

RJA

Rajput Jain & Associates
Chartered Accountants

**GST Analysis on
Advertising and Cinema Industry**

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- Rajput Jain & Associates is a Chartered Accountants firm, with its headquarter situated at New Delhi (the capital of India). The firm has been set up by a group of young, enthusiastic, highly skilled and motivated professionals who have taken experience from top consulting firms and are extensively experienced in their chosen fields has providing a wide array of Accounting, Auditing, Taxation, Assurance and Business advisory services to various clients and their stakeholders. focus at providing tailor made solutions to challenging problems of our clients, and perform with high quality and timely service.
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A word cloud on a transparent checkerboard background. The word 'ADVERTISING' is the largest and most prominent, written in white on a red diagonal banner. Other words in various sizes and orientations include 'MARKETING', 'PERSUASION', 'EDUCATION', 'COMMERCIAL', 'PROMOTION', 'RESEARCH', 'PUBLICITY', 'MANIPULATION', 'SALES', 'CONSUMPTION', 'BRANDING', 'PRESS', 'ONLINE', 'PAID', 'FINANCE', 'COMMUNICATION', and 'CINEMA'.

GST Analysis on Advertising and Cinema Industry

Agenda for discussion (Advertising Industry):

Taxability of Advertising Sector under Pre GST Regime

Applicability of GST in Advertising Sector

GST rates prevalent in Advertising Sector

Issues in different Media

Provisions Related to Place of Supply

Issues related to Input Tax credit (ITC)

Relevant AAR and AAAR Judgments

What is advertisement/Advertising?

"Advertisement- The action of **drawing the public attention** to something to **promote** its sale. The Business of producing and circulating advertisements. [Black's Law dictionary]

"Advertisement" **includes** any notice, circular, label, wrapper, document, hoarding or any other audio or visual representation made by means of light, sound, smoke or gas.

"Advertisement" **means** any form of presentation for promotion of, or bringing awareness about, any event, idea, immovable property, person, service, goods or actionable claim through newspaper, television, radio or any other means but does not include any presentation made in person [Section 65B(2) of the FA,2012]

Taxability of Advertising Sector under Pre GST

Regime : Positive list

- ❑ Applicability of Service Tax on advertisement industry Under Positive Tax regime:
Services provided by Advertising Agency w.e.f. 01.11.1996
Sale of Space or Time for Advertisement Services w.e.f. 01.05.2006

Constitutional Validity of levy of Service Tax on Sale of Space or Time for Advertisement under Advertising agency services challenged before the Hon'ble Madras High Court in the Case of Advertising Club and held unconstitutional.

► Definition of Advertising Agency:

"Advertising agency" means any person engaged in providing any service connected with the making, preparation, display or exhibition of advertisement and includes an advertising consultant. [*Section 65(3) of Finance Act, 1994 as amended*]

Taxability of Advertising Sector under Pre GST Regime : Positive list

► Definition of Sale of Space or Time for Advertisement Services:

- (i) providing space or time, as the case may be, for display, advertising, showcasing of any product or service in video programmes, television programmes or motion pictures or music albums, or on bill-boards, public places, buildings, conveyances, cell phones, automated teller machines, internet;
- (ii) selling of time slots on radio or television by a person other than a broadcasting agency or organization; and
- (iii) aerial advertising

Taxability of Advertising Sector under Pre GST Regime: Negative list

Selling of space or time for Advertisement;

- ❑ w.e.f 01.07.2012 to 30.09.2014 – Sale of space or time slot for advertisement other than advertisement broadcast by radio or television[clause (g) of section 66D of Finance Act].
- ❑ w.e.f 01.10.2014 – 30.06.2017 - Sale of space for advertisement in print media
- ❑ w.e.f October 1, 2014, only sale of space in print media kept out of ambit of service tax.

