



REVERSE CHARGE MECHANISM UNDER GST FOR GOODS AND SERVICES IN INDIA

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ABSTRACT

Generally, the supplier of goods or services is liable to pay GST. However, in specified cases like imports and other notified supplies, the liability may be cast on the recipient under the reverse charge mechanism. Reverse charge means the liability to pay tax is on the recipient of supply of goods or services instead of the supplier of such goods or services in respect of notified categories of supply. From this two things are clear: Firstly, Reverse charge may be applicable in case of supply of notified goods or services or both. Secondly, Reverse charge is also applicable in case of supply by an unregistered person to a registered person, where such supply is of taxable goods or services i.e. exempt supply received from an un-registered person is not covered under reverse charge mechanism. Under normal supplies, where supplier collects the tax from the recipient and deposits the same after adjusting his output tax liability with input tax credits, but under the reverse charge mechanism liability to pay tax on a particular supply is on the recipient of supply. The purpose of this charge is to increase tax compliance and tax revenues. Earlier, the government was unable to collect service tax from various unorganized sectors like goods transport. Compliances and tax collections will therefore be increased through reverse charge mechanism. The concept of reverse charge mechanism is already present in service tax. In GST regime, reverse charge may be applicable for both services as well as goods.

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INTRODUCTION

As the name suggests, reverse charge mean a levy of tax in reverse order. In other words on the same taxable event, liability for paying tax shifts from the person liable to pay tax to the person who is otherwise not liable to pay tax in terms of taxable event. In the context of GST, it means that it is not the supplier of goods and services who has to discharge his liability to pay tax but this liability for paying GST shifts to recipient of goods and services. Such a levy is not new in India and was already in vogue in earlier Service Tax Regime. Under GST, this concept has been made applicable to goods also.

Reverse Charge concept in GST: In terms of sec 2(98) of CGST / SGST “reverse charge” means the liability to pay tax by the recipient of supply of goods or services or both instead of the supplier of such goods or services or both under sub-section (3) or sub-section (4) of Section 9, or under sub-section (3) or sub-section (4) of Section 5 of the Integrated Goods and Services Tax Act. The statutory provisions mentioned in aforesaid definition read as under:

“The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods and 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.

The 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.”

Elements of Reverse Charge

From the above, it is clear that there are two elements of reverse charge under GST. Firstly if the supplier of goods or services or both is an unregistered person then payment of GST has to be made by recipient on reverse charge. Secondly, the Council can recommend specific categories of supply of goods or services or both on which tax would be paid by recipient instead of supplier. In other words, supplier in such cases need not comply with GST provisions even if otherwise he is not exempt.

Who Is Liable To Pay Tax on Reverse Charge

1. As per Section 2(107) “taxable person” means a person who is registered or liable to be registered under section 22 or section 24 of the CGST Act, 2017.

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2. Section 9(1) of the CGST Act, 2017 provides that central goods and services tax on all intra-state supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption are to be paid by the taxable person.
3. 2. However, in terms of section 9(3) of the CGST Act, 2017, in respect of specified categories of supply of goods or services or both, the tax is required to be paid on reverse charge basis by the recipient of such goods or services or both. Services, supply of which would attract levy of tax under reverse charge have been notified vide Notification No. 13/2017- Central Tax (Rate), dated 28-06-2017. Goods, supply of which would attract levy of Tax under reverse charge have been notified vide Notification No. 4/2017- Central Tax (Rate), dated 28-06-2017.

GST Payment for Supplies Received From Unregistered Dealers/Persons

- a. All taxable goods and services received from the unregistered dealers are liable to payment of GST by the receiver of such goods. The time has come to make sure, all your payments above Rs. 5,000/- per day are paid with GST.
- b. In other words, if the assessee is dealing with unregistered suppliers and making payments above Rs. 5,000/- per day / per transaction, he has to pay GST under reverse charge mechanism (RCM).
- c. While computing the limit of Rs. 5,000/- following items procured from unregistered dealer shall be excluded / included.

This list is illustrative and not exhaustive:

Exclusion from Rs. 5,000/-:

1. Salary and wages including reimbursements
2. Electricity and Water
3. Interest
4. Petrol, Diesel or CNG and fuel for vehicles
5. Government Fees
6. Items exempted from GST (like books, newspaper, etc.)
7. Postal expenses.
8. Inclusion in Rs. 5,000/-:
9. Rent,
10. Commission payments
11. Printing and stationery
12. Repairs and Maintenance
13. Office maintenance
14. Vehicle Maintenance
15. Computer maintenance
16. Legal fees
17. Consultancy fees
18. Professional fees
19. Audit fees
20. Labour charges
21. Freight and transportation charges
22. Gift expenses
23. Business promotion expenses
24. Advertisement, etc.
25. Food/restaurant Bills
26. Sundry purchases.

