

Hiregange Academy

(A Division of Empower Education Foundation®)

- Empowering Knowledge & Employability

Going Beyond!!! September 2018



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Agents under GST

Background

In common parlance, agent is understood as a person who is entrusted to act on behalf of the other person. An agent plays very important role in connecting the manufacturers/ service providers to the final consumers of goods and services. GST is a levy on supply of goods [moveable's] or services [anything other than goods]. Once it is clear that a person is acting on behalf of another person, as "agent" to supply goods on which GST is leviable, there maybe need to examine if such agent is required to register under GST. Once this aspect is confirmed, then it could ensure that registration is duly taken, tax paid, returns filed. In this backdrop paper writer has examined the concept of agent and GST implications and few issues on same.

Concept of agent and principal:

Agents are known by different names in trade. The agents carry on different functions like procurement of orders, guaranteeing the payment etc. In GST, the term agent is defined to mean any person who carries on the business of supply or receipt of goods or services on behalf of the principal. The principal is a person on whose behalf an agent would supply or receive the goods or services.

In this context we next see what is "business"? The definition of the term business could be understood in two parts:

- a) General activity: Trade, commerce and its incidental activities irrespective of its volume, frequency, continuity or regularity of the transaction.
- b) Specific activity: Acquisition of goods including capital goods, supply by association/ club, admission of persons to a premises and services by a race club including by way of totalisator or a license to book maker or activities of a licensed book maker in such club.

It can be seen from above to be covered within the ambit of the term 'agent' under GST, the following would be essential:

- a) a person carries on the business
- b) supplies goods / services on behalf of another persons or
- c) receives goods / services on behalf of another persons

Principal is a person, on whose behalf an agent carries on the business of supply or receipt of goods or services or both. It is important to note that the definition of the principal in the GST law has only limited reference to the principal and agent relationship.

Agent and GST on "Related persons" transactions

Related persons cover, one person controlling the other directly or indirectly. Principal could control the activities of agent. Accordingly, the agent and principal are related persons under GST. Transaction between related persons, even if made without consideration, is treated as supplies in Schedule I. Entry 3 of the said schedule states that the following transactions are 'supply of goods':

- a) Transfer of goods from principal to agent where agent supplies goods to the third person on behalf of the principal.
- b) Transfer of goods from agent to the principal where the agent receives the goods from the third person on behalf of the principal.

It can be seen from above, the supply of goods between principal and agent is treated as supply of goods, where the agent undertakes to supply or receive the goods on behalf of the principal and even if made for no consideration by virtue of entry 3 of Schedule I.

However, it is important to note that, the entry 3 of schedule I covers only the supply of goods. Supply of service between the principal and agent is not covered in entry 3 of the Schedule I.

How to determine whether a person is acting as an agent of the other person?

Only when the agent supply or receipt of goods on behalf of the principal, he would be covered in Schedule I. For determining relationship between the principal and agent under GST, it is required to examine whether the invoice for the further supply of goods on behalf of the principal is being issued by the agent or not.

- a) Where the invoice for the supply of goods to the customer is issued by the agent in his name then, the transfer of goods from the principal to the agent would fall within the ambit of Schedule I of the CGST Act.
- b) Where the invoice is issued by the agent to the customer in the name of the principal, for the supply of goods from the agent to customer, then agent is not covered within the ambit of Schedule I of the CGST Act.

GST implications for agent:

Registration: Where an agent is supplying or receiving goods or services on behalf of his principal, he is required to mandatorily register under GST and comply all the provisions of the law irrespective of his aggregate turnover. In other words, the threshold limit of 20L / 10L for registration is not applicable to an agent who supplies or receives goods or services on behalf of another person.

Accounts and records: On obtaining registration, the agent would maintain the accounts and records:

- a) Authorization received by him from each principal to receive or supply goods or services on behalf of such principal separately.
- b) Particulars including description, value and quantity (wherever applicable) of goods or services received on behalf of every principal
- c) Particulars including description, value and quantity (wherever applicable) of goods or services supplied on behalf of every principal

- d) Details of accounts furnished to every principal
- e) Tax paid on receipts or on supply of goods or services effected on behalf of every principal.

Valuation: The supply of goods between the principal and agent cannot be valued in accordance with section 15 i.e. transaction value as they are treated as related persons under GST. In such case, the valuation would be determined in accordance with valuation rules, in CGST Rules, 2017.

The valuation of the goods supplied would be done by opting the following method of valuation:

- a) Open market value of the goods
- b) At the option of the supplier, be ninety percent of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person, where the goods are intended for further supply by the said recipient.
- c) Cost + 10%.
- d) Where the value of a supply is not determinable in accordance with (a) to (C) above, the same would be determined by using reasonable means consistent with the principles and the general provisions of section 15 of the CGST Act.

The valuation of the services between the principal and agent would be only on the basis of the following as the option (a) and (b) is applicable for the supply of goods between the principal and agent:

- a) Cost + 10%.
- b) Where the value of a supply is not determinable in accordance with (a) to (C) above, the same would be determined by using reasonable means consistent with the principles and the general provisions of section 15 of the CGST Act.

Invoice & payment of tax: Where the goods are supplied by the agent to the third person on behalf of the principal, the invoice would be issued by the agent, levy tax, collect the taxes and pay to the department. Eg: Principal Mr A is located in Karnataka.

Agent, Mr B is located in Tamilnadu and the customer, Mr C is located in Kerela. Mr B agrees to supply goods to Mr C on behalf of the principal.

- a) Mr B would get registered under GST.
- b) Goods would be transferred from Mr A to Mr B.
- c) Mr B would issue tax invoice to the Mr C, charge tax, collect and pay tax to the government.
- d) Transfer of goods from Mr A to Mr B is covered in Schedule I and chargeable to tax.

Filing of returns: The agent would file the returns at regular intervals and pay taxes by availing the eligible ITC on the inward supplies.

Issues:

Whether an intermediary for enabling sourcing of goods between two parties, namely foreign principal and Indian supplier, is an agent liable to GST?

