

RJA

Rajput Jain & Associates

Chartered Accountants

REVERSE CHARGE MECHANISM - INTRICACIES & ISSUES

About Us

- Rajput Jain & Associates is a Chartered Accountants firm, with its headquarter situated at New Delhi (the capital of India). The firm has been set up by a group of young, enthusiastic, highly skilled and motivated professionals who have taken experience from top consulting firms and are extensively experienced in their chosen fields has providing a wide array of Accounting, Auditing, Taxation, Assurance and Business advisory services to various clients and their stakeholders. focus at providing tailor made solutions to challenging problems of our clients, and perform with high quality and timely service.
- Rajput Jain & Associates, a professional firm, offers its clients a full range of services, To serve better and to bring bucket of services under one roof, the firm has merged with its various Chartered Accountancy firms pioneer in diversified fields
- Our main office is located at Delhi. Incidentally, Delhi is the Capital of India. Our other offices are in Mankapur & Moradabad (U.P.). We have associates all over India in big cities. All our offices are well equipped with latest technological support with updated reference materials. We have a large team of professionals other than our Core Team members to meet the requirements of our prospective clients including the existing ones. However, considering our commitment towards high quality services to our clients, our team keeps on growing with more and more associates having strong professional background with good exposure in the related areas of responsibility. Further to meet the growing demands of the fiercely competitive market we are constantly looking forward for team of associates comprising of highly skilled professionals to cater the needs ever increasing clientele.

Reference in the presentation

- In the presentation reference to the provisions of CGST Act, 2017 or Notifications issued thereunder shall include reference to similar provisions under SGST Act as well as IGST Act including notifications issued thereunder unless expressly stated.
- No reference to tweet FAQ's as well as reply on twitter have been made as the same is untrustworthy and sometimes utterly useless. It may save you from penalty but not from payment of tax along with interest if it is legally payable. Interest is a cost. We need to save that also for our clients.

Will ITC be available if paid later ...

- ITC not available of any tax paid in accordance with the provisions of sections 74, 129 and 130 as per Sec. 17(5)(i).
- Sec. 74(1) Where it appears to the proper officer that **any tax has not been paid** or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised **by reason of fraud, or any wilful misstatement or suppression of facts to evade tax**, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.
- Can it be said that RCM paid after detection by the department is by reason of fraud, wilful misstatement or suppression ? No if credit is available

Revenue neutrality – No payment required - Not always a defense

- CCE vs Mahindra And Mahindra Ltd. 2005 (179) ELT 21 (S.C.)
 - There can be number of eventualities where extended period of limitation in terms of proviso to section 11A may be available to the Department despite availability of Modvat credit to an assessee. The availability of Modvat credit to an assessee by itself is not conclusive or decisive consideration. It may be one of the relevant consideration. How much weight is to be attached thereto would depend upon the facts of each case.
- Star Industries v. CCE 2015 (324) E.L.T. 656 (S.C.)
 - 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.
- CCE v. Dharampal Prem Chand Ltd. 2011 (265) E.L.T. 81 (Tri. – Del.)
 - In none of the above judgments, Hon'ble Supreme Court has laid down a general principle that in a revenue neutral situation an assessee is not required to pay the duty.

Revenue neutrality – No payment required - Not always a defense

- Concorde Hitech City (P) Limited v. State of Karnataka (2011) 39 VST 52 (Kar.)
 - The law does not provide for book adjustment of these two taxes. The condition precedent for claiming deduction from the output tax is the payment of input tax on such purchase.

Revenue neutrality can be a defense

- Reliance Industries Ltd. v. CCE 2009 (244) E.L.T. 254 (Tri. - Ahmd.)
 - Today, it is an established legal position that, where it is shown that any duty found payable by an assessee would be available as CENVAT credit to the recipient of the goods, such duty cannot be demanded from the former. In the result, the Revenue neutrality issue with reference to CENVAT credit is held in favour of the assessee.
- CCE, Pune v. Coca-Cola India Pvt. Ltd. - 2007 (213) E.L.T. 490 (S.C.) – (question of law kept open)

Extended period not invocable

- Nirlon Ltd. v. CCE 2015 (320) E.L.T. 22 (S.C.)
 - The question is about the intention, namely, whether it was done with *bona fide* belief or there was some *mala fide* intentions in doing so. It is here we agree with the contention of the learned Senior Counsel for the appellant, in the circumstances which are explained by him and recorded above. It is stated at the cost of repetition that when the entire exercise was revenue neutral, the appellant could not have achieved any purpose to evade the duty.
- Reliance Industries Ltd. v. CCE 2016 (44) S.T.R. 82 (Tri. - Mumbai)
 - It is settled law laid down in the following amongst other judgments a series of judgment including that of the Apex Court that in a case where credit is available to an assessee itself it cannot be said that there is any intention to evade payment of duty, which is a pre-requisite for invoking the extending period of limitation. In the instant case also if any tax was payable it could have been available immediately to the Appellant, thereby rendering the entire dispute being revenue neutral.

