

Treading the GST Path – XXXV

All about Reverse Charge

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As per Section 2 (98) of the CGST Act, 2017 “reverse charge” means the liability to pay tax by the recipient of supply of goods or services or both instead of the supplier of such goods or services or both under sub-section (3) or sub-section (4) of section 9, or under sub-section (3) or sub-section (4) of section 5 of the Integrated Goods and Services Tax Act.

The above referred sections are reproduced below.

Sections 9 (3) and 9 (4) of the CGST Act, 2017.

9 (3) The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both 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.

9 (4) The central 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.

Section 5 (3) and 5 (4) of the IGST Act, 2017

5 (3) The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both 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.

5 (4) The integrated 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.

It may be noted from the above, that there are two types of Reverse Charge, viz.,

- (i) Reverse charge specifically notified. {Sub Section (3) of Section 9 of CGST Act, 2017 and Section 5 of IGST Act, 2017}
- (ii) Reverse charge in respect of supply of any taxable goods or services or both by an unregistered person to a registered person. {Sub Section (4) of Section 9 of CGST Act, 2017 / Section 5 of IGST Act, 2017}

Vide Notification 13/2017 Central Tax (Rate) Dt. 28.06.2017 and Notification 10/2017 Integrated Tax (Rate) Dt. 28.06.2017, various services have been notified for reverse charge purposes, such as GTA service, Advocate Service, Sponsorship Service, Import of services etc.

Vide Notification 4/2017 Central Tax (Rate) Dt. 28.06.2017 and Notification 4/2017 Integrated Tax (Rate) Dt. 28.06.2017 certain goods have been notified for reverse charge purposes, where supply of such goods would attract RCM in the hands of the recipient of the supply.

The reverse charge liability in respect of the above notified goods and services continues as such.

Under sub section (4) of Section 9 of CGST Act, 2017 / Section 5 of IGST Act, 2017, all taxable supplies by an unregistered person to a registered person would be liable to appropriate GST under reverse charge basis, in the hands of the recipient.

Notification 8/2017 Central Tax (Rate) Dt.28.06.2017 has been issued providing for the below exemption.

In exercise of the powers conferred by sub-section (1) of section 11 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby exempts intra-State supplies of goods or services or both received by a registered person from any supplier, who is not registered, from the whole of the central tax leviable thereon under sub-section (4) of section 9 of the Central Goods and Services Tax Act, 2017 (12 of 2017) :

Provided that the said exemption shall not be applicable where the aggregate value of such supplies of goods or service or both received by a registered person from any or all the suppliers, who is or are not registered, exceeds five thousand rupees in a day.

2. This notification shall come into force with effect from the 1st day of July, 2017.

It may be observed that vide the above notification, the entire levy of GST under Section 9 (4) of the CGST Act, 2017 has been exempted. But, the said exemption would not be available, if the aggregate value of such taxable supplies received by a registered person from any or all unregistered persons exceeds Rs.5,000 in a day. In other words, if the value of supply of goods or services or both, received in a day from unregistered persons is more than Rs.5,000, appropriate GST thereon is payable by the recipient under reverse charge.

The above liability under reverse charge was posing major challenge to all GST registrants, for the following reasons.

- (i) All and sundry supplies of goods and services received from unregistered persons have to be monitored, the HSN / SAC of such supplies have to be identified.
- (ii) The applicable rate of GST for all such supplies have to be determined.
- (iii) Self invoice has to be raised for such supplies, as per Section 31 (3) (f) of the CGST Act, 2017.
- (iv) Payment voucher has to be raised while making payment for such supplies as per section 31 (3) (g) of the CGST Act, 2017.
- (v) Most of the GST thus paid would be entitled for Input Tax Credit and all the above difficulties does not actually involve any cash impact for the assesses or effective revenue to the Government.
- (vi) While big corporates can outsource their sundry requirements to a housekeeping agency (who would be registered) small and medium enterprises depend on various small unregistered suppliers for their various needs and they have to undergo the rigours of reverse charge.
- (vii) The clarifications issued through twitter to the effect that the expenses incurred and claimed as reimbursement by employees would not attract reverse charge, has created lot of confusion and such clarification is not supported by any legal provision. This has led to a belief that any expenses if arranged to be incurred through an employee and reimbursed to them would not attract reverse charge. While certain expenses incurred by the employees are booked as employee related remuneration, certain expenses are booked under the respective heads. For example, a fixed allowance may be given to an employee for boarding and lodging during official journeys, subject to production of bill and such expenses may be accounted as employee expenses. But if these expenses are considered and booked as boarding and lodging expenses of the company, whether reverse charge would apply or not lacks clarity.

The above concerns have been considered by the GST Council and Notification 38/2017 Central Tax (Rate) Dt. 13.10.2017 has been issued to amend Notification 8/2017 ibid. The said Notification 38/2017 is reproduced below.

In exercise of the powers conferred by sub-section (1) of section 11 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby makes the following amendment in the notification of the Government of India, in the Ministry of Finance (Department of Revenue), No.8/2017- Central Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 680(E), dated the 28th June, 2017, namely:-

In the said notification, the proviso under Paragraph 1 shall be omitted.