Agent does not include intermediary however intermediary includes agents. Only where a person supplies or receives the goods on behalf of principal, he would be said to be an agent. Enabling or sourcing of goods between two parties without supplies or receipt of goods cannot be an agent liable to GST.

However, being an intermediary, in accordance with section 13(8)(b) place of supply is the location of the supplier of the service i.e. location of the intermediary, liable to pay CGST+SGST on the intermediary services.

Whether an intermediary for enabling sourcing of goods between two parties, namely principal and supplier located in India, is an agent liable to GST?

The intermediary is not an agent as he is not supplying or receiving the goods on behalf of principal.

However, being an intermediary, he would be liable to pay tax as under in accordance with section 12(2) of the IGST Act, as they are not covered in section 12(3) to (14) of the IGST Act, 2017:

Intermediary and the principal [recipient of service] are located in the same State: CGST + SGST

Intermediary and the principal [recipient of service] are located in different States: IGST.

When advertising agency pays GST on behalf of model, whether the said agency is covered as “agent” under GST?

Where the agency is supplying or receiving services on behalf of the model, the agency could be covered within the term “agent” under GST. However, the supply of service from the agency to model is not covered in entry 3 of schedule I.

In case of M/s Katrina R Turcotte vs. commissioner of service tax, Mumbai-I [2013 (31) S.T.R 670 (Tri-Ahmd.) and Zaheerkhan B Khan vs. Commissioner Of Service Tax [2013- TIOL-643-CESTAT-MUM] it was held that S.T need not be paid once it is discharged by the agent.

This has persuasive value in GST regime as well. Where the agency has paid GST on behalf of model, GST may not be required to be paid again by the model.

Whether the job worker is said to be agent of the principal?

The job worker is not an Agent of the Principal and the relationship between the job worker and the principal is Principal to Principal basis and not principal to agent basis. Therefore, the job worker is not an agent of the principal.

Whether all the transfer of goods sent from the principal to the agent are covered in Schedule I?

Where the goods are transferred or received by the agent:

- a) On his own account
- b) And not supplying goods or services on behalf of principal to the third person

It cannot be treated as supply of goods in accordance with schedule I.

Conclusion

The persons who are engaged in carrying on the supply or receipt of goods or services on behalf of any other person would do well to confirm if there are any GST implications on them in capacity as “agent” in respect of such supplies done. This could ensure that there is no demand at future date for non-payment of applicable taxes along with interest and penalty.

Input Tax Credit Review Audit – Common Errors – GST

The GST audit under Section 35 (5) of CGST Act 2017 has not been notified till date. (May be by end of September 18] However, the industry and trade needs to carry out an input tax credit review before the last date of filing of September 2018 return [October 20th 2018]. It is understood that there could be a number of errors of understanding, system errors and transactional mistakes in the year 2017-18. The registered persons would have a chance to ensure total reconciliation and proper availment is carried out before this time limit expires. Those who miss this window may have to face disputes and litigations if they were to avail the ITC after this date.

The errors are expected to be mainly centered around vendor compliances impacting ITC, doubtful credits, missed or short credits. Excess or duplicate credits, debit/ credit note adjustments, capital goods credit vis a vis capitalization, reversal for exempt supplies and reverse charge. We examine some of them in more detail hereunder:

1. Considering ITC balance to payoff liability under reverse charge

- a) Recipient cannot utilize ITC for discharging RCM liabilities. GST portal also does not allow such adjustment while filing returns.
- b) ITC can be claimed in the same month where taxes are paid by the recipient under RCM in end of previous month.

2. Discharging GST under reverse charge on services u/s 9(3).

- a) Auditor needs to understand place of supply especially for export or import of services.
- b) The old service tax law and the GST Act differ and there are some transaction which no longer attract GST. If paid then refund can be sought as it is within limitation. Illustration: Rent a cab or manpower services which were liable for RCM under earlier tax regime but not notified services under GST regime.

3. ITC could be claimed on the taxes paid under RCM on the GTA services

- a) ITC is only restricted for provider of GTA service who pays at 5%. The customer who pays taxes under RCM could avail ITC if eligible.

4. Treating export of goods/services as exempted goods/services and not availing eligible credits related to same

- a) Refund of taxes paid on the goods or services could be availed by the person making the exports even when output GST is not paid on exported goods/exported services.

5. Non-reversal of ITC in cases where payment is not made to supplier within 180 days from the date of invoice

- a) Reversal of ITC with interest is required. (recently the amendment for no interest has been made- but retrospective applicability not made clear.)
- b) The care to enable re credit on future payment can be suggested.

6. Inter-State purchases made from unregistered persons

- a) Procure goods only from a registered vendor & avail eligible ITC.
- b) ITC availed on the basis of invoice of registered dealer provided by the unregistered person would not be available. Further availing ITC on the basis of photocopies may be disputed.
- c) No restriction for availing 100% of ITC on the purchase of capital goods. [50% credit was in earlier central excise regime].

7. Availing ITC on supplies specifically blocked u/s 17.

- a) Not allowed and if availed - has to be reversed.

8. Availing credit when the same is restricted by rate notification

- a) Where ITC was availed when the conditional of notification restricts. Credit to be reversed with interest.

9. Availing ITC merely on receipt of invoice without actual receipt of goods/services

- a) ITC could be availed only on receipt of invoice and goods (constructive receipts on instruction of purchaser included).

10. Non-reversal of proportionate ITC in respect of exempted supplies, non-business purpose use

- a) Non-business, non-taxable or exempt supplies not eligible for credit. It would amount to non-compliance of Rule 42 and 43 of the CGST Rules, 2017.

11. Non-availment of ITC on bank charges

- a) ITC could be availed as there is no specific restriction U/S 17(5)

12. Non-reversal of ITC in respect of goods lost, stolen, destroyed, written off or distributed as gifts/free samples

- a) Where ITC is availed and then the goods lost, stolen, destroyed, written off or distributed as gifts/free samples, ITC has to be reversed with interest.
- b) Written off could mean fully written off and therefore provision may not impact this.
- c) Inputs destroyed before putting into the production process would be covered.
- d) Inputs sent as samples are covered in this section. Inputs contained in final products would not be impacted.

