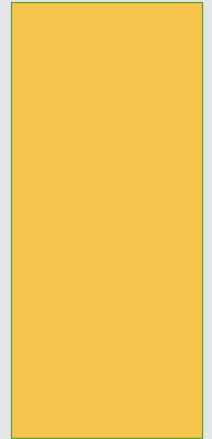


REVERSE CHARGE MECHANISM UNDER GST

CA Ashok Batra



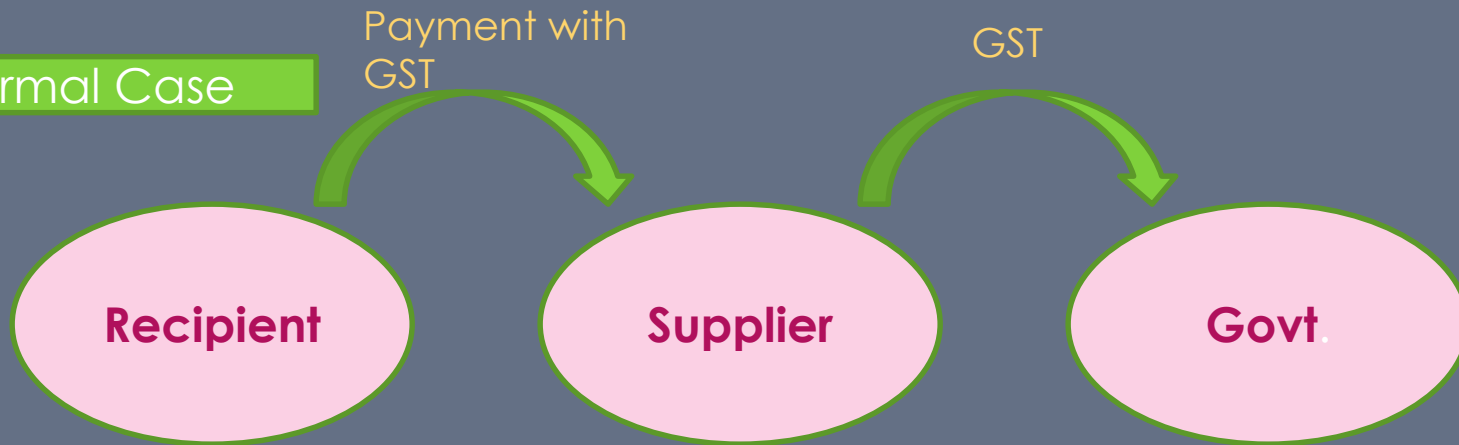
REVERSE CHARGE MECHANISM

□ **Section 2(98) defines Reverse Charge as:**

“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.

TAX LIABILITY

Normal Case



Reverse Charge

Payment without GST



SUPREME COURT JUDGMENT (IN CASE OF LAGHU UDHYOG- 1999 (112) E.L.T. 365 SC) DT. 27.07.1999

- *Section 68(1A) cannot be so interpreted so as to make a person as an assessee even though he may not be responsible for collecting the service tax. The service tax is levied by reason of the services which are offered.*
- *The tax is on the value of the services and it is only the person who is providing the service can be regarded as an assessee.*
- *The rules override the provisions of Section 65 & 66 of FA,1994, which predominantly applies to provider of service. Therefore, it cannot be so framed which do not carry out the purpose of the chapter and cannot be in conflict with the same.*

HISTORY

- After this Supreme Court Judgment, law was further amended by implementation of Section 68(2) which empowers Government to specify services and person liable to pay tax under RCM as per notification.
- Constitutional validity of this reverse charge tax was upheld in the case of **Gujarat Ambuja Cements Ltd. Vs. UOI 2006 (3) S.T.R. 608 (SC)**.

HISTORY

Reverse Charge was introduced in India by Finance Act, 1997 initially for 5 services namely:

- ❑ Goods Transport Agency,
- ❑ Clearing and Forwarding Agent,
- ❑ Air Travel Agent,
- ❑ Mandap Keeper,
- ❑ Consulting engineers,
- ❑ Manpower Recruitment

implemented through Service Tax Rule, 1994 (as amended in 1997) and Section 68(1A) of the Finance Act, 1994.

