provider normally arrange for space to keep goods and other ancillary activities with relation to such goods like loading/unloading and stacking, keeping inventory, security arrangement, providing insurance cover etc. Please note that said position had been clarified by Ministry of Finance as well in its circular number F.No. B. 11/1/2002-TRU dated 01.08.2002.

Whereas renting of storage premises is a different activity altogether, where the tenant takes the charge of the property and it is his discretion in what manner the space is being utilized. The owner of the property is not supposed to provide any services with relation to goods as mentioned above.

**Q.6 Whether renting for storage of agricultural produce will amount to services relating to agriculture by way of storage or warehousing of agricultural produce in GST Regime?**

**Ans** As mentioned in Question-5, it would be pertinent to mention that renting of storage facility would fall under service category of renting of immovable property and not under storage or warehousing services. Tenant may or may not utilize the said space for storing agricultural produce.

**Q.7 What are tax implications under GST regime on compulsory transfer of laptop to officer at book value of laptop as per Para 3.5 (Buy Back) of the Circular no. IT/01/2017 dated 10.03.2017 of IT division?**

**Ans** Section 15 of the Central Goods and Service Tax ('CGST') Act, 2017 prescribes the employee and employer as related persons.

Accordingly any supply of goods and/or services by employer to the employee will be covered under the definition of 'Supply' for the purpose of GST laws and therefore, GST would be payable on the supply of laptop.

Further as per Rule 28 of the CGST Rules, taxable value in this case shall be determined as per following approach in order to calculate the GST liability:

1. Open market value of the goods at the time of supply,
2. if the open market value is not available, then value of supply of goods of like kind and quality,
3. if the value is not determinable under above points, then value shall be taken as 110% of the cost of acquisition of such goods or shall be determined using reasonable means consistent with the principles and the general provisions of section 15 of the CGST Act.

On a perusal of the above provisions:

- Option 1 would lead to practical hardship since in such as case, there would be impending challenge to obtain more than 2 quotation from different vendor to determine Open Market Value
- Option 2 may not be applicable in the instant case considering the fact that the laptop would be an old one.
- Option 3 would lead to an undue financial hardship since in such a case, GST would need to be paid on 110% of the original cost of laptop.

Considering the aforementioned challenges and practical hardships to determine Fair Market Value (FMV) of the asset i.e. laptop, organisations are considering WDV of the asset calculated as per the provisions of Companies Act/accounting WDV) as the fair market value of the asset and accordingly GST is being discharged on the said value.

Further, FCI is charging the depreciation based on useful life of asset prescribed in Companies Act. Accordingly, aforesaid practice is to be adopted by FCI as well.

Further to mention that as on date 18% GST rate would be applicable on normal computer/laptop not exceeding 17 inches.

**Q.8 How the Invoice will be raised for transaction mentioned in Q.No.-7?**

**Ans** Invoice would be raised with taxable value as Fair market value (FMV) i.e. WDV of the asset. GST at the applicable rates would apply on such taxable value and will be recovered from employees, alongwith WDV.

**Q.9 What are the tax implications under GST regime on payment of Course Fee to Institute of Secretariat Training & Management (ISTM), New Delhi for conducting “Organisation Specific Programme” for FCI personnel?**

**Ans** Training provided by ISTM would constitute as supply of services (training services) provided by Government and nowhere exempted as per the provisions of GST.

As per Central (Rate) Notification No. 13/2017 dated 28.06.2017 services provided by Government to any business entity would fall under reverse charge mechanism and liability to discharge GST on said services lies with service recipient.

In the instant case services (Training services) provided by ISTM being Government entity would fall under above said category and liability to discharge tax on such services lies with FCI itself under reverse charge mechanism (RCM).

**Q.10 Whether works contract of FCI Engineering division for maintenance of Depots is covered “in respect of post-harvest storage infrastructure for agricultural produce” or not?**

**Ans** Works contract of FCI Engineering division for maintenance of Depots will not falls under entry “(v) *Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, supplied by way of construction, erection, commissioning, or installation of original works pertaining to,- (e) post-harvest storage infrastructure for agricultural produce including a cold storage for such purposes;*” of Notification no. 20/2017 dated 22.08.2017 and hence, GST will be applicable @18%.

Further, Original work contract service in respect of godowns available with FCI also does not fall under above mentioned entry as it is used for both agricultural produce i.e. Wheat, Paddy, Pulses and non-agricultural produce i.e. Rice.

**Q.11 Whether Rice, Wheat & Pulses are considered as “agricultural produce” or not?**

**Ans** As per Notification No. 12/2017 (CGST Rate), agricultural produce means:-

*“agricultural produce” means any produce out of cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products, on which either no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market;*

Pursuant to above definition please note that wheat, pulses, paddy would fall under category of agricultural produce. But, as per settled position in agriculture industry “Rice” does not fall under agricultural produce per se.”

**Q.12 Whether FCI is considered as a “Government Authority” or not?**

**Ans** FCI is not a “Governmental authority”.

**Q.13 In case mismatch of transaction between GSTR-1 of the supplier and GSTR-2 of the FCI due to rejection of invoice by supplier against which Input Tax Credit is claimed, following issue may arises and need to be clarified:-**

- a) **Whether the above ITC is allowed to be adjusted against the GST liability of a particular month or not?**
- b) **Further, if above is allowed then it is requested to confirm the period of non-approval of invoice by supplier after which ITC claimed will be reversed?**

**Ans** a) Details added by the recipient together with claiming the Input Tax Credit thereon, would be provisionally accepted by the GST portal in the same month,

However, any mismatch would be communicated to both supplier and recipient where the supplier has rejected any details,

In that case, the recipient would need to make suitable rectifications in his GSTR-2 for the month in which such mismatch has been communicated by the GST portal,

Further as per Rule 71(4), if such mismatch is not rectified by the recipient then amount to the extent of such discrepancy would be added to his output tax liability in the GSTR-3 for the month succeeding the month in which such discrepancy is communicated,

Apart from above, the recipient would also need to pay the interest liability on the amount of input tax credit availed and now needs reversal.

**b)** No specific mention is available with respect to time limit (if any) up to which the supplier can put the details on hold for his approval/rejection,

Further the same could not be observed from GST portal as well due to non-generation of the GSTR-1A for the time being,

**Q.14 Whether Gunny Cost & its depreciation component etc. has to be separately mentioned in Bill of Supply in procurement bills of food grains or gross amount (including cost of gunny etc.) is to be taken?**

**Ans** As per GST law, value of supply of goods or services has to be mentioned in Bill of Supply. The GST Law nowhere mandates to disclose cost elements of that value in the Bill of Supply. Accordingly, there is no requirement under the GST Law to disclose the gunny cost and depreciation component separately in Bill of Supply for procurement of food grains.

**Q.15 What will be the applicable HSN Code and GST Rates in case of Sale of Polythene Covers – Unserviceable as Dead Stock Article?**

**Ans** The scrap of Polythene Covers would attract 5% GST (as on date for applicable HSN code 3915).