13. Delay in availing ITC

- a) Avail the ITC on monthly basis and utilize for payment of output liability
- b) The absence of proper mechanism/checklist to determine the eligibility of ITC of various purchase /procurement transactions.

The full article with the steps to conduct an ITC audit and the format of ITC reconciliation for making the auditor's job easier are available in the web site idtc@icai.in- knowledge sharing- articles dt 6.8.18.

- CA Madhukar N Hiregange

Business Vertical under – GST

Background

Many entities provide groups of products and services or operate in geographical areas that are subject to differing rates of profitability, opportunities for growth, future prospects, and risks. A distinct component of an enterprise that is supplying an individual product or service or a group of related products or services and is subject to risks and returns different from those of other business segments is defined as business vertical under GST.

The factors that should be considered in determining whether goods or services are related includes—

- a) The nature of the goods or services;
- b) The nature of the production processes;
- c) The type or class of customers for the goods or services;
- d) The methods used to distribute the goods or supply of services; and
- e) The nature of regulatory environment (wherever applicable), including banking, insurance, or public utilities;

Few examples of different business verticals as under

- a. Trading in cars and servicing of vehicles vertical.
- b. Taxable goods, such as medicine and exempted services such as health care services vertical.
- c. Own manufactured goods vs traded goods.
- d. Supply of goods to domestic customers and for the export customers.
- e. Wholesale vertical vs end customers vertical for a consumer electronics company.
- f. Export Oriented unit and Domestic Tariff Area unit vertical

There is an facility given to take separate GST registration for each business vertical in a state. In this backdrop the paper writer has examined GST registration and other aspects for a business vertical and its implications under the law.

Registration under GST and business vertical

GST is a state based registration. A supplier engaged in taxable supply of goods or services from a state, has to take registration in that state. Such person is required to take registration when aggregate turnover [all India for all locations put together] exceeds Rs. 20 Lakhs pa.

A person shall be granted a single registration in each State. However a person having multiple business verticals in a State may be granted a separate registration for each business vertical, subject to such conditions as may be prescribed. The taking of registration for each business vertical is an option and not a compulsion.

In line with Section 25(5) of GST law sets out: A person such as a company, which has obtained more than one registration for each business vertical, in one State shall, in respect of each such registration, be treated as distinct persons for the purposes of GST.

Schedule I entry 2 sets out as follows- Supply of goods or services or both between distinct persons as specified in section 25, when made in the course or furtherance of business, is treated as supply even if done without consideration.

When one business vertical supplies goods or services to other business verticals, then it is treated as supply between distinct persons. Such supply of goods or services is deemed supply which is taxable

to GST, in hands of the supplying registered vertical, under Schedule I entry 2. The supplying business vertical has to raise tax invoice charging GST to the receiving business vertical. The credit can be availed by the receiving business vertical to extent related to taxable supplies done by it.

Option to avail composition scheme

Option to avail composition scheme is person wise and PAN based. It is not possible to avail composition scheme for one vertical of the business and pay tax in regular manner for one or more of another vertical of the same business by the same PAN holder. The composition scheme would become applicable for all the business verticals/registrations which are separately held by the eligible person with same PAN. However practically it may not be possible to avail composition scheme, when for several entities, the limit of Rs. 1.5 Crores pa maybe crossed when aggregate turnover in Preceding Year of all verticals is added up, in which case cannot opt composition scheme at all.

Latest development GST Amendment Act 2018 vs Business vertical

Multiple registrations were allowed earlier in a state, in case of separate business verticals. The law now allows separate registration for each place of business in respect of persons having multiple places of business in a state . The registration is now linked to place of business.

“Place of business” includes— (a) a place from where the business is ordinarily carried on, and includes a warehouse, a godown or any other place where a taxable person stores his goods, supplies or receives goods or services or both; or (b) a place where a taxable person maintains his books of account; or

(c) a place where a taxable person is engaged in business through an agent, by whatever name called

The facility to register each premise separately is also optional and not mandatory.

Further it has now been expressly provided in the Act that a person in a SEZ or being a SEZ developer have to apply for separate registration as compared to his registration in respect of the place of business located outside the SEZ in the same state or territory. Earlier the said provision was contained only in the CGST Rules.

Paper writer comments

Now separate GST registration may be taken for two different premises which maybe engaged in supply of same goods/services.

Such registration may also be taken for two different premises which may be engaged in supply of different kinds of the goods/services or engaged in supplying to same or different class of customers for the goods/services or engaged in different or same methods to distribute the goods or supply services;

Such registration maybe for such premises where each premise is a business vertical such as trading division premise and repair services division premise of a taxable person in a state

Conclusion:

The law has now evolved to enable taking separate GST registration for each place of business. It maybe noted that in respect of separate registration, the compliances by way of maintenance of books and records, paying taxes, filing periodic returns, audit has to be got done by assessee. Keeping this in view, the taxable person may take final decision whether to seek or continue with more than 1 GST registration in a state.

- CA Roopa Nayak

TDS under GST

After going through lot of ups & downs, twists & turns, government has finally notified the TDS provisions under GST w.e.f 01-10-2018. Let us discuss in detail, everything about TDS in GST.

1. What is TDS under GST?

- Generally, the onus to collect and deposit tax lies with the supplier of goods or service in GST. However, in few cases, the onus would be on the recipient to deposit the applicable GST to the government.
- TDS is one of the means of collecting GST from the recipient. However, unlike section 9(3), 9(4) where the recipient pays GST at applicable rates (5/12/18/28, as the case may be), here the recipient only deducts a certain percentage from the value of supply (2%) and disburses the same to the government. In case of RCM provisions, the onus to pay tax is on the recipient of services or goods; however, in TDS, the onus of tax payment still lies with the supplier of goods/services. Only recipient, on behalf of supplier, would deposit (not pay) a certain portion of tax.
- These provisions are applicable only to persons notified. The person deducting the amount (generally receiver of supply) is the deductor and the other person (generally supplier) is the deductee.