Extended period not invocable

- Jay Yuhshin Ltd. v. CCE - 2000 (119) E.L.T. 718 (Tribunal - LB)
 - (a) Revenue neutrality being a question of fact, the same is to be established in the facts of each case and not merely by showing the availability of an alternate scheme;
 - (b) Where the scheme opted for by the assessee is found to have been misused (in contradistinction to mere deviation or failure to observe all the conditions) the existence of an alternate scheme would not be an acceptable defence;
 - (c) With particular reference to Modvat scheme (which has occasioned this reference) it has to be shown that the Revenue neutral situation comes about in relation to the credit available to the assessee himself and not by way of availability of credit to the buyer of the assessee's manufactured goods;
 - (d) We express our opinion in favour of the view taken in the case of M/s. International Auto Products (P) Ltd. (supra) and endorse the proposition that once an assessee has chosen to pay duty, he has to take all the consequences of payment of duty.

History

- Service Tax
 - RCM imposed from 01.01.2005 through Notification No. 36/2004.
 - Sec. 66B creates a charge of tax on provision of service but collection shall be in the manner prescribed.
 - Sec. 68(1) provides for collection on forward charge & Sec. 68(2) provides for collection on reverse charge.
 - *(1) Every person providing taxable service to any person shall pay service tax at the rate specified in section 66B in such manner and within such period as may be prescribed.*
 - *(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.*
- Non-obstante clause – Overriding effect – CIT v. Oil and Natural Gas Commission (2002) 255 ITR 413 (Raj.) – It shall override the mention law in specified circumstances

History

- VAT
 - Sec. 7(1) of GVAT Act, 2003 provides for levy of tax on turnover of sales.
 - Sec. 3(1) provides for payment of tax by a dealer who exceeds the threshold.
 - Sec. 9(1) of GVAT Act, 2003 creates a levy of purchase tax
 - *(1) Where **a dealer who is liable to pay tax** under this Act purchases any taxable goods from a person who is not a registered dealer, then there shall be **levied** on such dealer **a purchase tax on the turnover of such purchases** at the rate set out against each of such goods in Schedule II or Schedule III of this Act.*
- Thus levy & collection can be separate.

Definition under GST

- Sec. 2(98) “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

Levy & Collection

Sec. 9(1)/Sec. 5(1)	Sec. 9(3) /Sec. 5(3)	Sec. 9(4) /Sec. 5(4)
<p>Subject to the provisions of sub-section (2), there shall be levied a tax called (the central goods and services tax on all intra-State supplies)/(the integrated goods and services tax on all inter-State supplies) of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.</p> <p>Sec. 2(107) "taxable person" means a person who is registered or liable to be registered under section 22 or section 24</p>	<p>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</p>	<p>The (central tax)/(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</p>

Few scenarios

Scenario	Tax to be paid	By whom tax to be paid	Which tax to be paid
Supplier not registered and covered under specific reverse charge	Yes	Recipient	Based on LOS & POS
Supplier registered and covered under specific reverse charge	Yes	Supplier or recipient or both ??	Based on LOS & POS
Supplier not registered and also not liable to be registered and covered under general reverse charge	Yes or No ??	If yes, recipient	Based on LOS & POS
Supplier not registered but liable to be registered and covered under general reverse charge	Yes or No ??	Supplier or recipient or both ??	Based on LOS & POS

Supplier registered and covered under specific reverse charge

- In exercise of the powers conferred by sub-section (3) of section 9 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government on the recommendations of the Council hereby notifies that on categories of supply of services mentioned in column (2) of the Table below, supplied by a person as specified in column (3) of the said Table, **the whole of central tax leviable under section 9** of the said Central Goods and Services Tax Act, shall be paid on reverse charge basis by the recipient of the such services as specified in column (4) of the said Table

Supplier not registered and also not liable to be registered and covered under general reverse charge