(4) Receiver of goods and services has to raise a bill on him for the above expenses to pay GST under Reverse Charge

Mechanism. This bill can be raised on daily basis, weekly basis and at least on monthly basis (Rule 46 of the GST Rules) on the last day of the month and GST is to be paid accordingly.

Note:(1) If the supplier of the above services is the registered dealer and has charged GST in the bill, then there is no liability on the receiver of goods / services under Reverse Charge Mechanism unless such goods or services are notified under Reverse Charge Mechanism.

(2) Services received from Goods Transport Operator Agency (GTA) are chargeable to GST @ 5% and no ITC for GST paid on GTA is available. However, payment for transport of goods upto R. 1,500/- for full truck/ tempo load is exempted from GST and upto Rs. 750/- for part consignment, thus, they are not to be taken into consideration while computing the limit of Rs. 5,000/-.

Reverse Charge not applicable when registered person selling goods or providing service not in furtherance of any business. Sale of old jewellery to jewellers not subject to GST under reverse charge system. – The CBEC by Press Release dated 13-07-2017, has clarified that as per the provisions of Section 9(4) of the CGST Act read with sections 2(105) and 7 of the CGST Act, a supply under GST is a transaction, for consideration by a person in the course of furtherance of business. In view of these provisions, when an individual sell old gold/jewellery to a jeweller, it cannot be said to be in the course or furtherance in his business. Thus, such transaction cannot qualify to be a supply per se, hence it will not attract any GST even under reverse charge mechanism. In view of this clarification, the selling of goods or providing of service by an individual, not in the course of any business, is outside the purview of GST, hence the reverse charge mechanism is not applicable to such transaction.

Value of supplies on which tax is payable on reverse charge basis is not to be included in the “Aggregate Turnover” – Section 2(6) of the CGST Act, provides that value of inward supplies on which tax is payable by a person on reverse charge basis is not to be included in the “aggregate turnover” of any person supplying goods or services or both.

Exemption on receipt from unregistered dealer – Government vide its Notification No. 8/2017 – Central Tax (Rate), dated 28-06-2017 has granted exemption in respect of supplies of goods or services or both received from unregistered person or persons provided such supplies don’t exceed Rs. 5,000/- per day. It means that supplies received by a registered person from petty unregistered persons are not liable to GST under reverse charge up to a consolidated value of Rs. 5,000/- per day.

Invoice by Recipient: If a recipient, who is liable to pay tax under reverse charge, receives taxable goods / services from an unregistered person then he shall issue an tax invoice as well as payment voucher in respect of goods or services or both received by him from such supplier.

Reverse Charge on Supplies of Goods: Time of Supply – As per the provisions of Section 12(3) of the CGST Act, for the reverse charge levy on goods, the time supply shall be the earliest of (a) the date of the receipt of goods; or (b) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or (c) the date immediately following thirty days from the date of issue of invoice or any other

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document, by whatever name called, in lieu thereof by the supplier. Where it is not possible to determine the time of supply shall be the date of entry in the books account of the recipient of supply.

Reverse Charge on supply of Services: - Time of Supply – In terms of Section 13(3) of the CGST Act, for the services in case of reverse charge, the time of supply shall be earlier of (a) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; (b) the date immediately following sixty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier. Where it is not possible to determine the time of supply shall be the date of entry in the books account of the recipient of supply. Also in case of supply by associated enterprises, where the supplier of service is located outside India, the time of supply shall be the date of entry in the books of account of the recipient of supply or the date of payment, whichever is earlier.

Reverse Charge on Import of Services: Since supplier of services abroad would not be registered, IGST would be levied on recipient and shall be paid by him on reverse charge basis and all the provisions of law shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply. However, in respect of import of Online Information and Database Access or Retrieval Services (OIDAR) by unregistered, non-taxable recipients, the supplier located outside India shall be responsible for payment of taxes.

Furnishing details of inward supplies: Section 38(2) of the CGST Act, provides that a registered person, paying tax is also required to furnish details of inward supplies of goods or services or both on which the tax is payable on reverse charge basis.

Small Scale supplier benefit not available to person required to pay tax under Reverse Charge: As per section 22(1) of the CGST Act, a supplier is exempted from registration if his aggregate turnover in a financial year does not exceed Rs. 20 lakhs in case of special category states. However, this benefit is not available to a person who is required to pay tax under reverse charge.

Tax under Reverse Charge to be paid where supply is received from non-registered person – (1) Section 9(4) of the CGST Act provides that if a registered person obtains supply of goods or services or both from a person who is not registered, the tax shall be paid by the registered person on reverse charge basis as the recipient of such goods or services or both.

(2) In terms of Notification No. 8/2017 – Central Tax (Rate), dated 28-06-2017, if aggregate value of intra-State supply from an unregistered person to a registered person in a day exceeds Rs. 5,000/- then GST on such supply will be required to be paid by the recipient under Reverse Charge.

