Volume-38 September-2017 Pages 1-21

SBS Wiki

monthly e-Journal

By

SBS and Company LLP
Chartered Accountants

CONTENTS

GST

AGRICULTURAL SECTOR

Contributed by CA Sri Harsha & CA Manindar

Introduction:

Agricultural Sector is the largest contributor to the Indian economy. It covers around 16% of the overall GDP of the Country. Under the earlier regime, Centre and State Governments are lenient in taxing the agricultural sector as compared to all other sectors. However, GST is implemented on the premise to widen the tax base with fewer exemptions and to ensure seamless flow of input tax credit so that the entire tax burden will be rested on the end consumers. This will have a bearing on all the business sectors and will impact one or the other aspects of every sector. Agriculture is no exception. In this article, an attempt is made to provide a macro view on the overall impact of GST on agricultural sector.

Agriculturist is relieved from GST Compliances:

The word 'Agriculturist' is defined under section 2(7) of CGST Act, 2017 to mean an individual or HUF who undertakes cultivation of land by own labour or by labour of family or by employing labour on wages or through hired labour. In terms of Section 23(1)(b), an agriculturist is relieved from the requirement of registration to the extent related to supply of produce arising out of cultivation of land. This would imply that any agriculturist is not legally required to collect and pay GST to Government, though the produce of the agriculturist would be subject to GST. This would mean that the person who buys such produce from an agriculturist is required to discharge the corresponding GST liability under reverse charge mechanism as it becomes a supply from unregistered persons in terms of Section 9(4) of CGST Act, 2017. A similar practice was adopted by State Governments under earlier regime also, in order to relieve the farmers from the burden of VAT compliance.

However, the said privilege is not applicable to those persons who are involved in animal husbandry and aquaculture. Thus subject to other requirements relating to taxability, these persons are required to register and pay GST upon supply of meat, eggs, milk, fish, shrimps, prawns etc.

GST Impact on Agricultural Produce:

Under the earlier regime, there used to be no excise duty or any other central taxes on agricultural produce as the said activities does not amount to manufacture. The only tax implications are of VAT or CST. Many of the states used to charge VAT at the rate of 5% on most of the agricultural produce viz. rice, wheat, barley, oats, maize etc. However, under GST there is not tax on these items unless they are sold in unit containers bearing a registered brand name. In such case, the applicable GST rate is 5%. Thus, compared to earlier regime, the tax impact on agricultural produce under GST regime is reduced and is restricted only to that produce that is sold under a brand name which are meant for consumption by wealthy citizens.

GST Impact on Milk Products:

Fresh milk, Pasteurised milk, separated milk curd, lassee and butter milk are not subject to VAT and excise duty under the earlier regime. These items continue to be exempt under GST also. Condensed milk was subject to VAT at 5% and excise duty at 12.5% under the earlier regime. It is now going to be taxed at GST

rate of 18%. In case of ultra-high temperature milk, which possess longer shelf life upto nine months, there used to be no excise duty but were subject to VAT at the rate of 5%. Now they are subject to GST at the rate of 5%. Thus, there is no increased tax impact on milk products due to GST.

GST Impact on Animal Husbandry and Aquaculture:

Live birds and their eggs, sheep, goats, swine, bovine animals were not subject to any VAT and they continue to be exempt under GST also. Meat used to be completely exempt under VAT. Under GST regime, frozen meat sold in unit containers under a registered brand name are subject to GST at the rate of 12%.
Coming to aquaculture, all kinds of fishes, prawns, shrimps were not subject to any VAT and they continue to be exempt under GST also. However, frozen meat of these items sold in unit containers under a registered brand name are subject to GST at the rate of 5%. Thus, under GST regime there is a higher tax impact on frozen meet.

GST Impact on capital goods and inputs used in Agriculture:

The capital goods required by agriculturists includes tractors, agriculture equipment, horticulture equipment, harvesting equipment, sprinklers, dippers, poultry machinery including incubators and brooders etc. All these items are exempted from excise duty under the earlier regime. They are subject to VAT at the rate of 5% in most of the states. Under GST regime, sprinklers and dippers are subject to GST at 18% while all other agriculture equipment is subject to GST at the rate of 12%. Thus these items would be subject to a higher tax rate under GST. However, as these items are exempted from excise duty under the earlier regime, there could be hidden tax impact on these items as no credit of service tax and excise duty paid by manufacturers of these items are allowed as CENVAT.