- Difference between levy & collection
- Bhagatram Rajeev Kumar v. Commissioner of Sales Tax 1995 taxmann.com 1055(SC)
- “The expression 'liable to tax' has been used to identify the person who shall pay the entry tax. To put it conversely if any goods mentioned in Schedule II are brought from outside the State by a person who is not liable to tax under the Sales Tax Act then entry tax shall not be realised from such person. The intention is to levy tax only when the goods are brought inside the State by a dealer carrying on business whose turnover is not less than Rs. 1000/- annually and not by any other person. In other words, the tax is leviable on all goods specified in Schedule II brought for consumption, use or sale ; but it shall be realised only from those persons who are dealers registered under the Sales Tax Act and are liable to pay tax. The expression 'liability to tax' is determinative of the person from whom the tax shall be realised and not of the goods which could be subjected to levy.
- The charge or incidence of tax is different from realisation of it. A levy may be valid and good and yet it may remain ineffective if there is no machinery provision.”

Difference between levy & collection

- Gujarat Ambuja Cements Ltd. v. Union of India 2006 (3) S.T.R. 608 (S.C.)
 - **The point at which the collection of the tax is to be made is a question of legislative convenience and part of the machinery for realization and recovery of the tax.** The manner of the collection has been described as “an accident of administration; it is not of the essence of the duty”. It will not change and does not affect the essential nature of the tax. Subject to the legislative competence of the Taxing Authority a duty can be imposed at the stage which the authority finds to be convenient and the most effective whatever stage it may be. The Central Government is therefore legally competent to evolve a suitable machinery for collection of the service tax subject to the maintenance of a rational connection between the tax and the person on whom it is imposed. By Sections 116 and 117 of the Finance Act, 2000, the tax is sought to be levied from the recipients of the services. They cannot claim that they are not connected with the service since the service is rendered to them.

Opening paragraph of Notification on Rates

- In exercise of the powers conferred **by sub-section (1) of section 9** of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby notifies the rate of the central tax of –
 - (i) 2.5 per cent. in respect of goods specified in Schedule I,
 - (ii) 6 per cent. in respect of goods specified in Schedule II,
 - (iii) 9 per cent. in respect of goods specified in Schedule III,
 - (iv) 14 per cent. in respect of goods specified in Schedule IV,
 - (v) 1.5 per cent. in respect of goods specified in Schedule V, and
 - (vi) 0.125 per cent. in respect of goods specified in Schedule VI
- appended to this notification (hereinafter referred to as the said Schedules), that shall be **levied on intra-State supplies of goods**, the description of which is specified in the corresponding entry in column (3) of the said Schedules, falling under the tariff item, sub-heading, heading or Chapter, as the case may be, as specified in the corresponding entry in column (2) of the said Schedules.

Supplier not registered but liable to be registered and covered under general reverse charge

- Laghu Udyog Bharati v. Union of India 2006 (2) S.T.R. 276 (S.C.) – Person responsible for collecting the tax is liable for payment as specifically stipulated. Recipient cannot be made liable.
- Once tax is paid by provider, same cannot be recovered from recipient
 - (i) Navyug Alloys Pvt. Ltd. vs. CCE, Vadodara-II: 2009 (13) S.T.R. 421 (Tri.-Ahmd.);
 - (ii) Mandev Tubes vs. CCE, Vapi: 2009 (16) S.T.R. 724 (Tri.-Ahmd.);
 - (iii) Sakthi Masala P.Ltd. vs. CCE, Salem: 2009 (15) S.T.R. 314 (Tri.-Chennai);
 - (iv) Deccan Chromates Ltd. vs. CCE, Hyderabad: 2011 (22) S.T.R. 440 (Tri.-Chennai);
 - (v) CST, Meerut-II vs. Geeta Industries P.Ltd.: 2011 (22) S.T.R. 293 (Tri.-Del.);
 - (vi) Umasons Auto Compo Pvt Ltd Vs CCExCESTAT Mumbai, 2014(2) TMI 100

Goods subject to reverse charge – Notification no. 04/2017 dated 28th June 2017

Description of supply of Goods	Supplier of goods	Supplier of Goods	Recipient of supply
Cashew nuts, not shelled or peeled		Agriculturist	Any registered person
Bidi wrapper leaves (tendu)		Agriculturist	Any registered person
Tobacco leaves		Agriculturist	Any registered person
Silk yarn		Any person who manufactures silk yarn from raw silk or silk worm cocoons for supply of silk yarn	Any registered person
Raw cotton		Agriculturist	Any registered person
Supply of lottery.		State Government, Union Territory or any local authority	Lottery distributor or selling agent
Used vehicles, seized and confiscated goods, old and used goods, waste and scrap		Central Government, State Government, Union territory or a local authority	Any registered person
Priority Sector Lending Certificate		Any registered person	Any registered person