SECTION 9(3)

- 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.

(Such services are notified under CGST (Rate) Notification 13/2017)

SECTION 9(4)

- The Government may, on the recommendations of the Council, by notification, **specify a class of registered persons who shall, in respect of supply of specified categories of goods or services or both received from an unregistered supplier**, pay the tax on reverse charge basis as the recipient of such supply of 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 such supply of goods or services or both.

(The aforesaid section is effective from 01.02.2019. Notification 07/2019-CT(R) dt. 29.03.2019 specifies such goods)

SERVICES LEVIABLE UNDER RCM

Service Tax 68 (2)

68(2) Notwithstanding anything contained in sub-section (1), in respect of such **taxable services as may be notified by the Central Government in the Official Gazette**, the service tax thereon shall be paid by **such person** and in such manner as may be prescribed at the rate specified in section 66B and all the provisions of this Chapter shall apply to such person as if he is the person liable for paying the service tax in relation to such service.

Any person even other than the recipient could be made liable

CGST 9(3) and IGST 5(3)

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.-**services notified u/n CGST (R)-13/2017 and IGST (R)- 10/2017**

Goods notified u/n CGST(R)- 4/2017

Only recipient could be made liable

COMPARISON OF ITC IN ST AND GST

Service Tax

Conditions u/r 4 for of CCR, 2004,
“(7) The CENVAT credit in respect of input service shall be allowed, on or after the day on which the invoice, bill or, as the case may be, challan referred to in rule 9 is received:

Provided that in respect of input service where **whole or part** of the service tax is liable to be paid by the recipient of service, **credit of service tax payable by the service recipient shall be allowed after such service tax is paid.**

GST

As per Section 41 of the Act:

(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed, **be entitled to take the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited on a provisional basis to his electronic credit ledger.**

(2) The credit referred to in sub-section (1) shall be utilized only for payment of self-assessed output tax as per the return referred to in the said sub-section.

COMPARISON IN SERVICE TAX AND GST

Service Tax

- **Partial Reverse Charge-**
Specific services have been notified, wherein partial tax has to be discharged by supplier and remaining liability is payable by recipient of service. Like: renting of motor vehicle, works contract, Manpower.
- **Full Reverse Charge**
Service Tax liability is payable by recipient of service.
Only on services
No RCM on services received from unregistered SP

GST

- **Full Reverse Charge**
Within GST, concept of partial RCM doesn't exist.

RCM both on Goods & Services

RCM on supplies received from unregistered supplier

SERVICES LISTED UNDER RCM

Service Tax Not.- 30/2012

- Insurance Agent
- Recovery Agent to banking co. or NBFC
- **Selling/ Marketing Agent of lottery ticket**
- Goods Transport Agency
- Renting of Motor Vehicle
- **Works contract**
- Sponsorship
- Legal Services/ Arbitration
- Director
- Aggregator
- **Government Services**
- **Manpower**
- **Services provided from non-taxable territory**

GST- CGST (R) Not.-13/2017

- Goods Transport Agency
- Legal Services/ Arbitration
- Sponsorship
- **Government Services**
- **Renting of immov. property by Govt.**
- **Long Term Lease of Land (>30 yrs)**
- **Transfer of Development Right**
- Director
- Insurance Agent
- Recovery Agent to banking co./ NBFC
- Transfer/ permitting use of copyright by music composer, photographer, artist
- Transfer/ permitting use of copyright for original literary work or publisher
- Security services
- Renting of motor vehicle
- Lending of securities, under lending scheme of SEBI

SERVICES LISTED UNDER RCM

Service Tax Not.- 30/2012

- -

GST- IGST (R) Not.-10/2017

Two additional services are notified for RCM under IGST

- Services other than OIDAR services provided from Non Taxable territory
- Services of transportation of goods by vessel from place outside India up to customs station clearance of India

GOODS LISTED UNDER RCM

Central Excise

- No goods were taxed under reverse charge under old regime.