2. Who are the persons notified to deduct TDS?

Category of persons	Section	Example
Department or an establishment of CG/SG		ISRO (Department of space)
Local authority	Category of persons notified u/s 51(1)	Panchayat, as defined in Article 243(d) of Constitution
Governmental agencies		Defence Research and Development Organization (DRDO)
Authority or board, set up by an act of parliament or state legislature	Category of persons notified vide Notification 50/2018 CT dated 13-09-2018	IIM's (set up by IIM Act)
Authority or board, established by any govt. with 51% or more participation by way of equity or control		Bharat Heavy Electricals Limited
Society established under CG/SG/local authorities		Bangalore Developmental Authority
Public sector undertakings		Air India Limited

3. Why was TDS introduced?

- It has been introduced to bring high value transactions under proper control, to curb fraudulent transactions and restrain tax avoidance. It is also aimed to bring the unorganized sector into the tax net.
- This is not new in indirect taxes. It was in force in Maharashtra and other states. However, TDS was applicable only for works contract transactions; now, its base has been widened to include all transactions (goods as well as services), to a specific category of persons.
- This is mainly applicable for government and governmental agencies. Usually, the outward supplies provided by government/governmental agencies would be exempt; thus, they wouldn't be eligible for ITC. So, there is an inherent risk that the supplier doesn't pay the applicable GST to the government (even, recipient wouldn't be concerned as he is not eligible for ITC). To ensure that this risk is minimised, TDS provisions are made applicable in GST.

4. When would TDS be deductible?

- Amount: - TDS would be deducted when the total value of supply, under a contract, exceeds Rs. 2.5 lakhs [Section 51(1)].
- Rate: - The deductor would deduct TDS at the rate of 2% [1% CGST & 1% SGST or 2% IGST] from the payment made/credited to the supplier of taxable goods or services.
- Computation of value of supply: - For the purpose of TDS, value of supply would be the amount excluding CGST, SGST, IGST, UTGST and Cess, as indicated in the invoice.
- Time of deduction:- TDS would be deductible at the time when the payment is made or credited to the supplier.

Example 1 :-

Assume, the payer is a society registered under Central Govt; state whether TDS would apply or not in the following cases:-

Taxable value	GS T rate	Invoice value	TDS deductible	Reasons
2,00,000	12	2,24,000	No	As value of supply is less than 2.5 lakhs, TDS is not applicable.
2,45,000	5	2,57,250	No	Value of supply is the value excluding GST, which is 2, 45,000. Since, it is less than 2.5 lakhs, TDS is not deductible
2,50,000	18	2,95,000	No	Value of supply is Rs 2.5 lakhs; it doesn't exceed Rs. 2, 50,000.
2,60,000	12	2,91,200	Yes	Applicable as value of supply(excluding GST) exceeds Rs. 2.5 lakhs
2,70,000	Exempt	2,70,000	No	TDS is applicable only to taxable goods or services.

Example 2 :-

Suppose Supplier X entered into a works contract agreement with ONGC (public sector undertaking), wherein the payment is to be made and invoices to be issued in installments, as given below. Determine the applicability of TDS provisions.

Percentage of completion	Payment(Rs. excluding GST at 18%)
50%	2,25,000
100%	2,00,000
6 months after completion	1,50,000

Answer: - TDS will have to be deducted, as the total value of supply under a contract is Rs. 5.75 lacs. It is immaterial if the payment are made in instalments or if the invoice is issued in smaller chunks. As long as the total value of the contract(excluding GST) exceeds Rs. 2.5 lacs and the payer is a person specified u/s 51, TDS at the rate of 2% would be deductible.

5. Cases when TDS need not be deducted:-

No deduction needs to be made if the location of the supplier and the place of supply is in a State/UT, which is different from the State/ UT of registration of the recipient [Proviso to section 51(1)]

Particulars	Case-1	Case-2	Case-3
Location of Supplier	Delhi	Delhi	Delhi
Place of Supply	Delhi	Bangalore	Delhi
Type of Tax	CGST, SGST(Delhi)	IGST	CGST, SGST(Delhi)
Location of recipient	Delhi	Bangalore	Bangalore
Whether TDS deductible	Yes; deduct 1% CGST, 1% SGST	Deduct 2% IGST	No; as location of supplier and POS is in Delhi, whereas location of recipient is in Bangalore.

6. Procedural requirements:-

- a) Registration:- Every person, who is required to deduct tax, shall obtain registration irrespective of the fact that whether such person is separately registered under the Act or not [Section 24(vi)]. Hence, there are no threshold limits for registration as deductor and registration is mandatory.

- b) Returns to be filed by deductor:- The deductor needs to file GSTR-7 electronically through common portal, as per rule 66(1). The amount needs to be paid within 10 days after the end of month in which such deduction is made [Section 51(2)]
- c) Whether TDS certificate is required to be issued to the deductee: -Just like the income tax Law, the deductor would require furnishing a certificate mentioning the contract value, rate of deduction, amount deducted, amount paid to the Government and other particulars in form GSTR-7A. [Section 51(3)]
- d) Time limit for furnishing TDS certificate:- The deductor would furnish the TDS certificate within 5 days of crediting such amount to the government. [Section 51(4)]
- e) Penalty for delay in furnishing certificate:- Late fee payable would be Rs. 100 per day (from the day after the expiry of such five days) until the failure is rectified (i.e. until the date such certificate is furnished), subject to a maximum of Rs. 5,000.
- f) How can deductee(supplier) claim such credit:-
- The amount would be credited to the electronic cash ledger of the deductee(supplier). [Section 51(5)]
 - The supplier may use the same to set off against his output tax liability for the period.
 - Balance, if any, after set off against output tax liability, may be claimed as refund in form RFD-01 on the common portal.
- g) What if the deductor doesn't deposit such amount:- He would be liable to pay interest at 18%, in addition to the amount of tax deducted. [Section 51(6)]
- h) What if excess amount has been deducted erroneously:-
- i) The deductor or deductee may claim refund of the same, in accordance with section 54.
 - j) However, if amount has already been credited to electronic cash ledger of the deductee, refund would not be granted to the deductor. In other words, deductee has to obtain the refund himself in such cases.[Proviso to section 51(8)]