Applicability of GST in Advertisement Sector

GST is Applicable w.e.f. 01.07.2017 on the following activities of the Advertisement Industry:

Advertising Services

Sale of advertising space in print media (except on commission)

Sale of TV and radio advertising time

Sale of Internet advertising space [Digital Media]

Sale of other advertising space or time (except on commission)

Sale of advertising space or time on commission

GST Rate on various activities under Advertisement Sector:

SAC	Advertising services and provision of advertising space or time	Rate
998361	Advertising Services	18%
998362	Purchase or sale of advertising space or time, on commission	18%
998363	Sale of advertising space in print media (except on commission)	5%
998364	Sale of TV and radio advertising time	18%
998365	Sale of Internet advertising space	18%
998366	Sale of other advertising space or time (except on commission)	18%

Advertisement Sector vis-à-vis Role of Advertising agencies

Business can opt to advertise their products/services:

- Directly through the advertisers
- Through Advertising agencies

Advertisement Agencies can provide Services

- in Principal's Capacity
- in Agent's Capacity

Advertising Agency providing services in Principal's Capacity

- Business approaches the Advertising agency for Advertisement
- Advertising agency buys advertisement in its name from the Advertiser
- Advertising agency resells the same to the Business.

Illustration

A publishes Newspapers and sells space of its newspaper to B(Advertising Agency). A charges Rs 100,000 for sale of such space.

GST payable on the same by A will be Rs 5,000 ($100,000 \times 5\%$)

B(advertising agency)sells the same space to a business entity at say Rs 150,000, the GST payable by B on the same will be Rs 7,500 ($1,50,000 \times 5\%$)

Advertising Agency providing services in Agent's Capacity

- ▶ Advertising agency buys the space on behalf of the Business
- ▶ Advertising agency charges commission for the same from business.

Illustration

B(Advertising Agency) books advertisement with A (Newspaper) on behalf of his client and charges Rs 100,000 for sale of such space as reimbursement at actuals and 5% commission on the value of space i.e. Rs. 5000/- from client.

GST payable by A will be Rs 5,000 ($100,000 \times 5\%$)

GST payable on the same by B will be Rs 5,000 ($100,000 \times 5\%$) plus Rs.900 ($5000 \times 18\%$)

Issues under Different medium of advertisement :

- ❑ Advertisement in Outdoor media
- ❑ Advertising in Electronic/ Radio Media/ Cinema Halls
- ❑ Advertisement in print Media
- ❑ Advertising through digital Platform
- ❑ Advertisement through person located outside India

Issues in Outdoor media:

RCM Applicability in case of Outdoor media:

► [Notification No. 13/2017-CT \(R\) dated 28.06.2017](#)

Service received by the business entity from the Government

RCM Liability is applicable on the recipient

Government includes Central Government, State Government, Union Territory or Local Authority

Issue:

Whether RCM U/s 9(3) of CGST Act, 2017 applicable on media spaces like State Transport Buses, Railway properties, Panels, SKY walks, Flyovers, etc. leased out for Ad purposes by various Govt. Entities ?

Issues in Outdoor media:

► Specific Exclusions:

- Amount paid to Govt is below INR 5,000/-.[Notification No.]
- Amount paid towards taxes, duties or cess [Notification No.]

► Issue :

Whether late fees or penalty paid to the Government can be considered as an amount paid against any services?

Issues in Outdoor media:

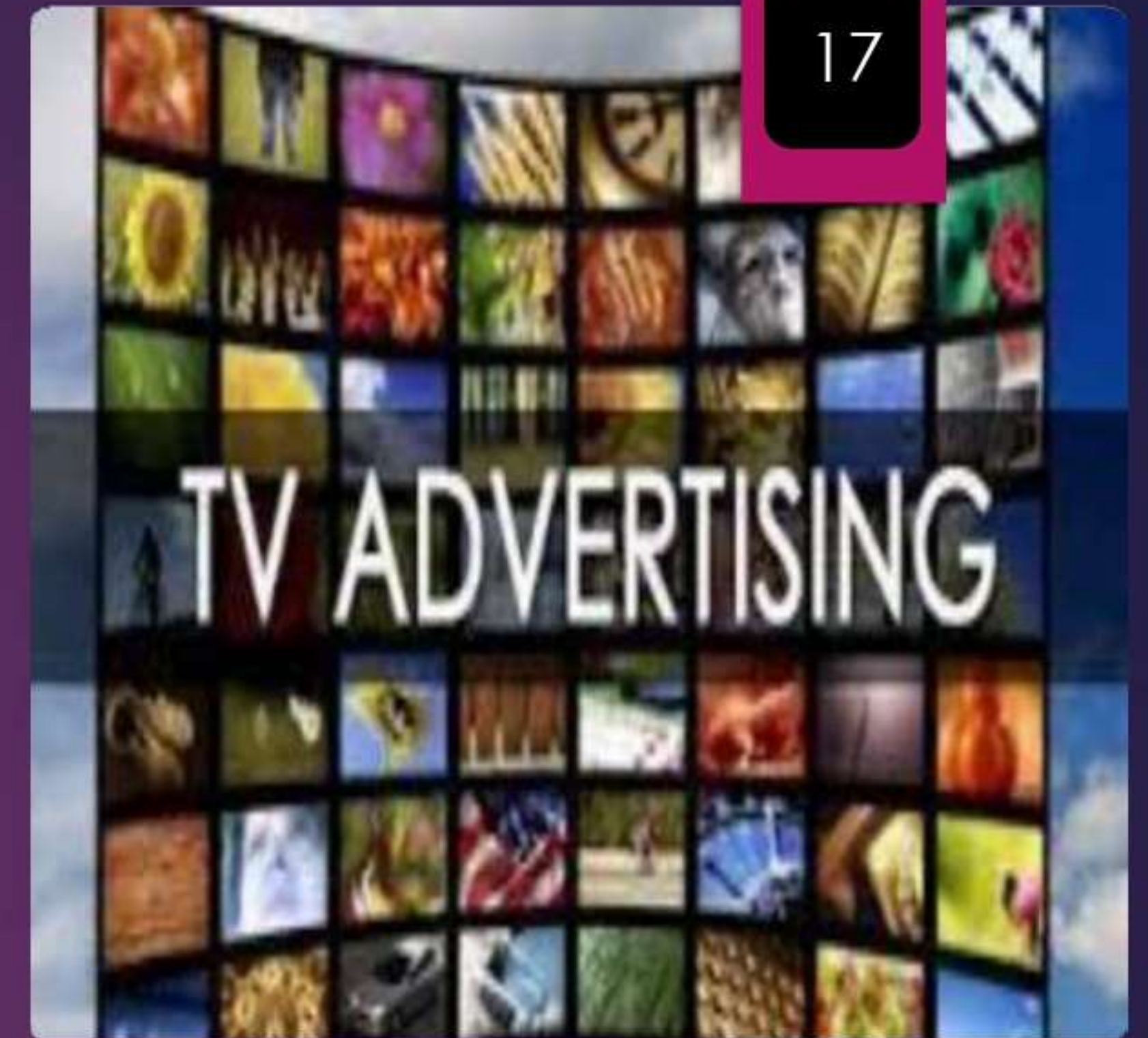
Role of Composite supply vis-à-vis outdoor media Advertisement :

- Cases where goods and services are supplied together

Example: Selling of outdoor space also involves supply of Vinyl, Flex together with fixing the same on the hoarding.

Concept of composite supply triggered when Transaction involves multiple supplies in the fold of a single transaction

Principle Supply to be determined as per Section 8 of the CGST Act
GST rate as applicable on the principle supply



B. Issues in Electronic/ Radio/Cinema Media:

Issues in Electronic/ Radio/Cinema Media:

Issuing Credit Notes in case of Disputes:

Generally in TV and Radio media there are many disputes regarding matching of spot and time slot allotted and it results in lot of disputes between the Ad agency and the Channel Partner. In certain situations the disputes are raised after a considerable time has passed.