GST- CGST (R) Not. 4/2017

- Supplied by Agriculturist
 - Cashew Nuts, not shelled or peeled
 - Bidi wrapper leaves
 - Tobacco leaves
 - Raw cotton
- Supply of silk yarn on manufacture by raw silk or silk warm cocoons
- Supplied by Govt. or local authority
 - Supply of lottery
 - Used vehicles, seized and confiscated goods, old and used goods, waste and scrap
- Priority sector lending certificate

RCM ON SERVICES PROVIDED BY UNREGISTERED SUPPLIER

CGST 9 (4), IGST 5(4)

9(4) The Government may, on the recommendations of the Council, **by notification, specify a class of registered persons who shall, in respect of supply of specified categories of goods or services or both received from an unregistered supplier**, pay the tax on reverse charge basis as the recipient of such supply of 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 such supply of goods or services or both.

Note: Earlier this provisions was applicable on all goods and services. The same was amended on 01.02.2019 for specified goods or services.

RCM ON E-COMMERCE OPERATOR

CGST 9(5) [IGST 5(5)]

9(5) The Government may, on the recommendations of the Council, by notification, **specify categories of services the tax on intra-State (inter-state) supplies of which shall be paid by the electronic commerce operator if such services are supplied through it**, and all the provisions of this Act shall apply to such **electronic commerce operator as if he is the supplier liable for paying the tax** in relation to the supply of such services:

Provided that where an **electronic commerce operator does not have a physical presence in the taxable territory**, any person representing such **electronic commerce operator** for any purpose **in the taxable territory** shall be liable to pay tax:

Provided further that where an **electronic commerce operator does not have a physical presence in the taxable territory** and also he does not have a representative in the said territory, **such electronic commerce operator shall appoint a person in the taxable territory for the purpose of paying tax** and such person shall be liable to pay tax.

RCM ON E-COMMERCE OPERATOR

Description of supply of Services	Supplier of service	Person Liable to Pay GST
Transportation of passengers by a radio-taxi, motor cab, maxi cab and motor cycle	Any Person	E-commerce operator
Providing accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes	Any person [except who is liable for registration u/s 22(1) of the said CGST Act]	E-commerce operator
Services by way of house-keeping, such as plumbing, carpentering etc. (added w.e.f. 22/08/2017)	Any person [except who is liable for registration u/s 22(1) of the said CGST Act]	E-commerce operator

SALIENT FEATURES

TIME OF SUPPLY UNDER GST FOR RCM

Goods

Section 12 (3)- The time of supply shall be the earliest of the following dates, namely:—

- (a) **receipt of goods**; or
- (b) **earlier of payment as entered in the books of account or payment is debited in his bank**; or
- (c) **thirty days from the date of issue of invoice or any other document.**

If can't be determined under clause (a) or (b) or (c) then it shall be the date of entry in the books of account of the recipient of supply

Services

Section 13 (3)- The time of supply shall be the earliest of the following dates, namely:—

- (a) payment entered in books of recipient or date of payment in bank; or
- (b) sixty days from the date of issue of invoice or any other document,

If can't be determined under (a) or (b), the date of entry in the books of account of the recipient of supply.

In case of supply by associated enterprises, where the supplier is located outside India, it shall be earlier of date of entry in the books of account of the recipient or the date of payment

TAX INVOICE

- As per Section 31 of the CGST Act read with Rule 46 every registered person should mention in its tax invoice, whether the said goods or services are taxable under RCM.
- The recipient paying tax under reverse charge is required to issue self-invoice u/s 31 (3)(f) in case the supplier is unregistered.
- Time limit to issue tax-invoice is within a time of 30 days from the date of supply of services as per Rule 47.
- Section 31 (3)(f) specifically mentions that the self invoice should be generated at the time of receipt of supply.
- A registered person who is liable to pay tax under sub-section (3) or sub-section (4) of section 9 shall issue a payment voucher at the time of making payment to the supplier

PAYMENT

- As per Section 49(4), amount available in the electronic ledger can be utilized only for payment of output tax liability.
- RCM is not an output tax liability for the recipient. Thus RCM liability has to be discharged in cash only.
- As per rule 36(1)(b), ITC of RCM is available on the basis of self invoice, subject to payment of tax.
- Therefore, ITC of RCM can be availed only after payment of tax to the Government.