Coming to fertilisers, they are subject to VAT at the rate of 5% and excise duty at the rate of 1% without CENVAT. Therefore, the duty impact is around 6%. As there is no benefit of CENVAT of excise duty and service tax paid by manufacturers on their inputs and input services, there was a hidden tax impact on these items. Under GST regime, they are going to be taxed at 5%. Further, there are no restrictionson availment of input tax credit under GST. Thus, there is favourable tax impact in case of fertilisers.

Coming to the case of seeds including fish and prawn seeds, prawn feeds and other aquatic feeds, they are not subject to any tax under the earlier regime as well as under GST regime.

Conclusion:

Upon comprehension of the above tax changes of various aspects of agricultural sector, it is inevitable that both Centre and States continues to be lenient in taxing this sector under GST regime also. Only products that are sold under a registered brand name which are meant for consumption by wealthy citizens are subject to additional tax burden. In fact, the essential items like rice, wheat, barley, oats, maize etc are free of any tax as compared to earlier regime which is a welcoming move.

This article is contributed by CA Sri Harsha Vardhan K & CA Manindar K Partners of SBS and Company LLP, Chartered Accountants. The authors can be reached at harsha@sbsandco.com & manindar@sbsandco.com

GST

STORY OF BOND OR LUT FOR SEZ SUPPLIES

Contributed by CA Sri Harsha & CA Manindar

Today's world is a world of misinformation, misinterpretation and misleading with the advent of rapid communication and social networking tools. Majority of the law now is understood either from Facebook, Whatsapp or YouTube. The irresponsible sharing of messages, without investing time to validate the messages has creating a lot of trouble for the entire human race irrespective of the field we are in.

The Government has introduced the Goods and Services Tax (GST) with effective from 01st July, 2017. Undoubtedly, GST has become as buzz/trending word on majority of the social networking sites, which made everyone to look at it and share their thoughts on such subject. Accordingly, there were presentation materials, video tutorials and what not. We welcome such awareness which is being created but the problem, we see is, majority of the presentations and tutorials are not well researched and done without understanding the law.

One such issue, which the trade is being confused with is, whether the requirement of bond or letter of undertaking is applicable for every supplies made to a unit in Special Economic Zone or developer of Special Economic Zone (SEZ) or is it applicable only for certain supplies made to a unit in SEZ or developer of SEZ. In this article, we try to dwell upon the same issue.

Before addressing the issue, let us understand the provisions applicable when supplies were made to a unit of SEZ or developer of SEZ. Section 7(5)(b) of Integrated Goods and Service Tax Act, 2017 (IGST Act) specifies that when supplies made to or by a SEZ developer or SEZ unit, the same shall be deemed to be supply of goods or services in the course of inter-state trade or commerce.

Hence, by virtue of Section 7(5)(b) of IGST Act, any supplies made to a unit in SEZ or a developer of SEZ shall be treated as inter-state supply, irrespective of the fact, the supplier and recipient are located in the same state/union territory. This was made very clear by the proviso to Section 8 of IGST Act. So, it is in absolute clarity that the legislature wants to treat the supplies made to unit in SEZ or developer of SEZ are inter-state and not intra-state.

Once, the supply is concluded to be an inter-state, then the provisions of IGST Act shall be applicable and accordingly, it has to be seen what is the rate applicable for the supplier when supplies were made to a unit located in SEZ or a developer of SEZ. In this regards, attention is required towards Section 16 of IGST Act, which deals with the concept of 'Zero Rated Supply'.

The phrase 'Zero Rated Supply' has been defined vide Section 2(23) of IGST Act as to have the meaning assigned to it in Section 16. Hence, Section 16 of IGST Act is the relevant section to understand the concept of 'Zero Rated Supply'. Let us proceed to examine the anatomy of Section 16 *ibid.*

Section 16 ibid has 3 sub-sections. The first sub-section deals with the meaning of 'Zero Rated Supply' stating that '*any supplies of goods or services or both namely: (a) export of goods or services or both or (b) supply of goods or services or both to a special economic zone developer or a special economic zone unit'.*

That is to say, if any supplies of goods or services or both were made to a unit located in SEZ or developer of SEZ, the same shall be termed as 'Zero Rated Supply'.