Goods subject to reverse charge – Notification no. 04/2017 dated 28th June 2017

- No turnover cap for above referred scenarios.
- Sec. 2(7) “agriculturist” means an individual or a Hindu Undivided Family who undertakes cultivation of land —
 - (a) by own labour, or
 - (b) by the labour of family, or
 - (c) by servants on wages payable in cash or kind or by hired labour under personal supervision or the personal supervision of any member of the family
- An agriculturist, to the extent of supply of produce out of cultivation of land shall not be liable for registration – Sec. 23(1)(b)

SERVICES SUBJECT TO REVERSECHARGE-
NOTIFICATION NO. 13/2017 – CT (R) OR
NOTIFICATION NO. 10/2017 – IT (R)

Not under RCM as compared to earlier regime

- Manpower supply
- Security service (till 31.12.2018)
- Rent-a-cab
- Works contract

Import of service

Category of Supply of Services	Supplier of service	Recipient of Service
Any service supplied by any person who is located in a non-taxable territory to any person other than non-taxable online recipient.	Any person Located in a non-taxable territory	Any person located in the taxable territory other than non-taxable online recipient.

Import of service – Sec. 7

- **Scope of supply.** — (1) For the purposes of this Act, the expression “supply” includes —
 - (b) import of services for a consideration whether or not in the course or furtherance of business

Ocean freight

Category of Supply of Services	Supplier of service	Recipient of Service
Services supplied by a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India.	A person located in non-taxable territory	Importer, as defined in clause (26) of section 2 of the Customs Act, 1962(52 of 1962), located in the taxable territory.

Ocean freight

- Explanation:
 - (d) the words and expressions used and not defined in this notification but defined in the Central Goods and Services Tax Act, the Integrated Goods and Services Tax Act, and the Union Territory Goods and Services Tax Act shall have the same meanings as assigned to them in those Acts.
- Recipient – Sec. 2(93)
- United Shippers Ltd. v. Commissioner of Central Excise 2015 (37) S.T.R. 1043 (Tri. - Mumbai) – Civil Appeal dismissed vide 2015 (39) S.T.R. J369 (S.C.)
 - when the goods are being transported by the barges from the mother vessel to the jetty onshore, that activity is part of the import transaction of bringing the goods into India from a place outside India; that question of rendering any service in respect of such goods by way of cargo handling or otherwise can take place only after the Customs transaction is completed; that therefore, the levy to Service Tax the transportation by barges from the mother vessel to the jetty on-shore, would not arise at all since the activity is part of the import transaction liable to import duty.

Security Services

Category of Supply of Services	Supplier of service	Recipient of Service
<p>Security services (services provided by way of supply of security personnel) provided to a registered person:</p> <p>Provided that nothing contained in this entry shall apply to, –</p> <p>(i)(a) a Department or Establishment of the Central Government or State Government or Union territory; or (b) local authority; or (c) Governmental agencies; which has taken registration under the Central Goods and Services Tax Act, 2017 (12 of 2017) only for the purpose of deducting tax under section 51 of the said Act and not for making a taxable supply of goods or services; or</p> <p>(ii) a registered person paying tax under section 10 of the said Act.</p>	<p>Any person other than a body corporate</p>	<p>A registered person, located in the taxable territory.</p>

Issues

- Which service providers are covered under RCM ??
 - Meaning of the term "body corporate" ?
 - (b) "Body Corporate" has the same meaning as assigned to it in clause (11) of section 2 of the Companies Act, 2013."
 - Circular No. 8/48/2(7)/63-PR, dated 24-11-1962
 - Is LLP a body corporate ?? Sec. 3(1) of LLP Act, 2008
- Which recipients are covered ??
 - Interplay between 9(3) & 24(iii)
 - Specified Governmental Entity ??
 - Composition recipients ??
- Exemption from registration ??
 - Notification No. 5/2017 – Central Tax
- ITC challenge ??
- Services for the month of December, 2018 ??