INPUT TAX CREDIT

Supplier

- Supplier of goods or services chargeable under RCM is restricted to avail ITC thereon as per Section 17(2) read with Section 17(3). The value of exempt supplies in 17(2) shall include supplies under RCM 17(3)

Recipient

- Recipient shall avail ITC in terms of Section 16.
- Such tax should be actually paid to Government.

PERIOD OF AVAILMENT OF ITC 16(4)

As per Rule 36 (1)(b) a registered person may avail ITC based on invoice issued in accordance with the provisions of clause (f) of sub-section (3) of section 31, **subject to the payment of tax.** Section 31(3)(f) specifically mentions that the self invoice should be generated at the time of receipt of supply.

Even if the invoice is not issued within the time limit, only general penalty can be levied for the same and accordingly, ITC in relation to RCM wherein recipient has issued self invoice, can be availed in subsequent year but only after the payment of tax along with interest.

PERIOD OF AVAILMENT OF ITC 16(4)

It was also clarified in Press Release dated 03.07.2019, that ITC of RCM may be allowed in the period of payment. Relevant extract are as under:

g) Reverse charge in respect of Financial Year 2017-18 paid during Financial Year 2018-19: Many taxpayers have requested for clarification on the appropriate column or table in which tax which was to be paid on reverse charge basis for the FY 2017-18 but was paid during FY 2018-19. It may be noted that since the payment was made during FY 2018-19, the input tax credit on such payment of tax would have been availed in FY 2018-19 only. Therefore, such details will not be declared in the annual return for the FY 2017-18 and will be declared in the annual return for FY 2018-19. If there are any variations in the calculation of turnover on account of this adjustment, the same may be reported with reasons in the reconciliation statement (FORM GSTR-9C).

PERIOD IN WHICH ITC CAN BE CLAIMED

ITC CAN BE CLAIMED IN THE MONTH OF PAYMENT ITSELF

Cenvat Credit of services taxable under RCM was available in subsequent period's return in service tax regime.

While in GST regime, ITC paid on supplies chargeable under RCM, can be availed and utilised in the same month itself.

To illustrate if a registered person is having RCM liability of Rs. 10L and OTL of Rs. 20L, then it is required to pay Rs. 20L in cash only. Representation should be correct in GSTR-3B as Rs. 10L cash towards RCM and balance Rs. 10L towards OTL.

COMPULSORY REGISTRATION

- Notwithstanding anything contained under Section 22 of the CGST Act, it is mandatory for persons mentioned under section 24 to obtain GST Registration.
- According to aforesaid Section, person liable for tax under RCM and Ecommerce operator liable to pay tax RCM as per Section 9(5) shall mandatory obtain GST Registration

EXEMPTION FROM REGISTRATION

As per Section 23(2) read with CGST Notification 5/2017:

*In exercise of the powers conferred by sub-section (2) of section 23 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government hereby specifies the **persons who are only engaged in making supplies of taxable goods or services or both, the total tax on which is liable to be paid on reverse charge basis by the recipient** of such goods or services or both under sub-section (3) of section 9 of the said Act as the category of **persons exempted from obtaining registration** under the aforesaid Act.*

Thus, person supplying services chargeable to tax completely under RCM, shall be exempted from GST Registration.

GST RETURN

Supplier

- The registered supplier shall update the information in relation to tax invoices chargeable under RCM in column 4B of GSTR-1

Recipient

- Person liable to pay tax under RCM, shall furnish taxable value and tax amount in inwards supplies in column 3.1.(d) and avail ITC thereon in table 4.