Whether amount has been credited to the electronic cash ledger	No	Yes
Persons eligible for refund	Deductor or deductee	Deductee only

7. Commonly asked Questions:-

- a) Whether TDS provisions are applicable on IGST (inter-state) transactions also?
- TDS would be applicable on IGST transactions as well, provided the place of supply and location of recipient fall in the same state. [Proviso to section 20 of IGST Act]
 - However, notification 50/2018 CT has notified effective date of TDS as 01-10-2018 for intra-state supplies; similar notifications have been issued in SGST also. However, no notification is issued in IGST till date. Thus, the effective date of TDS for IGST transactions is yet to be notified.

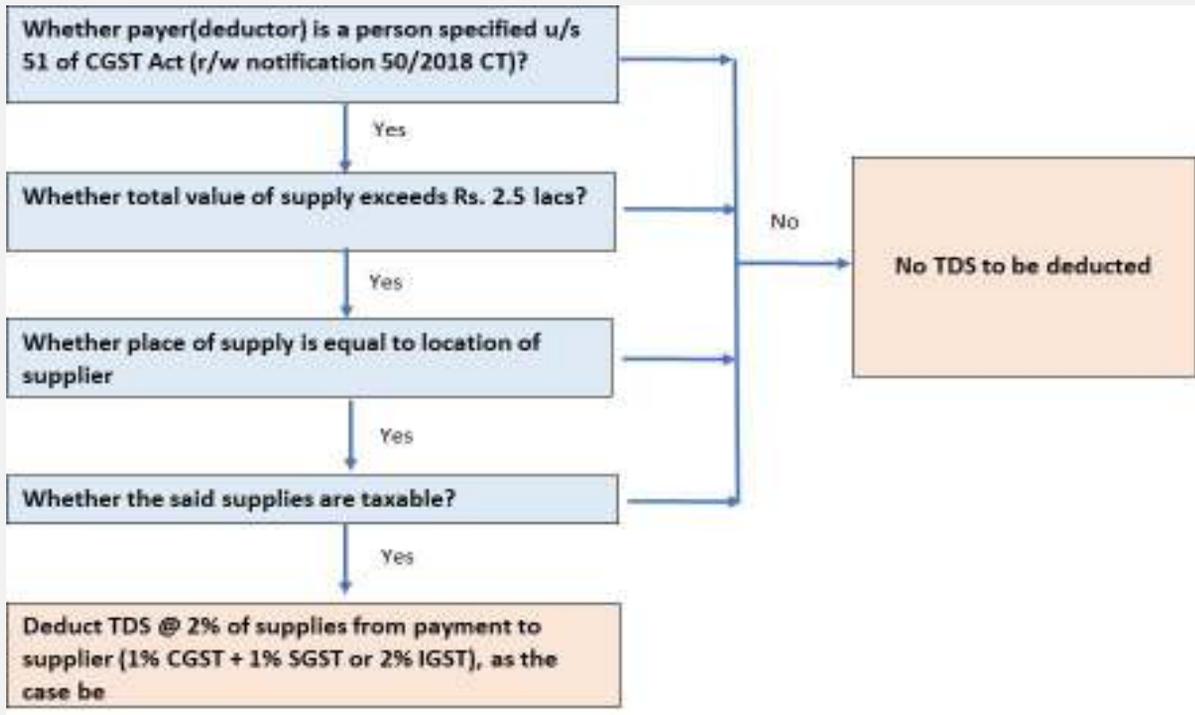
- b) Goods have been supplied on 05-09-2018; however, the payment is made on 07-10-2018. Whether TDS needs to be deducted?
- In terms of section 51(1), TDS is to be deducted from the payment made or credited to the supplier. In other words, the factor to be considered for deducting TDS is payment, not supply.
 - So, even though the supply has taken place before the appointed date (01-10-2018), payment is made after the appointed date; thus, TDS would be deductible.
- c) Whether TDS is to be deducted in case of exempt supplies?
- TDS would be deductible from the payment made to supplier of taxable goods or service [section 51(1)]. As the goods are exempt, no need to deduct TDS.
 - Further, the objective of TDS is to ensure better compliance, not to tax exempt supplies. Thus, no need to deduct TDS.
- d) Whether TDS is to be deducted in case of supplies from unregistered persons?
- Answer: - As URP cannot issue a tax invoice, there is no need to deduct TDS in case of supplies from unregistered persons.

State the differences between TDS and RCM provisions

Particulars	TDS	RCM
Liability to pay tax	Liability to pay tax with supplier; deductor only deduct and pay 2% to govt. which will be credited to the cash ledger	The onus to pay tax lies wholly with the recipient of goods/service
Collection of GST on invoice	The supplier would collect GST from the payer. Only 2% of basic value is withheld and paid to govt.	The GST portion is not paid to supplier. Recipient directly pays the same to govt.
Documents to be issued	TDS certificate to be issued	Self-invoice and payment voucher to be issued
Payment of tax to govt.	Payment to govt. will always be at 2% of taxable value	Payment to govt. will be on applicable rates(5/12/18/28) on taxable value
Requirement for separate return	Requirement for separate return, i.e. GSTR-7; in addition to the monthly GSTR-3B	No requirement for separate return, these details to be disclosed in monthly return (GSTR-3B)

- e) How to determine the applicability of TDS if a taxable as well as exempt supply is undertaken, on a single contract?
- Answer:-Exempt supplies are to be wholly ignored for the purpose of TDS deduction. If the value of supply of taxable portion(excluding GST and cess) exceeds RS. 2.5 lakhs, then TDS would be deductible.

