

Treading the GST Path XXVI

Cross border RCM

(G. Natarajan, Advocate, Swamy Associates)

M/s ABC & Co is registered under GST in the State of Tamil Nadu. The Managing Partner of M/s ABC & Co travels to Bangalore and stays in an unregistered Hotel at Bangalore. Is M/s ABC & Co liable to pay GST under Reverse Charge? If so what will be the type of GST payable? (For Hotel services, as per Section 12 (3) of the IGST Act, the place of supply is the location of the Hotel, i.e. Karnataka in this case and since the supplier is also in Karnataka, it will be an intra-state supply attracting CGST and Karnataka SGST)

M/s ABC & Co is registered under CGST Act and Tamil Nadu SGST Act but is not having any registration under Karnataka SGST Act.

As per Section 9 (4) of the TN SGST Act, "the State Tax in respect of the supply of taxable goods or services or both by a supplier, who is not registered, to a registered person shall be paid by such person on reverse charge basis as the recipient and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both". The term "registered person" is also defined in the TNSGST Act, under Section 2 (94) of the Act as any person who is registered under Section 25 of the Act and M/s ABC & Co satisfies this definition.

It may be observed from the above that what is payable under TNSGST Act is the "State Tax", which is the tax payable under this Act. As per Section 9 (1) of the Act, the said tax is payable on all intra state supplies made in the State of Tamil Nadu. In other words, TN SGST is payable only when the supplier of goods or services or both and the place of supply falls in the State of Tamil Nadu. So, if Ms ABC & Co receives any intra state supply of goods or services or both in the State of Tamil Nadu, attracting TNSGST, from unregistered suppliers in the State of Tamil Nadu, then they would be required to pay TN SGST under reverse charge, under Section 9 (4) of the TN SGST Act.

Karnataka SGST Act also contains a similar provision and Section 9 (4) thereof is also similarly worded. So, if any supplies which are taxable under the Karnataka SGST Act, i.e. any intra-state supply in Karnataka is made by an unregistered person to a registered person, then reverse charge would apply in the hands of the registered person. The term "registered person" is also defined in the Karnataka SGST Act, as a person registered under Section 25 of the said Karnataka SGST Act. As M/s ABC & Co is not registered under Karnataka SGST Act, the provisions of Section 9 (4) of the Karnataka SGST Act is not at all applicable to him. So, it can be concluded that when M/s ABC & Co, which is registered in Tamil Nadu receives any intra-state supply of goods or services or both, in any State where they are not registered there is no liability to pay any SGST under reverse charge. In other words, the reverse charge liability for supplies from unregistered person is only in respect of intra-state supply received in the State, where one is registered.

But, the position under CGST Act is different. Section 9 (4) of CGST Act casts similar obligation on all registered persons and a registered person under CGST Act refer to the person who is registered under section 25 of the CGST Act and M/s ABC & Co being registered under CGST Act, they would be liable to pay CGST under reverse charge, on all intra-state supplies received by them in any State, from unregistered persons.

There would be no liability under IGST Act to pay IGST under reverse charge, as any person who makes an inter-state supply is bound to be registered and not entitled for any threshold exemption. If there are any defiant suppliers, who are not registered despite making inter-state supplies, as per Section 5 (4) of the IGST Act, whenever a registered person receives supplies of goods or services or both from an unregistered person and such supply is an inter-state supply, the recipient is liable to pay IGST under reverse charge.

The CGST / IGST thus paid under reverse charge is entitled for ITC.

To sum up,

S.No.	Situation	Example
1	A person registered in one State receives any intra-state supply in any other State from unregistered persons, where he is not registered there is no need to pay any SGST under reverse charge.	A person registered in one state avails services of Hotel, Restaurant, etc. in a different state, from unregistered suppliers. As per Section 12 (3) of the IGST Act, the place of supply is the location of the hotel / restaurant and hence an intra-state supply.
2	A person registered in one State receives any intra-state supply in any other State from unregistered persons, where he is not registered, he is liable to pay CGST.	
3	A person registered in one State receives any inter-state supply from an unregistered supplier in another state – IGST payable under reverse charge.	Receiving services of a CA from outside the State. As per Section 12 (2) of the IGST Act, the place of supply is the recipient's location and location of the supplier is in a different state and hence it is an inter-state supply. It may be noted that the CA in this case is bound to be registered as he is making inter-state supply and the possibility of he not being registered is very remote.

PS. The above views were reconsidered on the basis of certain feedback received. It may be observed from Section 22 of the CGST Act, that registration under the Act is Statewise. Even the registration number of the same person would be different in different State, based on the State Code. So, in the above examples, when the person who is not registered in Karnataka avails the services of a Hotel in Karnataka, since the person is not registered in Karnataka, there would be no CGST / SGST liability under RCM. Thanks for the feedback.

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