OTHER MISC ISSUES

- Recipient making advance payment should pay RCM in advance.
- Composition dealer falling under RCM shall discharge tax at normal rates and can not avail ITC of same.
- Value of supplies to be grossed up with the TDS
- Liability under RCM to be discharged under same HSN /SAC Code which is applicable if such supplies are under forward charge

OTHER MISC ISSUES

- Supplies under RCM are not included in the definition of aggregate turnover as defined in Section 2(6) of CGST
- Partial Exemptions have also provided to supplies on which tax is liable to be paid under RCM. Hence not subject to RCM like Services provided by advocates and sponsorship services.
- Who should bear the incidence of tax on supplies under reverse charge

IMPORTANT ISSUES

GOODS TRANSPORT AGENCY

- **Meaning of GTA:** Any person who provides services in relation to transportation of goods by road and issues consignment note, by whatever name called.
- W.E.F. 22.08.2017, services supplied by those Goods Transport Agencies fall within the purview of RCM who have not paid tax at the effective rate of 12% in respect of transportation of goods by road. Thus, if the GTA charges tax at the effective rate of 12% in its tax invoice from the recipient of its services, then it is liable to pay tax under forward charge and the RCM provisions shall not apply.
- GTA has been given an option to pay tax either at the effective rate of 12 percent and claim the benefit of ITC or pay tax at concessional effective rate of 5 percent without taking benefit of ITC. RCM is applicable only in a situation where GTA discharge its tax liability at concessional rate of tax at 5 percent only.

GOODS TRANSPORT AGENCY

- Can GTA supply the services to some recipients by charging 12% and charge 5% charging from others?- Condition mentioned under entry no 9(iii) of N/N 11/2017- CT(R) dated 28.06.2017 denies the same.
- Can GTA change the option to pay tax @12% from 5% or vice versa in the same Financial Year?

SERVICES BY GOVERNMENT, LOCAL AUTHORITY

Most of the services provided by CG/ SG/ or local authority are exempted. Nevertheless, services provided by Govt., or local authority to business entity is taxable under Reverse Charge excluding following:

- Posts, parcel post, life insurance
- Aircraft, vessels
- Transport of goods
- Security services

Renting of immovable property was brought under the ambit of reverse charge vide N/N 3/2018 CT(R) dated 25.01.2018.

SERVICES BY GOVERNMENT, LOCAL AUTHORITY

Whether Royalty paid to the Government taxable under RCM:

- ❑ Royalty is a tax, levied under the statute.
- ❑ Seven Judges Bench of the Hon'ble Supreme Court in the case of **INDIA CEMENT LTD. & ORS. V. STATE OF TAMIL NADU & OTHERS**, [(1990) 1 SCC 12] has already held that mining royalty is a tax.
- ❑ The issue is pending before Constitutional Nine Member Bench of the Hon'ble Supreme Court **Mineral Area Development Authority etc. Vs. Steel Authority of India and ors** [2011 4 SCC 450].