8. Flowchart of TDS under GST



- **Mohammed Tabish Hassan**
Vetted by **CA Mahadev R.**

Case Law Updates

M/s. Apollo Screens Pvt Ltd Vs UIO 2018-TIOL-1831-HC-AHM-ST

Facts: Assesse is engaged in manufacturing activity and has not filed the TRANS-1 within the due date to carry forward the CENVAT Credit balance lying in the last return filed under previous laws. The assessee vide letter dated 27.04.2018 had communicated to the departmental authorities that due to portal errors, the assessee could not file the necessary declarations. The petitioner had not contacted the department during the time permitted for filing the return pointing out the difficulties in E-filing.

Issue: Whether assessee is eligible to carry forward the closing balance of CENVAT Credit to GST if the TRANS-I is not filed within due date.

Decision: There is nothing on record to suggest that all throughout from 01.07.2017 till 27.12.2017, the petitioner made multiple efforts at filing the returns making necessary declarations of unused CENVAT Credit. If the attempt was made but failed, assessee would have approached the Nodal Officer or grievance cell during the currency of time limit for filing the return. The petitioner's first official attempt in writing came on 27.04.2018 i.e. good four months after the time limit has lapsed. In absence of any other material suggesting genuine honest attempt on the part of the petitioner to file the return electronically, the same having failed on account of portal error or some such technical error attributable to the department, it would not be possible to extend the time limit for the petitioner.

Comment: Many High Courts has directed the GST council to provide an opportunity to the assessee to file the TRANS-I. Further, this case has not discussed that the CENVAT Credit is the vested right of the assessee and the same cannot be denied due to technical or procedural errors.

M/s. Speed Crafts Ltd Vs UIO - 2018-TIOL-1843-HC-DEL-CT

Facts: The assessee has submitted tender wherein the bid document specified that quoted price is inclusive of Central Excise (Nil at time of bid), Sales Tax (Nil at time of Bid) and Works Contract Tax (1%). The bid also specified that in case excise duty is levied by government, the same shall be reimbursed. Subsequent to the signing of the agreement, service tax was levied on the works executed. The assessee has raised a claim seeking reimbursements of the service tax payable along with interest. The Railways (recipient of service) rejected the claim and the same was upheld by the Arbitration tribunal.

Issue: Whether the assessee is eligible to get the reimbursement of new tax levied on a particular activity from the recipient which does not exist at the time of entering into contract?

Decision: The Hon'ble High Court held that the assessee was liable to the extent of the obligations which existed on the Bid date but not beyond that. As service tax was imposed subsequently, the same would be reimbursable by the recipient, going by the precedent of

Comments: The terms inclusive of taxes shall be considered to include only the taxes which are in existence as on the date of entering into contract and it cannot be interpreted to include the future tax, since the same did not have the *consensus ad idem* among the parties of the contract.

Link to GST: Many of the contracts entered prior to GST which are continuing in GST regime may not have mention about GST and the contracts were also not amended to incorporate the said clause. Further, in many cases the exemption provided to Government projects were removed in GST regime and tax rate was also high

when compared to tax rate in pre-GST regime. As per rationale of the above, the assessee can claim the reimbursement of GST as GST is not in existence as on the date of entering into agreement.

CA Lakshman Kumar
CA Venkat Prasad

Essel Propack Ltd. Vs. Commissioner of CGST-2018(9) TMI 247-CESTAT MUMBAI

Facts: Appellant has made payment to third party M/s. Shree Kalamadevi Charitable Trust for imparting training students of unprivileged section of society in discharge of Corporate Social Responsibility. Appellant has availed CENVAT Credit on such expenditure incurred towards CSR activities.

Issue: Whether CENVAT credit of the taxes paid on the CSR activities is eligible?

Decision: Sustainability is dependent on CSR without which companies cannot operate smoothly for a long period as they are dependent on various stake holders to conduct business in an economically, socially and environmentally sustainable manner i.e. transparent and ethical. CSR is to be treated as input service in respect of activities relating to business, production and sustainability of the company itself would be at stake. Hence, CENVAT credit of the taxes paid on the CSR activities is eligible.

Comments: CSR is generally understood as being the way through which the company achieves a balance of economic, environmental and social imperatives, while at the same time it addresses the expectations of stake holders and shareholders. Further, the provisions of Companies Act, 2013 made mandatory that every company should involve in the CSR activities.

Link To GST: The rationale of the above decision can be applied in the GST regime also since the scope of Input tax credit is widened to allow the ITC on the goods/services used or intended to be used in the course or furtherance of business.

CCE Vs. Coconut Lagoon Kumarakom 2018-TIOL-2436-CESTAT-BANG

Facts: Respondent is engaged in running resorts wherein they provide ayurvedic treatment with full time qualified ayurvedic doctors and qualified staff. All the treatments given are as per the standard ayurvedic medical texts. The type of treatment and duration will be decided by a qualified and registered medical practitioner after conducting the diagnosis

Issue: whether the treatment given by the ayurvedic centers run by the resorts amount to 'health care services'?

Decision: By the mere fact that the ayurvedic centers are located in the premises of the resorts, it cannot be said that they cease to be ayurvedic centers. The prescribed treatments are contained in Ayurvedic Pharmacopeia. It is therefore seen that these centers provide a holistic ayurvedic treatment which includes massages given by qualified professors under medical supervision for curing diseases. It is not always necessary that the treatment should be only in the dull / dreary atmosphere of hospitals alone. Hence, the ayurvedic treatments given at the resorts are not liable for service tax.

Comments: The cost of treatment and the ambience of the treatment are not the factors to decide the treatments as non-therapeutic and only for well-being. For that matter, the duration of treatment is also no criteria. In case of consultations by psychiatrists, the sessions may last even one day, for that reason one cannot conclude that the

psychiatrists ceases to be a doctor. The duration and the type of treatment depends on the diseases, the conditions of the patient, and the expertise of the doctor.