Credit Notes can be issued as per Section 34 (1) of CGST Act, 2017.

Relevant Provision:

Where a tax invoice has been issued for supply of any goods or services or both and the **taxable value or tax charged** in that tax invoice is:

- found to exceed the taxable value or tax payable in respect of such supply, or
- where the goods supplied are returned by the recipient, or
- where goods or services or both supplied are found to be deficient,

the registered person, who has supplied such goods or services or both, may issue to the recipient what is called as a credit note containing the particulars specified by law.

Issues in Electronic/ Radio/Cinema Media:

► Burning Issues :

- ❖ Portal issue for issuing Single Credit note for multiple invoices .
- ❖ Procedure for issuing credit note in case of disputes in respect of different spots booked in different invoices-Resolved
- ❖ Credit note in case disputes raised after a considerable time i.e. after due date of filing of return for the month of September of the succeeding year
- ❖ Treatment of GST paid on Bad debts booked in the books of Account.

C. Issues in Print Media



NEWSPAPER ADS

*TRADITIONAL NEVER
GOES OUT OF FASHION!
CREATE A STRONGER IMPACT.*

Issues in Print Media:

- ▶ **GST applicability on selling of space for Advertisement in print media [CBIC Press Release 92/2017 dt 23.08.2017]:**

- ▶ CBIC has issued clarification regarding rate of taxation for Ad Agency in respect of Selling of space for Advertisement in print media under:

Principal to Principal Basis- Ad Agency buys space from the newspaper and sells such space for Advertisement to clients on its own account- GST @5% on the full amount charged by Advertisement agency from the client

Agent Basis- Ad Agency sells space for Advertisement as an agent of the newspaper on commission basis- GST@ 18% on the sale commission received from client/Newspaper

D. Issues in Digital Media



Issues in Digital Media :

Relevant legal Provisions):

- ▶ **online information and database access or retrieval services** means services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention and impossible to ensure in the absence of information technology and includes electronic services such as,--
 - **advertising on the internet;**
 - providing cloud services;
 - provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;
 - providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;
 - online supplies of digital content (movies, television shows, music and the like);[Section 2(17 of IGST, 2017]

Issues in Digital Media:

Relevant legal Provisions (Contd.):

- ▶ Place of supply of online information and database access or retrieval services shall be the location of the recipient of services.

Online Advertisement Services provided to non Taxable online recipient from outside India:

- ▶ On supply of OIDAR services **by any person located in a non-taxable territory** and received by a **non-taxable online recipient**, the supplier of services located in a non-taxable territory shall be the person liable for paying integrated tax on such supply of services.
- ▶ “**non-taxable online recipient**” means any Government, local authority, governmental authority, an individual or any other person not registered 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. [Section 2 (16) of IGST Act, 2017]

Issues in Digital Media :

Supply of OIDAR Service by Blogger residing in India:

- ▶ Bloggers provides online space to companies to place their advertisements
- ▶ Google Ad sense/ Google YouTube /Facebook place ad on blogger's site.
- ▶ Service of advertising on internet provided by Blogger falls under Online information and database Access or Retrieval (OIDAR) services.
- ▶ Where blogger (Supplier) is located in India and Google Ad sense/ Google YouTube /Facebook (Recipient) is located outside India then place of supply is outside India and Blogger services will be considered as exports,.

Advertisement through person located outside India:

Reverse charge mechanism is applicable on any **supply of service by any person who is located in a non-taxable territory to any person located in a taxable territory, other than the non-taxable online recipient.** [Section 5(3) of the IGST Act, 2017]

If Mr A procures advertisement service from M/s. XYZ, a person located in non-taxable territory, then Mr A would be required to discharge the GST liability to the Government as a recipient of service.