GTA

Category of Supply of Services	Supplier of service	Recipient of Service
Supply of Services by a goods transport agency (GTA)	Goods Transport Agency (GTA) who has not paid central tax at the rate of 6% (amended by Notification No. 22/2017 dated 22.08.2017)	<p>(a) Any factory registered under or governed by the Factories Act, 1948(63 of 1948); or</p> <p>(b) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India; or</p> <p>(c) any co-operative society established by or under any law; or</p> <p>(d) any person registered under the Central Goods and Services Tax Act or the Integrated Goods and Services Tax Act or the State Goods and Services Tax Act or the 2 Central Goods and Services Tax Act or the Integrated Goods and Services Tax Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act; or</p> <p>(e) any body corporate established, by or under any law; or</p> <p>(f) any partnership firm whether registered or not under any law including association of persons (including LLP w.e.f. 22.08.2017 (Notification 22/2017); or</p> <p>(g) any casual taxable person.</p> <p>The person who pays or is liable to pay freight for the transportation of goods by road in goods carriage, located in the taxable territory shall be treated as the person who receives the service for the purpose of this notification.</p>

Notification No. 20/2017-Central Tax (Rate) dated 22.08.2017 amending Notification No. 11/2017

- Services of goods transport agency (GTA) in relation to transportation of goods (including used household goods for personal use).
- Tax rate:
- 2.5% (No ITC) - RCM;
- 6% (with ITC) – Forward charge - have to pay same rate on all services of GTA

Who is GTA??

- No provision to issue consignment note under the Carriage by Road Act, 2007.
- Second proviso to Rule 4A of Service Tax Rules, 1994 provided that an invoice, a bill or, as the case may be, a challan shall include any document, by whatever name called, which shall contain the details of the consignment note number and date, gross weight of the consignment and also contain other information as required under this sub-rule.
- Rule 4B further provided that any goods transport agency which provides service in relation to transport of goods by road in a goods carriage shall issue a consignment note
- Explanation provided that "consignment note" means a document, issued by a goods transport agency against the receipt of goods for the purpose of transport of goods by road in a goods carriage, which is serially numbered, and contains the name of the consignor and consignee, registration number of the goods carriage in which the goods are transported, details of the goods transported, details of the place of origin and destination, person liable for paying service tax whether consignor, consignee or the goods transport agency.
- *"Which criteria is to be satisfied first is not clear"* – (2012) 36 STT 444 (New-Delhi CESTAT)

Who is GTA??

- RCM Notification provides that the words and expressions used and not defined in this notification but defined in the Central Goods and Services Tax Act, the Integrated Goods and Services Tax Act, and the Union Territory Goods and Services Tax Act shall have the same meanings as assigned to them in those Acts.
- Explanation to Sr. No. 9 of Notification No. 11/2017 – Central Tax (Rate) defines GTA as:
 - Goods transport agency means any person who provides service **in relation to transport of goods** by road and **issues consignment note**, by whatever name called.
 - Principal supply should be of transportation of goods. Loading or unloading may be incidental. Shall be treated as composite supply of transportation.

Who is GTA??

- Rule 54(3)
 - Where the supplier of taxable service is a goods transport agency supplying services in relation to transportation of goods by road in a goods carriage, the said supplier shall issue a tax invoice or any other document in lieu thereof, by whatever name called, containing the gross weight of the consignment, name of the consigner and the consignee, registration number of goods carriage in which the goods are transported, details of goods transported, details of place of origin and destination, Goods and Services Tax Identification Number of the person liable for paying tax whether as consigner, consignee or goods transport agency, and also containing other information as mentioned under rule 46.

Individual truck owners ??

- FM Speech on 08.07.2004 - *"58 services have been brought under the net so far. I propose to add some more this year. These are ---- services provided by transport booking agents I may clarify that there is no intention to levy service tax on truck owners or truck operators."*
- Nandganj Sihori Sugar Co. Ltd. v. CCE 2014 (34) S.T.R. 850 (Tri. – Del.) – Transport of sugarcane by individual truck owners – Not GTA
- Paragraph 9 – "The transportation of goods by individual truck owners without issue of consignment note, GR's & billties, etc. as prescribed in Rule 4B of the Service Tax Rules, would be simple transportation and not the service of Goods Transport Agency which involves not only undertaking the transportation of the goods handed over to it **but also undertaking delivery of the goods to the consignee and also temporary storage of the goods till delivery.** When the transporters did not issue consignment notes or GRs or Challans or any documents containing the particular as prescribed in Explanation to Rule 4B of the Service Tax Rules, 1994, the Transporters cannot be called "Goods Transport Agency" and, hence, in these cases, the service of transportation of sugarcane provided by the transporters would not be covered by Section 65(105)(zzp)."
- Also no averment by the department that transporter was supposed to issue consignment note but appellants persuaded not to.