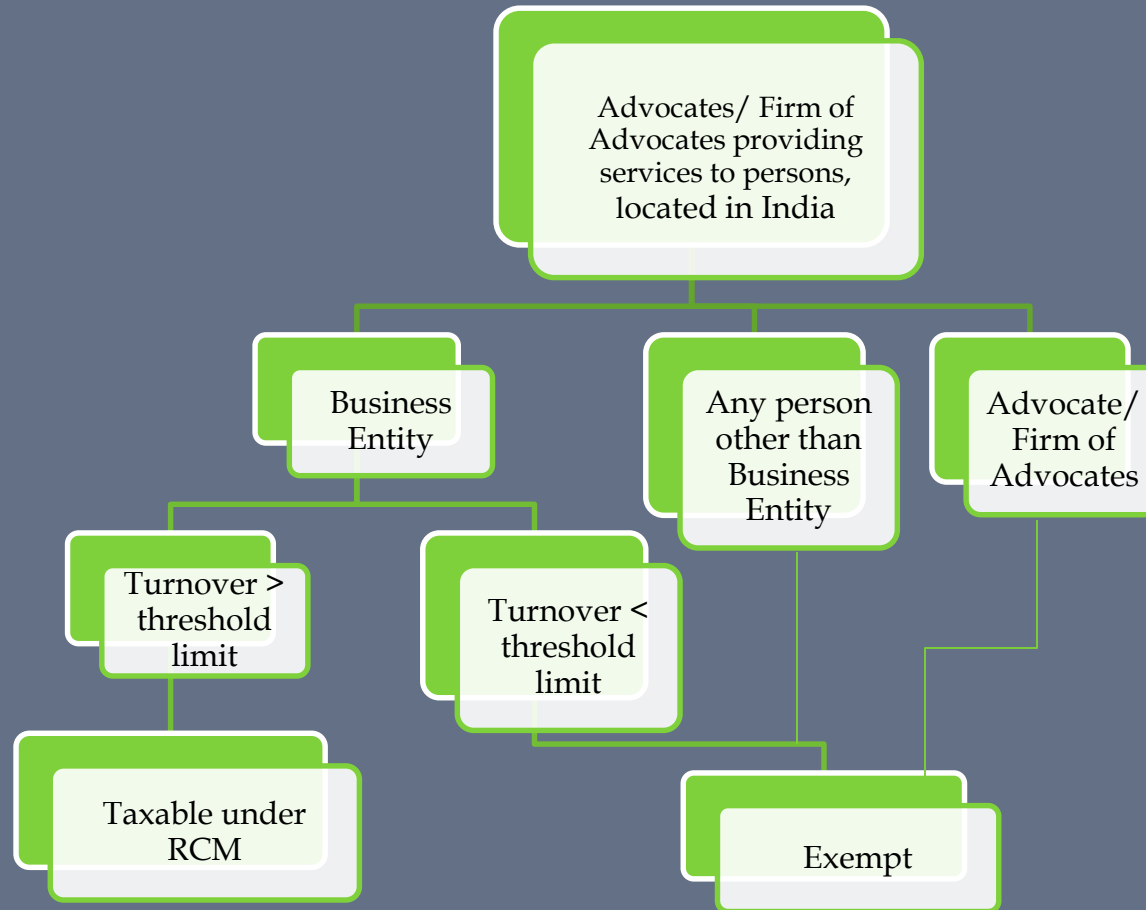
LEGAL SERVICES

- The services provided are the legal services.
- The services must be provided by an advocate, a senior advocate or a partnership of advocates.
- The services recipient should be a business entity.
- Such business entity should be located in the taxable territory.

LEGAL SERVICES

- **Legal Service:** means any service provided in relation to **advice, consultancy or assistance in any branch of law**, in any manner and includes representational services before any court, tribunal or authority.”
- **Business entity:** means any person carrying out **business**.
- N/N 12/2017- CT(R) dated 28.06.2017 exempts the legal services provided to business entity having turnover below the threshold limit.

LEGAL SERVICE



SPONSORSHIP SERVICE

- Supplier of Service can be any person.
- Recipient of service should be any body-corporate or partnership firm.
- As per Entry No. 53 of N/N. 12/2017- CT(R) dated 28.06.2017 the following sponsorship services are exempt from GST.

Services by way of sponsorship of sporting events organised –

(a) by a national sports federation, or its affiliated federations, where the participating teams or individuals represent any district, State, zone or Country;

(b) by Association of Indian Universities, Inter-University Sports Board, School Games Federation of India, All India Sports Council for the Deaf, Paralympic Committee of India or Special Olympics Bharat

(c) by the Central Civil Services Cultural and Sports Board;

SUPPLIER LOCATED IN NON-TAXABLE TERRITORY

Section 7

Scope of supply. —

(1) For the purposes of this Act, the expression “supply” includes:

(a).....

(b) import of services for a consideration whether or not in the course or furtherance of business;

(c).....

Further, as per Schedule I, **import of service** even if without consideration from **related person or from any of its establishment outside India**, in course of business would constitute supply.

SUPPLIER LOCATED IN NON-TAXABLE TERRITORY

- ❑ Payment of royalty and license fees- exemption from IGST to the extent included in Customs Valuation
- ❑ Services imported by SEZ from outside India
- ❑ Establishment in India and establishment outside India – to be treated as distinct person.
- ❑ Transactions with associated enterprises – entry in the books of account – General Motors (I) Pvt Ltd – expense provision liable to ST under RCM

SUPPLIER LOCATED IN NON-TAXABLE TERRITORY

- ❑ Valuation for services provided from outside India- actual consideration received Garware Polyester Ltd [2017 (5) GSTL 274 9T-Mum)], 2017-TIOL-1866-CESTAT-MUM
- ❑ Liason office in India –need not to register- Rajasthan AAR-2018-TIOL-97-AAR-GST.