(3) However, no such monetary limit has been prescribed under IGST Ac, a person required to pay the tax under Reverse Charge is to pay the tax by cash through electronic cash register only and he is not entitled to pay the tax by utilising Input Tax Credit.

Other provisions relating to Reverse Charge:

1. All persons who are required to pay tax under reverse charge have to be registered for GST irrespective of the threshold.
2. The service recipient, i.e., who pays reverse tax, can avail input tax credit services are used for furtherance of business.
3. Every tax invoice has to mention whether the tax in respect of supply in the invoice is payable on reverse charge. Similarly, this also needs to be mentioned in receipt voucher as well as refund voucher, if tax is payable on reverse charge.
4. Every registered person is required to keep and maintain records of all supplies attracting the payment of tax on reverse charge.
5. Invoice level information in respect of all supplies attracting reverse charge, rate-wise, are to be furnished separately in the table 4B of GSTR-1.
6. Advance paid for reverse charge supplies is also leviable to GST. The person making advance payment has to pay tax on reverse charge basis.

Goods liable to Reverse Charge – The table of Notification No. 4/2017 – Central Tax (Rate), dated 28-06-2017 gives details of the goods notified for payment on reverse charge basis. They are Cashew Nuts, not shelled or peeled, Bidi wrapper leaves (tendu), Tobacco leaves, silk yarn and supply of lottery.

Service liable to reverse charge: The table of Notification No. 13/2017 – Central Tax (Rate), dated 28-06-2017 gives details of the services notified for payment on reverse charge basis. They include services by GTA, Advocate including Senior Advocate, Arbitral Tribunal, Sponsorship Services, Government providing renting of immovable property services and specified services of the postal department, Director of a Company, Insurance Agent, Recovery Agent and Authors, Music Composers, Photographers, Artists or the like.

Exemption from registration to persons supplying goods and services only under reverse charge mechanism – The Central Government has w.e.f. 22-06-2017, specified 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 CGST Act, as the category of persons exempted from obtaining registration under the aforesaid act.

Legal Services by Advocates including Senior Advocates under Reverse Charge – No change due to GST – The CBEC has clarified that legal service has been defined to mean 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 and legal services, which includes representational services, provided by advocates are under Reverse charge.

Reverse Charge on Legal Services – The GST Council in its 20 meeting held on 05-08-2017 has decided to clarify that legal services (including representational services) provided by an individual advocate or senior advocate or a firm of advocates (including LLP) provided to a business entity in taxable territory are covered under reverse charge mechanism.

Special provisions relating to Electronic Commerce Operator – In case of certain supplies or services through Electronic Commerce Operator, service tax is payable neither by service provider nor by service recipient but by Electronic

Commerce Operator. This is in terms of Section 9(5) of CGST/SGST Acts and similar provisions in IGST Act. In this connection following categories of services have been notified vide Notification No. 17/2017 – Central Tax (Rate), dated 28-06-2017 where Electronic Commerce Operator is liable for paying GST.

1. Services by way of transportation of passengers by a radio-taxi, motorcab, maxicab and motorcycle.
2. Services by way of providing accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes, except where the person supplying such service through electronic commerce operator is liable for registration under sub-section (1) of section 22 of the Central Goods and Services Tax Act.

CONCLUSION

In case of Reverse Charge Mechanism levy on account of purchase from unregistered dealer, a registered person may keep the following points in mind:

1. Firstly try as far as possible to procure supplies of goods or services from a registered person to avoid complexities of paying GST under Reverse Charge Mechanism.
2. When procured, please ensure to avail exemption of Rs. 5,000/- per day on purchases made from unregistered supplier of goods or services. If such purchase exceeds Rs. 5,000/- on any day, then exemption even up to Rs. 5,000/- is not available at that day.
3. Must issue a self-invoice on daily, weekly or at least monthly basis for consolidated purchases made from unregistered person(s) during the day.

4. HSN Code / Services accounting code (SAC) as required to be mentioned on invoices, should also be self-assessed.
5. GST liability under Reverse Charge Mechanism must be discharged on monthly basis.
6. Ensure incorporating supplies under RCM in monthly GST return.
7. Don't forget to avail input tax credit (ITC) of the GST paid under Reverse Charge Mechanism.

It has been clarified by CBEC that Reverse Charge is not applicable when unregistered person is supplying goods or services which are not in furtherance of the business. For example, a transaction where an individual, say a housewife sells old jewellery to a jeweller is not subjected to GST under Reverse Charge System because selling of Gold is not the business of the housewife. However, where an unregistered goldsmith on his own account, supplies gold ornaments to a jeweller then Reverse Charge Mechanism would be applicable and jeweller would be liable to pay 3% GST. Similar example can be given for sale of old car by an individual to another individual or to a dealer dealing old cars.

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