Issues related to Input Tax credit(ITC) in Advertising Industry



Issues related to Input Tax credit(ITC) in Advertising Industry

Eligible ITC under GST Regime:

- High-end Equipment and electronic goods used for advertisement
- Flex, Banner, Electricity Material ,other material used for Ad
- Creative Charges, Travelling Expenses, Maintenance Exp
- Celebrity fees, Content Writer, Voice over, Costumes, Vanity van, security, Editing fees etc.
- Agency bills for Radio, Cinema, TV, Space for outdoor Advertising, Digital etc.

Ineligible Credit under GST Regime:

- In eligible credit as mentioned under Section 17(5) of the CGST Act, 2017
- In case of granting of rights in respect of immovable property for Advertisement, if recipient and supplier are in different states then the credit flow is blocked.

Issues related to Input Tax credit(ITC) in Advertising Industry

Ad Co's dealing in Electronic media are involved in Shooting Ad shoots at remote locations where they do not have a place of business. Availability of ITC ?

Eg. An Advertisement Agency registered in Maharashtra decides to shoot a commercial in the State of Jammu and Kashmir. They would incur substantial cost towards accommodation of the entire crew for which the hotel would charge CGST + Jammu GST. The advertising agency will not be able to avail credit of the same since they are registered in Maharashtra (credit available only of IGST and CGST + Home State GST).

Transaction Planning Involved

Place of Supply and related Issues:

Relevant legal Provisions:

Sec 12(2) IGST Act: Place of supply of services, except the services specified in sub-sections (3) to (14)–

- (a) made to a registered person shall be the location of such person;
- (b) made to any person other than a registered person shall be,–
 - (i) the location of the recipient where the address on record exists; and
 - (ii) the location of the supplier of services in other cases.

► **Place of Supply for Advertisement Services Provided to Government [Section 12(14) of IGST Act] –**

Covers supply of advertisement services to the Central Government, a State Government, a statutory body or a local authority.

Place of supply of services will be the concerned State/Union Territory.

Place of Supply and related Issues:

- **If more than one State/ Union Territory is involved:**
- value of such supplies specific to each State or Union territory to be determined.
- Value determined **in proportion to the amount attributable to services provided by way of dissemination in the respective States** or Union territories as per the terms of the **contract/agreement entered into.**
- If there is no such agreement/contract, value may be calculated on such other basis as may be prescribed.

Illustration :

X Ltd. is registered in Chennai. It provides advertisement services. It enters into an agreement with Kerala Government to provide advertisement services pertaining to Swachh Bharat Abhiyan in the entire State of Kerala. Place of supply of service in this case will be Kerala.

AAR
Authority For Advance Ruling



Important AAR judgments related to Advertisement Industry:

Important AAR judgments related to Advertisement Industry:

Infobase services Pvt. ltd.- Order No. 38/WBAAR/2019-20 dated 24 Dec 2019[Authority of Advance Ruling West Bengal]

Issue involved:

Classification of Supply— The Applicant is executing a composite contract involving several services and activities. The Applicant sought a advance Ruling on whether its procurement of advertisements for the Directory is classifiable as selling of space for advertisement in print media.

Ruling:

The Applicant is making a mixed supply to the Tollygunge Club of printing service (SAC 998912) and intermediary service for selling space for advertisement on behalf of the club (SAC 998362)

The Authority Ruled out that Selling of space for advertisement when made as an intermediary, is classifiable under SAC 998362, which excludes sale of advertising space in print media (SAC 998363) and is taxable @ 18%

Important AAR Judgments Related to Advertisement Industry:

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Macro media digital imaging Pvt. ltd.- Order No. 15/WBAAR/2019-20 dated 19 August 2019 [Authority of Advance Ruling West Bengal]:

Issue Involved:

composite Contract in relation to printing whether classifiable under composite Service – The Applicant is making a composite supply, where the goods supplied, having no use other than displaying the printed matter, is ancillary to the principal supply of printing.

