

Frequently Asked Questions(FAQs) on GST

arising out of Virtual CPE meeting held on 21st May 2021

Q1. What would be the place of supply where a petrol pump dealer registered in Maharashtra (Mumbai) supply petrol (non gst supply) to a transporter who is registered in Gujarat? The Petrol was purchased from Petrol Pump in Maharashtra.

Ans. Petrol is outside the ambit of GST; Hence POS provisions will not be of any use from GST POV.

Q2. If a registered person is an agent of a foreign company and earning commission on services provided in foreign currency and has filed, the LUT then is it exempt from GST?

Ans. In case if he falls under the Intermediary Definition (See Sec- 2(13) of CGST Act) then POS would be in India and said Transaction will not get covered under zero rated supply.

Q3. If there is Movement of goods and recipient take delivery of goods from location of supplier then what is POS?

Ans. Most preferred View

As per Sec-10(1)(a) of IGST Act –“where the supply involves movement of goods, whether by the supplier or the recipient or by any other person, the **place of supply of such goods shall be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient.**”

Thus, If the recipient is registered, it would be the same as location of goods when the movement of goods terminate for delivery to the Recipient. i.e. **Recipient's Location**

Although the goods are received ex-factory i.e. supplier location by the recipient, the movement of the goods terminates for delivery to the recipient only at recipient's location Irrespective of whether the supplier or the recipient is actually undertaking the movement of goods, the place of supply is the location of goods where movement of goods terminates for delivery to the recipient.

Q4. Dear Mam, what should I do if contractor does not File Gst Return?

Ans. If Contractor does not file GST Return , you can't take ITC for the transaction done with him. You need to make sure that your transaction gets reflected in GSTR-2/2B , otherwise you are not eligible to take the credit. Provisional 5% of eligible ITC can be taken as per Rules 36(4).

Q5. Can I take credit, if contractor only file gstr1?

Ans. Its disputed, as the transaction will reflect in your GSTR-2A/2B and you may avail the ITC.

Generally, persons are able to check only this condition but there is clause in section 16(2) where it says that Tax should be deposited with Government. Provisional 5% of eligible ITC can be taken as per Rules 36(4).

Q6. What is GST scenario in case of Royalty paid on Stone Quarry and sale of crushed Stones?

Ans. Whether its related to mining Lease? If yes, then reference can be made Case Name: ***In re NMDC Limited (GST AAR Chhattisgarh)*** GST on royalty paid in respect of mining lease

Q7. Whether the fees charged to a Foreign Parent Company for incorporation of subsidiary in India qualifies as Export of Services

Ans. It involves consultancy services so it would get covered under Export of Services. This services if having nexus for performance-based services then its contrary to this view.

Q8. Is GST applicable if I am trading in Stock Exchange and my turnover is more than 20 lacs? On what value will it be charged?

Ans. No, Securities are outside the purview of GST. GST Act specifically excludes Securities from the definition of Goods.

As per Section 2(52) -Goods means any movable property **except money and securities**.....”

Definition of Services under Sec-2(102) also excludes Securities from the definition of service. As per **Sec-2(102)** “services” means anything other than goods, money and securities.....”

Thus, trading in shares and securities is not considered as supply as per the GST Act and falls outside the purview of GST. **Therefore, securities traders are not liable to register under GST.**

Q9. A contractor is doing building construction on the land of the owner, owner has entered into a contract with the contractor as per which the contractor has to construct a building on the land of the landowner and hand over the building to the owner. My query is whether the contractor can avail itc on the materials he purchased for the construction of the building like cement, sand, iron rods, etc

Ans. No, ITC shall not be available for any work contract services.

As per Sec-17(5)(c) of CGST Act, ITC for the construction of an immovable property cannot be availed, except where the input service is used for further work contract services.

Q10. If a contractor is supplying work contract service and builds a building for the owner of the land, whether the contractor can avail ITC on materials used for construction of building like cement, sand, etc. Please explain with examples

Ans. No, ITC shall not be available for any work contract services. ITC for the construction of an immovable property cannot be availed, except where the input service is used for further work contract services. Therefore ITC restricted under **Sec-17(5)(c) of CGST Act**.

For example, XYZ Contractors are constructing an immovable property. They cannot claim any ITC on the works contract. However, XYZ hires ABC Contractors for a portion of the works contract. XYZ can claim ITC on the GST charged by ABC Contractors