Individual truck owners ??

- Sr. No. 18 of Notification No. 12/2017 – Central Tax (Rate) provides for exemption for services by way of transportation of goods -
 - (a) by road except the services of—
 - (i) a goods transportation agency;
 - (ii) a courier agency;
 - (b) by inland waterways.

Exemption – Notification No. 12/2017 – Central Tax (Rate)

- Services provided to an unregistered person (other than specified persons) w.e.f. 13.10.2017
- Services provided by a goods transport agency, by way of transport in a goods carriage of :
 - (a) agricultural produce
 - (b) goods, where consideration charged for the transportation of goods on a consignment transported in a single carriage does not exceed one thousand five hundred rupees
 - (c) goods, where consideration charged for transportation of all such goods for a single consignee does not exceed rupees seven hundred and fifty
 - (d) milk, salt and food grain including flour, pulses and rice
 - (e) organic manure
 - (f) newspaper or magazines registered with the Registrar of Newspapers
 - (g) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap
 - (h) defence or military equipments

Advocate

Category of Supply of Services	Supplier of service	Recipient of Service
<p>Services provided by an individual advocate including a senior advocate or firm of advocates by way of legal services, directly or indirectly.</p> <p>Explanation.— "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.</p>	<p>An individual advocate including a senior advocate or firm of advocates</p>	<p>Any business entity located in the taxable territory</p>

C.B.E. & C. Press Release No. 81/2017, dated 15-7-2017

- The words "*by way of legal services*" are preceded and succeeded by comma. Therefore, the said words apply to an individual advocate including a senior advocate and a firm of advocates.
- The words "*by way of representational services before any court, tribunal or authority....*" appear in conjunction with senior advocate without a comma and merely describe the nature and mode of representational services provided by a senior advocate to a business entity. It, therefore, follows that legal services, which includes representational services, provided by advocates are under reverse charge.
- The business entity located in the taxable territory who is litigant, applicant or petitioner, as the case may be, shall be treated as the person who receives the legal services for the purpose of this notification – Explanation (c)

Advocate – Exemption – Sr. No. 45 of Notification No. 12/2017

- a partnership firm of advocates or an individual as an advocate other than a senior advocate, by way of legal services to
 - (i) an advocate or partnership firm of advocates providing legal services;
 - (ii) any person other than a business entity; or
 - (iii) a business entity with an aggregate turnover up to twenty lakh rupees (ten lakh rupees in the case of special category states) in the preceding financial year
- a senior advocate by way of legal services to
 - (i) any person other than a business entity; or
 - (ii) a business entity with an aggregate turnover up to twenty lakh rupees (ten lakh rupees in the case of special category states) in the preceding financial year.

Sponsorship

Category of Supply of Services	Supplier of service	Recipient of Service
Services provided by way of sponsorship	Any person	A body corporate or partnership firm persons (including LLP w.e.f. 22.08.2017 (Notification 22/2017) located in the taxable territory.

- Sponsorship not defined in the Act
- It shall not include financial or other support in the form of donation or gift where in recipient is under no obligation to provide anything in return to such donation.
- Following service is exempt:
- 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;
 - (d) as part of national games, by the Indian Olympic Association; or
 - (e) under the Panchayat Yuva Kreedha Aur Khel Abhiyaan Scheme.

Other specified services

Category of Supply of Services	Supplier of service	Recipient of Service
Services supplied by an arbitral tribunal	An arbitral tribunal	Any business entity located in the taxable territory
Services supplied by the Central Government, State Government, Union territory or local authority to a business entity excluding, – (1) renting of immovable property, and (2) services specified below- (i) services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Central Government, State Government or Union territory or local authority; (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; (iii) transport of goods or passengers	Central Government, State Government, Union territory or local authority	Any business entity located in the taxable territory.
Services supplied by the Central Government, State Government, Union territory or local authority by way of renting of immovable property to a person registered under the Central Goods and Services Tax Act, 2017 (12 of 2017) (w.e.f. 25.01.2018)	Central Government, State Government, Union territory or local authority	Any person registered under the Central Goods and Services Tax Act, 2017

Directors

Category of Supply of Services	Supplier of service	Recipient of Service
Services supplied by a director of a company or a body corporate to the said company or the body corporate.	A director of a company or a body corporate	The company or a body corporate located in the taxable territory.