Ruling:

The Authority does not dispute that the goods supplied are classifiable under Chapter 49. But such supplies are ancillary to the principal supply of printing service. Thus the Applicant is making a composite supply, where the service of printing is the principal supply. The goods supplied, having no use other than displaying the printed matter, is ancillary to the principal supply of printing.

Important AAR Judgments Related to Advertisement Industry:

Appeal order No. 12/WBAAAR/APPEAL/2019 dated 17th Dec, 2019:

Facts:

Appellant's contention is that as product description in their invoice is mentioned as "Printing and Supply of Trade Advertisement Material – HSN 4911", what they supply are primarily goods. As per Dept. as in the purchase order ITC Limited has mentioned the order description as Service - "Digital Printing - Outdoor", what is supplied are primarily Services.

Ruling:

As in the purchase order issued to the Appellant, the particular of charges has been mentioned as "Printing charges for 1 no. of Blackback flex" hence what the Appellant supplies is nothing but service.

GST Impact on Cinema/theatre Industry



Cinema Industry



Pre GST Taxability on Entertainment Sector.



Impact of GST on Supplies made by Distributors



Impact of GST on Supplies made by Cinema owner



Provisions Related to Place of Supply



Issues related to Input Tax credit

Pre GST Taxability on Cinema Industry:

Entertainment Tax:

- Prior to GST, Entertainment Tax rates for the film industry varied from state to state, ranging from 15% to 110%.

VAT :

- Food and Beverages sold at Cinema/multiplex were taxed @ 14.5%

Service Tax:

- Food and Beverages sold at Cinema/multiplex were taxed @ 15% after allowing abatement of 60% in value

Concept of Distributors in Cinema Industry

- ❑ The distributor, who purchases the rights from the producer for further distribution, is the second important aspect of the industry.
- ❑ In the earlier regime (pre-GST), the permanent and temporary transfer of film rights by the distributors to the theatre owners were taxed differently.
- ❑ On permanent transfer of rights, there was a levy of VAT but no ST, while in the case of temporary transfer, the industry enjoyed exemption from both ST and VAT.
- ❑ Certain distributors have their own theatres to exhibit movies and thus involve no transfer of rights

Impact of GST on Supplies made by Cinema owner:

- ▶ In the value chain of Cinema Industry, Exhibitor is the last and perhaps the most important role player. It's the exhibitor who screens a film for the audience.
- ▶ They either acquire the cinematographic film's rights temporarily/permanently from the distributor or rent out the theatre they own for exhibit of movies or may enter into a revenue arrangement with the distributor.
- ▶ Under the first arrangement, i.e. where the movie is exhibited on his own account, the exhibitor earns from the sale of movie tickets..
- ▶ Under the Second arrangement, the theatre owner enters into a revenue-sharing arrangement with the distributor. Under a revenue-sharing arrangement, there is no supply per se between the distributor and exhibitor; therefore, the transaction is unlikely to attract GST.
- ▶ Other than the above, a theatre owner may also earn from the supply of advertisement space, earning of sales commission from online booking platforms, and supply of food and beverages over the counters at the theatre. The supply of food and/or beverages is taxable at the rate of 5% with no input tax credit facility.

Impact of GST on Supplies made by Distributors

- ▶ Under the P2P arrangement, when a movie is exhibited by the theatre owner on his own account (i.e. the copyrights are transferred), the distributor will charge 12% GST on the supply of copyrights and the theatre owner will charge GST on the sale of tickets.

OR

- ▶ Distributor can take the theatre on hire from the theatre owner and exhibit the movie. Then the theatre owner will charge GST for providing renting services and the distributor will charge GST on the sale of tickets.

OR

- ▶ Under the third option, i.e. joint/collaboration, typically no services are rendered by the distributor to the theatre owner or vice versa. Rather, it is commonly known as the revenue sharing arrangement which was not subject to tax in the ST regime, and will not attract GST in the absence of any underlying service depending on the terms of contract.