The second sub-section deals with availment of input tax credit used for making zero rated supply, notwithstanding the fact that such supply is an exempt supply. Hence on combined reading of first and second sub-section, it is evident that supplies made to a unit located in SEZ or a developer of SEZ are exempt supply in the nature of zero rated and credit used for making such supplies can also be availed.

The third sub-section is creating the confusion for the trade. The third sub-section deals with the provisions applicable for a registered person who is engaged in making zero rated supplies for claiming refund of unutilised input tax credit (Since, the supplies made by supplier are not subjected to any tax, the GST paid on inputs and input services has to be given as refund, otherwise the cost of supplies might be increased).Let us take an example to understand.

A Limited is engaged in supply of services to a unit located in SEZ namely, B Limited. For providing such supplies, A Limited has purchased certain goods and services, where GST paid on them was Rs 18,000. Now, A Limited using such goods and services, has provided supplies to B Limited and billed them Rs1,00,000/-. Since the supply is being made to a unit in SEZ or a developer of SEZ, a simple invoice with Rs1,00,000/- shall be raised on B Limited.

If you see in the above example, the input taxes of Rs 18,000/- was lying with A Limited since the same cannot be used for payment of output tax on supplies made to B Limited, since such supply is zero rated [Please note that for the purposes of availing the credit, the zero rated supplies are treated as taxable supplies].

Hence, in order to refund the input taxes paid by A Limited since the output is exempted because of a zero rated supply, the third sub-section states that such refund can be obtained in either of the two options:

a. With Payment of IGST
b. Without Payment of IGST

With Payment of IGST:

A question arises as to when the supplies to SEZ unit or developer of SEZ is not taxable, then how is that payment of IGST arises. This is nothing but creating an artificial tax liability on supplies made to SEZ unit or developer. The supplier will not charge tax on the said supplies, however, for the purposes of refund, the supplier shall create an artificial tax liability which is equivalent to the input tax and claim the refund of the same from the government.

Like in the above example, the supplier will raise an invoice (only for the purposes of claiming refund and not to be shared with B Limited) with Rs 1,00,000/- + Rs 18,000/- as IGST and submit to the government that Rs 18,000/- payable is adjusted against the available input tax credit and accordingly the government, will refund the IGST paid which is Rs 18,000/-

Hence, technically, the refund is being granted is the unutilised input tax credit but said and understood as refund of IGST paid. This option can be exercised by tax payers who do not want to go into the bond or letter of undertaking model.

Without Payment of IGST:

In this option, the tax payer shall be eligible for refund of unutilised input tax credit which got accumulated because of zero rated supplies. However, in order to be eligible for refund, the tax payer has to execute a bond (for specified persons a letter of undertaking can be filed instead of bond) prior to export of goods or services.

The bond shall be realised within 15 days after the expiry of three months from the date of issue of invoice for export of goods, if the goods are not exported out of India or within 15 days from one year, or such further period extended by Commissioner, from the date of issue of the invoice for export of services, if payment for such services is not received by exporter in convertible foreign exchange as per Rule 96A of Central Goods & Services Tax Rules, 2017 (CGST Rules).

Further, the sub-rule (5) of Rule 96A of CGST Rules, the provisions of bond or letter of undertaking shall be applicable *mutatis mutandis* in respect of zero rated supply of goods or services or both to a developer of SEZ or unit located in SEZ.

Issue for deliberation:

Now, the core issue for discussion is:

Whether a supplier who is engaged in supply of services to a unit located in SEZ has to apply for a bond or letter of undertaking as mentioned in Rule 96A(5) of CGST Rules?

(or)

Does the provisions of bond or letter of undertaking shall be applicable only for registered persons who are planning to claim refund of unutilised input tax credit as per Section 16(3) of IGST Act?