- Services by an employee to the employer in the course of or in relation to his employment – Neither supply of goods nor supply of services – Entry No. 1 of Schedule III

Other specified services

Category of Supply of Services	Supplier of service	Recipient of Service
Services supplied by an insurance agent to any person carrying on insurance business	An insurance agent	Any person carrying on insurance business, located in the taxable territory.
Services supplied by a recovery agent to a banking company or a financial institution or a nonbanking financial company.	A recovery agent	A banking company or a financial institution or a non-banking financial company, located in the taxable territory.
Supply of services by an author, music composer, photographer, artist or the like by way of transfer or permitting the use or enjoyment of a copyright covered under clause (a) of sub-section (1) of section 13 of the Copyright Act, 1957 relating to original literary, dramatic, musical or artistic works to a publisher, music company, producer	Author or music composer, photographer, artist, or the like	Publisher, music company, producer or the like, located in the taxable territory
Supply of services by the members of Overseeing Committee to Reserve Bank of India	Members of Over-seeing Committee constituted by the Reserve Bank of India	Reserve Bank of India.
Services supplied by individual Direct Selling Agents (DSAs) other than a body corporate, partnership or limited liability partnership firm to bank or non-banking financial company (NBFCs).	Individual Direct Selling Agents (DSAs) other than a body corporate, partnership or limited liability partnership firm.	A banking company or a non-banking financial company, located in the taxable territory

General reverse charge – Sec. 9(4) & 5(4)

- Exemption upto INR 5000/-
- Goods & Services received in unregistered State
- Only 'supply' is covered
- Notification: 38/2017-C.T. (Rate) dated 13.10.2017
 - Omission of the proviso restriction the exemption upto INR 5,000/- under Notification No. 8/2017-Central Tax (Rate) dated 28.06.2017
- Notification: 32/2017-I.T. (Rate) dated 13.10.2017
 - Grants exemption from IGST

Exemption upto INR 5000/- - Notification No. 8/2017 – Central Tax(Rate)

- 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 said the CGST Act, 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.**

Issues

- Limit to be calculated State-wise
 - A person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, **be treated as distinct persons for the purposes of this Act** – Sec. 25(4)
- Whether it shall include all supplies or only taxable supply
 - Proviso uses the phrase 'such supplies' – Hence only taxable supplies to be considered
- When shall it be deemed that supply has been received
 - Date of self-invoice prepared u/s 31(3)(f)

Services received in unregistered State

- If place of supply is in the unregistered State
 - For services like hotel & restaurant, place of supply is location of immovable property.
 - At such place of supply, recipient is unregistered.
 - Hence RCM shall not trigger.
- If place of supply is in the Registered State
 - As per default rule u/s 12(2) of IGST Act, 2017 place of supply of services made to any person other than a registered person shall be:
 - the location of the recipient where the address on record exists and
 - the location of the supplier of services in other cases
 - “address on record” means the address of the recipient as available in the records of the supplier – Sec. 2(3) of CGST Act, 2017
 - “recipient” of supply of goods or services or both, means (a) where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration – Sec. 2(93) of CGST Act, 2017

Location of recipient of service

- Sec. 2(70) “location of the recipient of services” means,—
 - (a) where a supply is received at a place of business for which the registration has been obtained, the location of such place of business;
 - (b) where a supply is received at a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;
 - (c) where a supply is received at more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the receipt of the supply; and
 - (d) in absence of such places, the location of the usual place of residence of the recipient – (“usual place of residence” means — (a) in case of an individual, the place where he ordinarily resides; (b) in other cases, the place where the person is incorporated or otherwise legally constituted – Sec. 2(113))
- Conflict with Place of Supply – Sec. 9(1) creates levy and only collection is shifted. Hence place of supply shall override location of recipient.

Goods received in unregistered State

- As per Sec. 10(1)(a) of IGST Act, 2017 place of supply where the supply involves movement of goods, whether by the supplier or the recipient or by any other person, the place of supply of such goods shall be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient.
- As place of supply is in unregistered State, RCM shall not trigger.