**Transfer of copyright for exhibition in Theatre:
Treated as supply of services GST rate of 12%**

**Transfer of copyright for exhibition in
Television: Treated as supply of services GST
rate of 12%**

Sale of movie tickets

(ii) Services by way of admission exhibition of cinematograph films where price of admission ticket is one hundred rupees or less.	6%/9%	Substituted from 9% to 6% by Notification No.27/2018 dated 31.12.2018 w.e.f. 01.01.2019
[(iia) Services by way of admission to exhibition of cinematograph films where price of admission ticket is above one hundred rupees.	9%/14%	

other services

- ▶ Renting service to distributor-18%
- ▶ Leasing of food courts, outlets-18%
- ▶ Supply of advertisement space-18%
- ▶ Online sales commission-18%
- ▶ Supply of food and beverages- 5% without ITC

Provisions related to Place of Supply

► Place of Supply of Goods:

In case of sale of food & Beverages in a movie hall, the place of supply is the movie hall itself.

► Place of Supply for Services:

- Place of supply of services is the location of the **service recipient**.
 - In cases of supply to unregistered dealer and their location not available, the location of the service provider will be the place of provision of service.
 - Place of provision in case of renting services will be the location of the immovable property
- Place of supply is the place where the service are actually performed. i.e. movie hall itself.

Input Tax Credit Related Issues

- ▶ A theatre owner incurs a huge amount of expenditure to maintain and provide the comfort and entertainment to meet the expectations of the audience.
- ▶ Earlier, as there was only Entertainment Tax on the sale of tickets, no set-off of ST or VAT paid by exhibitors on the procurements was allowed.
- ▶ The levy therefore was cumulative, which the end consumer had to bear.
- ▶ With the introduction of GST, the final cost of tickets is reduced due to the seamless input tax credit mechanism available in the value chain at every level.
- ▶ Major expenses incurred by a theatre owner are towards the procurement of broadcasting rights, contract staffing, digital transmission, leasing of equipment, rental expenses, annual maintenance expenses, etc.

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Sr. No.	Expenses	Eligibility
1.	Temporary transfer of IP rights by producer	Eligible
2.	Contract staffing services	Eligible
3.	Digital transmission Expenses	Eligible
4.	Lease of lights, cameras, projectors and other Equipment	Eligible
5.	Rental expenses of theatre	Eligible
6.	Repair and maintenance	Depends

Input Tax Credit Related Issues

- **Whether ITC Reversal under rule 42 and 43 of CGST Rules required for Multiplex engaged in sale of tickets and supply of food?**
 - ▶ Section 17 (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. [See Rule 42 & Rule 43]”
 - ▶ Section 17 (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.]

Section 2(47) “exempt supply” means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under [section 11](#), or under [section 6](#) of the Integrated Goods and Services Tax Act, and includes non-taxable supply;

Notification No. 11/2017-
Central Tax(Rate) Dated
28th June 2017 As amended
by Notification No 46/2017
Dated 14th Nov 2017

►4. Explanation.- For the purposes of this notification,-

►(iv) Wherever a rate has been prescribed in this notification subject to the condition that credit of input tax charged on goods or services used in supplying the service has not been taken, it shall mean that,-

(a).....

(b) credit of input tax charged on goods or services used partly for supplying such service and partly for effecting other supplies eligible for input tax credits, is reversed as if supply of such service is an exempt supply and attracts provisions of sub-section (2) of section 17 of the Central Goods and Services Tax Act, 2017 and the rules made thereunder.

(3)	(4)	(5)
<p>(i) Supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or drink, where such supply or service is for cash, deferred payment or other valuable consideration, provided by a restaurant, eating joint including mess, canteen, whether for consumption on or away from the premises where such food or any other article for human consumption or drink is supplied, other than those located in the premises of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes having declared tariff of any unit of accommodation of seven thousand five hundred rupees and above per unit per day or equivalent.</p>	<p>2.5</p>	<p>Provided that credit of input tax charged on goods and services used in supplying the service has not been taken [Please refer to Explanation no. (iv)].</p>

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