2. The exemption contained in the notification No. 8/2017-Central Tax (Rate) dated the 28th June, 2017 as amended by this notification shall apply to all registered persons till the 31st day of March, 2018.

Effect of the above amendment:

Since the proviso has been omitted, the main part of the exemption would apply and there would be no liability to pay CGST under reverse charge for any supplies received by a registered person from unregistered persons.

The exemption under Notification 8/2017 would be available only upto 31.03.2018 and from 01.04.2018 the said reverse charge would resume, either in the same form or in any modified form.

Date of effect of the above amendment:

Though nothing has been said in Notification 38/2017 about its date of effect, the same shall be applicable only from the date of its publication in the official gazette, i.e. 13.10.2017 since this notification has not been issued with any retrospective effect. So, any Reverse charge liability accrued upto 12.10.2017 is payable. For example,

- (a) M/s ABC received certain goods on 10.10.2017 for a value of Rs.7,500 from an unregistered person, for which payment is also made on the same day. The time of supply for the same would be the date of receipt of goods, i.e. 10.10.2017, as per section 12 (3) of the CGST Act and hence GST is payable by M/s ABC under reverse charge.
- (b) M/s ABC received certain goods on 10.10.2017 for a value of Rs.7,500 from an unregistered person, for which payment is made on 14.10.2017.

The time of supply for the same would be the date of receipt of goods, or date of payment, whichever is earlier as per section 12 (3) of the CGST Act and since the date of receipt of goods is prior to 13.10.2017, GST is payable by M/s ABC under reverse charge.

- (c) M/s ABC received certain services on 10.10.2017 for a value of Rs.7,500 from an unregistered person, for which payment is also made on the same day. The time of supply for the same would be the date of payment, i.e. 10.10.2017, as per section 13 (3) of the CGST Act and hence GST is payable by M/s ABC under reverse charge.
- (d) M/s ABC received certain services on 10.10.2017 for a value of Rs.7,500 from an unregistered person, for which payment is made on 14.10.2017. The time of supply for the same would be the date of payment, as per section 13 (3) of the CGST Act, which is after 13.10.2017 and hence no GST is payable by M/s ABC under reverse charge.

Inter-state supplies received from unregistered persons is also liable to IGST under reverse charge (though such instances could be minimum as any person effecting inter state supplies are liable to be registered). Now, with the decision of the Government to permit unregistered suppliers with less than Rs.20 lakhs turnover also to make inter-state supplies, such reverse charge liabilities would be more.

It may be noted that no exemption upto Rs.5,000 per day similar to the one available under CGST was available under IGST.

Now under Notification 32/2017 Integrated Tax (Rate) Dt. 13.10.2017, the following exemption has been provided for.

In exercise of the powers conferred by sub-section (1) of section 6 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), the Central Government, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby exempts the inter-State supply of goods or services or both received by a registered person from any supplier, who is not registered, from the whole of the integrated tax leviable thereon under sub-section (4) of section 5 of the said Act.

2. The exemption contained in this notification shall apply to all registered persons till the 31st day of March, 2018.

As per the above, no IGST is payable in respect of taxable supplies received from unregistered persons by a registered person in the course of inter state supply, upto 31.03.2018.

Certain Suggestions on RCM.

The most complicated and cumbersome requirement under GST law is this reverse charge on supplies by unregistered persons. It may be observed that the total revenue to the Government on account of this reverse charge would not at all be substantial. Further, since most of the GST paid on reverse charge would be entitled for ITC the entire issue is revenue neutral and it defies logic as to why the assesses should undergo such a rigmarole, which benefits no one. Further, the intention of giving exemption from registration under GST for small suppliers having less than Rs. 20 lakhs per annum turnover is lost, as the registered persons refuse to transact with such small suppliers, for the fear of reverse charge and the small suppliers are forced to obtain registration.

As the entire scheme of such reverse charge may be reconsidered by the Government, the following suggestions are offered.

- (i) The best option would be do completely do away with this reverse charge liabilities under sub section (4) of Section 9 of CGST Act and sub section (4) of Section 5 of the IGST Act.
- (ii) Alternatively, a uniform rate may be prescribed for this reverse charge purpose and the following sample rates are suggested.

If the value of taxable supplies (any goods or services or both) received in a day from unregistered person is below Rs.10,000 in a day	NIL
If the value of taxable supplies (any goods or services or both) received in a day from unregistered person is above Rs.10,000 but below Rs.20,000 in a day	5 % (CGST & SGST put together)
If the value of taxable supplies (any goods or services or both) received in a day from	12 %(CGST & SGST put together)

unregistered person is above Rs.20,000 in a day	
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- (iii) Instead of a daily limit for exemption, a monthly limit may be fixed for exemption. For example payments upto Rs.3,00,000 per month is exempted and if the payments exceeds Rs.3,00,000 GST at an uniform rate is payable.
- (iv) Alternatively, a minimum rate of say 1 % (both CGST and SGST put together) may be prescribed for all supplies received from unregistered persons, above a value of say Rs.10,000 per day / Rs.3,00,000 per month, with absolute bar on Input Tax Credit entitlement.

Simplifying the reverse charge would go a long way in alleviating the major sufferings of GST registrants and it is hoped that the Government would seriously consider the above suggestions.

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