On a plain reading of Section 16 of IGST Act and specific reading of Section 16(3) ibid, it is evident that only persons who are opting for claiming of refund has to file either a bond or letter of undertaking prior to export. However, on reading Rule 96A (1) of CGST Rules, it states that every person who has opted to supply goods or services without payment of IGST, has to file a bond or letter of undertaking prior to export which is apparently contradictory to Section 16 of IGST Act.

However, on a careful reading of both Section 16(3) and Rule 96A, it can be safely said that only persons who are opting to export goods or services without payment of IGST has to file either bond or letter of undertaking. That is to say, even Rule 96A(1) also talks about the option provided in Section 16(3) of IGST Act. If the person opts to supply without payment of IGST, means, it is one of the option mentioned in Section 16(3) of IGST Act.

Hence, we can conclude that there is no requirement of bond or letter of undertaking if the person is not claiming refund and as per Section 16(1) and (2), there is no requirement to pay tax on supplies made to unit located in SEZ or developer of SEZ.

However, as stated in the initial paragraphs of this article, there is a lot of misinformation in the public domain concluding that every supply made to SEZ shall be either under the cover of bond or letter of undertaking and it is immaterial, whether the supplier is claiming refund or not.

We opine that government should come up with a circular to clarify that bond or letter of undertaking is applicable only when the supplier of services to SEZ unit or developer of SEZ or exporter of services is required only when the supplier is interested to claim the refund of taxes as per Section 16(3) of IGST Act.

This article is contributed by CA Sri Harsha Vardhan K & CA Manindar K Partners of SBS and Company LLP, Chartered Accountants. The authors can be reached at harsha@sbsandco.com & manindar@sbsandco.com

GST

UNDERSTANDING REVERSE CHARGE

Contributed by CA Sri Harsha & CA Manindar

One of the painful concepts under the Goods & Services Tax (GST) laws is the concept of reverse charge. The concept of reverse charge was known to the trade dealing with both goods or services. However, under GST laws, the said concept has taken a new shape and has become a night mare for majority of the trade. We shall try to dwell on such issues in this article after a brief understanding of the law.

Principally, under the indirect taxation laws, the tax has to be collected and paid by the supplier, who is engaged in supply of goods or services. However, under certain notified circumstances, the burden of payment of tax is shifted on the recipient of the supply of goods or services. Hence, colloquially, the said tax shift is referred as reverse charge.

Under GST laws, the recipient is obliged to pay tax on receipt of supply of goods or services or both vide two sections, namely Section 9(3) and 9(4) of Central Goods & Services Tax Act, 2017 (CGST Act). Similar sections with same verbatim, are there under the State Goods & Services Tax Act (SGST Act), Integrated Goods & Services Tax Act (IGST Act)and Union Territory Goods & Services Tax Act (UT GST Act).

Section 9(3) of CGST Act talks about instances, where the tax has to be paid by recipient of supply of specific goods or services or both, as notified by the government. Vide Notification No 04/2017 – CT (Rate) dated 28th June, 17 and Notification No 13/2017- CT (Rate) dated 28th June, 17, the government has notified the specific category of goods and services respectively on which reverse charge is applicable.

Section 9(4) of CGST Act talks about instances, where tax has to be paid by recipient of supply of goods or services or both, when purchased from an unregistered supplier. Hence, all taxable purchases made from unregistered supplier would attract tax under reverse charge. However, the central government on recommendations of the council has exempted supplies aggregating to the value of Rs 5,000/- per day when purchased from unregistered supplier vide Notification No 8/2017-CT (Rate) dated 28th June, 17.
With the above understanding, let us now address certain frequently asked question under reverse charge.

Section 9(3):

1. ***We are engaged in trading of goods. We were given to understand that there will be a reverse charge liability only if we purchase certain notified goods like cashews or services like services from advocates. Is this in accordance with the law?***

   The reverse charge under GST laws is under two sections as detailed above namely Section 9(3) and Section 9(4) of CGST Act. Section 9(3) deals with the reverse charge liability if certain notified services or goods are procured(for example cashew or advocate services.