Only 'supply' is covered

- Sec. 9(4) provides that RCM shall trigger on 'supply' from unregistered person to registered person.
- Sec. 7 defines 'supply' for the purpose of whole Act.
- As per Sec. 7(1)(a) only transactions made in the course or furtherance of business are covered when made for consideration.
- Reimbursement to employee using own vehicle for official purpose is not a 'supply' as such employee is not in the business of providing such service.
- C.B.E. & C. Press Release No. 78/2017, dated 13-7-2017
 - In master class it was said that jeweller will have to pay tax under RCM on purchase of old jewellery
 - Even though the sale of old gold by an individual is for a consideration, it cannot be said to be in the course or furtherance of his business (as selling old gold jewellery is not the business of the said individual), and hence does not qualify to be a supply *per se*. Accordingly the sale of old jewellery by an individual to a jeweller will not attract the provisions of Section 9(4) and jeweller will not be liable to pay tax under reverse charge mechanism on such purchases. However, if an unregistered supplier of gold ornaments sells it to registered supplier, the tax under RCM will apply.

Second hand dealers

- Notification No. 10/2017 – Central Tax (Rate) provides for exemption from the whole of central tax leviable u/s 9(4) on the intra-state supply of second hand goods received by a registered person dealing in buying and selling of second hand goods and who pays tax on the value determined under rule 32(5).

Credit of tax – Conditions u/s 16(2)

- (a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;
- (b) he has received the goods or services or both.
- *Explanation.* — For the purposes of this clause, it shall be deemed that the registered person has received the goods where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;
- (c) subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilization of input tax credit admissible in respect of the said supply (**by when ??**); and
- (d) he has furnished the return under section 39

Document for availing the credit – Rule 36

- Documentary requirements and **conditions for claiming input tax credit** — (1) The input tax credit shall be availed by a registered person, including the Input Service Distributor, on the basis of any of the following documents, namely -
 - (b) an invoice issued in accordance with the provisions of clause (f) of sub-section (3) of section 31, **subject to the payment of tax**
- Interpretation of expression 'subject to'
- K. R. C. S. Balakrishna Chetty and Sons & Co. vs The State Of Madras 1961 SCR (2) 736
 - On a proper interpretation of the section it only means that the **exemption under the licence is conditional upon the observance of the conditions prescribed** and upon the restrictions which are imposed by and under the Act whether in the rules or in the licence itself ; that is, a **licensee is exempt from assessment as long as he conforms to the conditions of the licence** and not that he is entitled to exemption whether the conditions upon which the licence is given are fulfilled or not. **The use of the words "subject to" has reference to effectuating the intention of the law and the correct meaning, in our opinion, is "conditional upon".**

Tax invoice – Sec. 31(3)

- (f) a registered person who is liable to pay tax under sub-section (3) or sub-section (4) of section 9 shall issue an invoice in respect of goods or services or both received by him from the supplier who is not registered **on the date of receipt of goods or services or both;**
- (g) 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.

Time of supply under RCM – Sec. 12 & 13

- In case of goods under RCM, time of supply shall be earliest of –
 - Date of receipt of goods
 - Date of payment if made before 31st day from date of invoice or
 - 31st day from date of invoice
- In case of services under RCM, time of supply shall be the earliest of –
 - Date of payment if made before 61st day from date of invoice or
 - 61st day from date of invoice

Payment of tax – Sec. 49

- (3) The amount available in the **electronic cash ledger** may be used for making any payment towards tax, interest, penalty, fees or any other amount payable under the provisions of this Act or the rules made thereunder in such manner and subject to such conditions and within such time as may be prescribed.
- (4) The amount available in the **electronic credit ledger** may be used for making any payment **towards output tax** under this Act or under the Integrated Goods and Services Tax Act in such manner and subject to such conditions and within such time as may be prescribed. (please also refer Rule 85)
 - Sec. 2(82) “output tax” in relation to a taxable person, means the tax chargeable under this Act on taxable supply of goods or services or both made by him or by his agent **but excludes tax payable by him on reverse charge basis**

Payment to supplier criteria not applicable

- Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed - Second proviso to Sec. 16(2)

ITC blockage for suppliers – Sec. 17(3)

- The value of exempt supply under sub-section (2) shall be such as may be prescribed, and shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.

Compulsory registration in certain cases – Sec. 24

- Notwithstanding anything contained in sub-section (1) of section 22, the following categories of persons shall be required to be registered under this Act, —
- (iii) persons who are required to pay tax under reverse charge
- Difference between 9(3) & 9(4)
 - Sec. 9(3) is collection mechanism from recipient of goods or services
 - Sec. 9(4) is collection mechanism from registered person
 - Hence if one is not registered in a particular State, collection cannot be done. If one cannot collect, one cannot enforce compulsory registration.
 - Thus Sec. 24(iii) covers only liability u/s 9(3) or 5(3)

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