OCEAN FREIGHT

- ❑ Ocean Freight Services supplied by a person located in non- taxable territory up to the customs station of clearance in India is unconstitutional- Mohit Minerals- 2021-TIOL-21-SC-GST-LB.
- ❑ Provisions related to RCM under Service tax is different from the provisions contained in GST law. In service tax, the Government had the power to levy tax under RCM on any person other than the recipient of service.
- ❑ In GST, the Government can levy tax under RCM only on the recipient of service.
- ❑ Delegated legislation cannot travel beyond the scope of the powers conferred by the parent legislation.

DIRECTOR REMUNERATION

- GST Circular No. 140/10/2020 dated 10.06.2020, CBIC has clarified:

GST on Director's Remuneration

Whole time Directors (Employee)	Non-executive / Independent Directors
As employee, not a taxable supply to company	As director, taxable supply to company
GST – Not taxable	GST – Taxable and payable under reverse charge
Non-employee services – taxable and payable under reverse charge	Non-director services – Taxable and payable under reverse charge.

DIRECTOR REMUNERATION

- ❑ **Remuneration received by whole time directors was received in the capacity of an employee and accordingly, no service tax is applicable.**

- ❑ **In the case of**
 - ❑ ***Allied Blenders & Distillers Pvt. Ltd. vs Commissioner of CST [2019 (24) G.S.T.L. 207 (Tri. - Mumbai)] and***
 - ❑ ***PCM Cement Concrete Pvt. Ltd. vs Commissioner [2018 (9) G.S.T.L. 391 (Tri.-Kolkata)],***

- ❑ **Although, AARs have given contrary rulings which have been nullified after clarification of CBIC**
 - ❑ **Alcon Consulting Engineers (I) Pvt. Ltd. – Karnatka AAR**
 - ❑ **Clay Crafts India Pvt. Ltd.- Rajasthan AAR**

CONSTRUCTION SERVICES

Description of Service	Liability under RCM
Services supplied by any person by way of transfer of development rights or FSI	By Developer
Long term lease of land (30 years or more) by any person against consideration in the form of up-front amount	By Developer
Supplies from unregistered dealer falling short of 80%	By Developer
Supplies of Cement and Capital Goods	By Developer

LEGAL ISSUES

WHAT IF SUPPLIER HAS PAID THE TAX?

- If the supplier has paid the tax inadvertently, then recipient is not liable to pay tax.
 - Since, the Government has received the tax, there is no revenue loss.
 - Tax cannot be levied twice on the same transaction.
 - *Lilason Breveries Ltd. vs CCE, BHOPAL* [2009 (9) TMI 275 - CESTAT, NEW DELHI]
- Extended period cannot be invoked
- Penalties cannot be levied

SUPREME COURT- RCM IS TAX NEUTRAL

❑ Commissioner of Central Excise, Pune Vs Coca-Cola India Pvt. Ltd. , 2007-TIOL-245-SC-CX

6. *It is stated by the learned counsel for the assessee that the excise duty paid and the Modvat credit availed under Notification No. 5/94-C.E.(N.T.), dt. 1-3-1994 were identical and therefore consequences of payment of excise duty after availing Modvat credit was revenue neutral.*

7. *In view of the stand taken by the assessee in the counter-affidavit and the statement made by the learned counsel for the assessee, **the appeals are dismissed leaving the question of law open.** However, there shall be no order as to costs.*

SUPREME COURT- RCM IS TAX NEUTRAL

❑ Star Industries Vs Commissioner of Customs, (Imports), Raigad- 2015(324)ELT656(SC)

35. It was submitted by the learned counsel for the assessee that the entire exercise is Revenue neutral because of the reason that the assessee would, in any case, get Cenvat credit of the duty paid. If that is so, this argument in the instant case rather goes against the assessee. **Since the assessee is in appeal and if the exercise is Revenue neutral, then there was no need even to file the appeal. Be that as it may, if that is so, it is always open to the assessee to claim such a credit.**



THANK YOU