Link To GST: Under GST, the treatments (including massage) performed under medical supervision or advice under the recognized system of medicine (like Allopathy, Ayurvedic, Homeopathy etc.), the same would be 'health care services' and exempted from GST vide Sl. 74 of Notification No. 12/2017(R) dated 28.06.2018 as amended. The rationale of the above decision can be applied to the ayurvedic treatments given at the resorts as long as the same are provided as per the ayurvedic texts and under the supervision/advise of the qualified doctors/staff.

CCE Vs. Fortune Cookie- 2018 (7) TMI 1759 - CESTAT ALLAHABAD

Facts: Respondent is engaged in supplying food to the members of Noida Golf Course after taking the premises on rent. The respondent treated this activity as 'restaurant service' and paying applicable service tax thereon. The revenue proposed to treat the activity as 'outdoor catering'.

Issue: Supplying food at the golf club premises shall be treated as 'restaurant services' or 'Outdoor Catering Service'?

Decision: The definition of "Outdoor catering service" specified that services is to be provided at the premises of the service recipient whereas in the case of "restaurant service" to be provided by the service provider in his premises (owned/rented). In the present case, the place of service is of the service provider (rented premises). Therefore, services provided shall be treated as 'Restaurant' and not as "Outdoor catering Service".

Comments: Apart from the place of services, the Hon'ble Supreme court in case of Tamil Nadu Kalyana Mandapam Assn. v. UOI [2006 (3) S.T.R. 260 (S.C.) mentioned the following differences between the "Outdoor Catering" and "Restaurant Services"

- a) The food/eatables/drinks are the choice of the person who partakes the services in case of 'Outdoor catering' whereas in case of restaurant, the customer's choice of foods is limited to the menu card.
- b) In the case of 'outdoor catering', the customer is at liberty to choose the time and place where the food is to be served while the 'restaurant', the place & time is fixed by the service provider.
- c) In the case of an outdoor caterer, the customer negotiates each element of the catering service, including the price to be paid to the caterer. which is not the case of 'restaurant service'.

Link To GST: Under GST, the 'restaurant services' are liable at 5% without ITC whereas the 'outdoor catering' services are liable at 18% with ITC. Though the similar definition given under the service tax law is not there in 'GST law', the rationale of the above decision can be applied even in GST regime while keeping the observations made by the Hon'ble Supreme court in case of *Tamil Nadu Kalyana Mandapam Assn (supra)*.

Further, w.e.f. 27.07.2018, there was amendment made in the GST rate notifications to do away the concept of 'outdoor catering' and specified that food supplies that are event/occasional based liable at 18% with ITC facility and all other cases liable at 5% without ITC facility.

- S.Harshitha

- CA Venkat Prasad

Recent Updates under Customs and FTP

Customs

24x7 Clearance - regarding

Board has now decided that the facility of 24x7 Customs clearance for specified imports viz. goods covered by 'facilitated' Bills of Entry and specified exports viz. reefer containers with perishable/temperature sensitive export goods sealed in the presence of Customs officials as per Circular No.13/2018-Cus dated 30.5.2018 and goods exported under free Shipping Bills will be made available at M/s Adani Kattupalli Sea port in Chennai, Tamilnadu. This would be the 20th Sea port in the country where 24x7 facility would be in operation. [Circular No. 31/2018-Customs dated 5th September 2018].

Clarification regarding bank guarantee requirement for bond executed by EOUs- regarding:

The confusion is arising on account of the requirement of EOUs to follow Rule 5 of Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 to be eligible for claiming exemption of duties/ taxes on the import of goods under Notification no. 52/2003 dated 31.03.2003. As the EOUs have already been executing B-17 bond, hence it was clarified vide Circular no. 29/2017-Customs dated 17.07.2017 that the said B-17 bond will serve the requirement of continuity bond as required under Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 and there is no requirement to submit a separate continuity bond by EOUs. As B-17 bond is serving the purpose of continuity bond for EOUs, hence various circulars issued by the Board extending the facility of exemption from furnishing bank guarantee/ surety by EOUs namely Circular no. 54/2004-Customs dated 13.10.2004 and circular no. 36/2011-Customs dated 12.08.2011 will continue to hold good, as these circulars are in line with the Para 6.12 of the Foreign Trade Policy which lays down the conditions for EOUs to be exempted from furnishing of bank guarantee.

In view of above, it is reiterated that waiver of bank guarantee/ surety to EOUs would continue to be governed by various circular issued from time to time by CBIC with regard to B-17 bonds executed by EOUs and will not be guided by the Circular no. 48/2017-Customs dated 08.12.2017 which governs the general importers and not the EOUs. [Circular No. 27/2018-Customs dated 14th August].

Safeguard duty on Solar cells whether or not assembled in modules or panels - regarding:

It has been decided not to insist payment of safeguard duty on Solar cells whether or not assembled in modules or panels which was subject to duty in terms of notification number 01/2018 Customs (SG) dated 30th July, 2018

In terms of interim directions issued by the Hon'ble High Court of Orissa in writ petition (Civil) No 12817 of 2018 be assessed provisionally on furnishing of simple letter of undertaking/bond by concerned person.

FTP

Procedural relaxation for obtaining IEC:

Procedure for filling online application for IEC/ modification in IEC/e-IEC is laid down. IEC will henceforth be system generated and applicant will have the facility of taking a print out of IEC. Further, requirement of Digital Signature for submitting IEC applications is done away as per the public notice issued by DGFT [Public Notice No. 27/2015-2020 dated 08th August, 2018].

Advance Authorization scheme - procedural relaxation:

Introduced new facility which enables exporters who obtained Advance Authorizations under self-declaration basis to view status of their applications online as per the trade notice issued by DGFT. [Trade Notice No. 24/2018 dt 16th Aug]

Restriction on import of green peas

Directed to make amendment in ITC (HS) 2017, Schedule 1 (Import policy) to import of Peas classified under Exim Code 0713 1000 (Including yellow peas, Green peas, Dun peas and Kaspas peas) is "Restricted" till 30.09.2018. Meaning of the word "Restricted" is a term indicating the import or export policy of an item, which can be imported into the country or exported outside, only after obtaining an Authorisation from the offices of DGFT. [Notification No 32/2015 - 2020

- Venkatanarayana G.M

Notifications & Circulars issued for the period September 2018

SI No	Subject	Notification / Circular No. & Date of Issue	Link to Download
1	Seeks to make amendments (Eighth Amendment, 2018) to the CGST Rules, 2017	39/2018-Central Tax ,dt. 04-09-2018	Click here
2	Seeks to extend the time limit for making the declaration in FORM GST ITC-04	40/2018-Central Tax ,dt. 04-09-2018	Click here
3	Seeks to waive the late fee paid for specified classes of taxpayers for FORM GSTR-3B, FORM GSTR-4 and FORM GSTR-6	41/2018-Central Tax ,dt. 04-09-2018	Click here
4	Seeks to extend the time limit for making the declaration in FORM GST ITC-01 for specified classes of taxpayers	42/2018-Central Tax ,dt. 04-09-2018	Click here
5	Seeks to extend the due date for filing of FORM GSTR - 1 for taxpayers having aggregate turnover up to Rs 1.5 crores.	43/2018-Central Tax ,dt. 10-09-2018	Click here
6	Seeks to extend the due date for filing of FORM GSTR - 1 for taxpayers having aggregate turnover above Rs 1.5 crores	44/2018-Central Tax ,dt. 10-09-2018	Click here
7	Seeks to extend the due date for filing of FORM GSTR - 3B for newly migrated (obtaining GSTIN vide notification No. 31/2018-Central Tax, dated 06.08.2018) taxpayers [Amends notf. No. 21/2017 and 56/2017 - CT]	45/2018-Central Tax ,dt. 10-09-2018	Click here
8	Seeks to extend the due date for filing of FORM GSTR - 3B for newly migrated (obtaining GSTIN vide notification No. 31/2018-Central Tax, dated 06.08.2018) taxpayers [Amends notf. No. 35/2017 and 16/2018 - CT]	46/2018-Central Tax ,dt. 10-09-2018	Click here
9	Seeks to extend the due date for filing of FORM GSTR - 3B for newly migrated (obtaining GSTIN vide notification No. 31/2018-Central Tax, dated 06.08.2018) taxpayers [Amends notf. No. 34/2018 - CT]	47/2018-Central Tax ,dt. 10-09-2018	Click here
10	Seeks to make amendments (Ninth Amendment, 2018) to the CGST Rules, 2017.	48/2018-Central Tax ,dt. 10-09-2018	Click here

Notifications & Circulars issued for the period September 2018

SI No	Subject	Notification / Circular No. & Date of Issue	Link to Download
11	Notification amending the CGST Rules, 2017 (Tenth Amendment Rules, 2018)	49/2018-Central Tax ,dt. 13-09-2018	Click here
12	Seeks to bring section 51 of the CGST Act (provisions related to TDS) into force w.e.f 01.10.2018	50/2018-Central Tax ,dt. 13-09-2018	Click here
13	Seeks to bring section 52 of the CGST Act (provisions related to TCS) into force w.e.f 01.10.2018	51/2018-Central Tax ,dt. 13-09-2018	Click here
14	Seeks to notify the rate of tax collection at source (TCS) to be collected by every electronic commerce operator for intra-State taxable supplies	52/2018-Central Tax ,dt. 20-09-2018	Click here
15	Seeks to insert explanation in an entry in notification No. 12/2017 – Central Tax (Rate) by exercising powers conferred under section 11(3) of CGST Act, 2017.	23/2018-Central Tax (Rate) ,dt. 20-09-2018	Click here
16	Extension of time limit for submitting the declaration in FORM GST TRAN-1 under rule 117(1A) of the Central Goods and Service Tax Rules, 2017 in certain cases	Order 04/2018-GST	Click here

1. Registration for Practical Training Assessment Tests - (29-08-2018)
<https://resource.cdn.icai.org/50659bosfaqapt.pdf>
2. Scholarships for CA Students
<https://resource.cdn.icai.org/51572bos41252.pdf>
3. Structure of Practical Training Assessment
<https://resource.cdn.icai.org/51546bos41217.pdf>
4. Applicable study material for may, 2019 exams - new scheme foundation, intermediate and final course
<https://resource.cdn.icai.org/51618bos41271.pdf>
5. Announcement - Open House Question Answer Sessions - (11-09-2018)
https://www.icai.org/new_post.html?post_id=15118&c_id=347
6. Schedule of Mock Test Paper (Series – II) – Foundation, Intermediate & Final (New Course) / IIPC & Final (Old Course)
<https://resource.cdn.icai.org/51778bos130918new.pdf>

Happenings at Academy

Upcoming Events

Mark your Calendar

Topic	Date & Time	Venue
Seminar on "GST Annual Returns, Reconciliation, Certification including latest TDS / TCS Provisions"	27 th October 2018	To be decided
GST certification course	22 nd to 27 th October 2018	To be decided

List for Concluded Events

Topic	Date	Seminar Material
Seminar on "GST Annual Return - Importance & understanding and Latest Amendments"	15 th Sep 2018	http://www.hiregangeacademy.com/event/BGM-GST-Annual-Return-Importance-&-understanding-and-Latest-Amendments-15.09.2018.pdf

Concluded Events

One day Seminar on “Getting ready for GST Audit”



We thank all the delegates and the speakers for making the seminar a marvelous learning experience!

We are encouraged by our readers and the complements received. In our endeavour to improve our quality we request you to give two minutes time to give feedback.

-Thanking you,
Newsletter team

Write us at-

<https://docs.google.com/a/hiregangeacademy.com/forms/d/1LprDBXq11Ld0rG7cn8p-dMW-1hkQRpCZtN6bwSXrr0/edit?usp=drive web>