Section 9(4) deals with the reverse charge liability when goods or services are procured from unregistered supplier. Hence, there would be liability under reverse charge even you are purchasing goods or services other than those notified vide Notification No 04/17 & 13/17 – CT (Rate) dated 28th June, 17.

2. What are the goods that are notified for liability under reverse charge under Section 9(3) of CGST Act?

The following are the goods that are notified for liability under reverse charge under Section 9(3) of CGST Act by virtue of Notification No 04/17-CT (Rate) dated 28th June, 17:

a. Cashew Nuts, not shelled or peeled falling under Chapter 0801
b. Bidi Wrapper Leaves (tendu) falling under Chapter 1404 90 10
c. Tobacco Leaves falling under Chapter 2401
d. Silk Yarn falling under Chapters 5004 to 5006
e. Supply of Lottery

The above goods when supplied and received by certain notified persons, the tax has to be paid by notified recipient of such supplies.

3. What are the services that are notified for liability under reverse charge under Section 9(3) of CGST Act?

The following are the services that are notified for liability under reverse charge under Section 9(3) of CGST Act by virtue of Notification No 13/17-CT (Rate) dated 28th June, 17:

a. Goods Transportation Agency Services
b. Advocate Services
c. Arbitral Tribunal Services
d. Sponsorship Services
e. Services provided by Central/State Government or Local Authority except certain notified
f. Director of Company/Body Corporate
g. Insurance Agent Services
h. Recovery Agent Services
i. Supplies of Services of Author/Music Composer/Photographer/Artist/Like

The above services when supplied and received by certain notified persons, the tax has to be paid by notified recipient of such supplies.

4. ***Under the service tax laws, the services of works contract, rent-a-cab, manpower and security services were notified under partial reverse charge mechanism? Does such mechanism continue even under GST laws?***

Under GST laws, the concept of partial reverse charge does not exist. Further, the services of works contract, rent-a-cab, manpower and security services are not notified under Section 9(3) of CGST Act read with Notification No 13/2017-CT (Rate) dated 28th June, 17. Therefore the said services are not directly covered under reverse charge. These services will be under reverse charge only when they are procured from unregistered suppliers in terms of Section 9(4) of CGST Act. The FAQs relating to Section 9(4) are detailed hereunder.

5. ***We are a company engaged in construction services. During the year, we have placed order for certain materials from our vendor. As per the agreement, we have to incur the freight for obtaining the goods to our construction site. The vendor has arranged for a Goods Transport Agency Services (GTA) and accordingly the GTA has delivered goods at our site. Now, the GTA has raised invoice for the supplies with a tax of 5% . Can we make the payment of tax to the GTA?***

Since the services provided by GTA are notified services under Notification No 13/2017- CT (Rate) and the recipient is also a notified person, the obligation to pay tax shall be on the company and not the GTA supplier.

Hence, the GTA has to raise invoice without tax component and the tax has to be paid by the company to the credit of central government. Further, it is important to note that tax being paid to GTA is not a proper compliance and the authorities can insist tax payment again from the company since the obligation is on the company.

6. ***In the above question, whether there would be any change if the GTA charges 12% of tax instead of 5%?***

Vide Notification No 22/2017-CT (Rate) dated 22nd August, 17, the government has made an amendment to Notification No 13/2017 – CT (Rate). As per the changes done, if the GTA charges 12% of tax, the recipient is not obliged to pay tax under reverse charge.

Hence, in the given case, since the GTA supplier has charged tax @ 12% instead of 5%, the obligation of payment of GST is on the GTA supplier and not on the person who has received the services.

7. ***Under the service tax laws, if the services are procured by a person located in taxable territory from a person located in non-taxable territory, the obligation to pay service tax on such services was on the recipient of services that is the person located in taxable territory. This was evident from the erstwhile Notification No 30/2012-ST dated 20.06.2012. However, under GST laws, when we see the Notification No 13/2017-CT (Rate), such services were not specified. Does that mean there is no concept of import of services under GST laws?***

Under GST laws, the concept of import of services is taken care by the IGST Act. Vide Section 7(4) of IGST Act, import of services into territory of India are specified as inter-state supplies.

Hence, the notification for reverse charge has to be seen under IGST laws and not under CGST laws. Accordingly, Entry 1 of Notification No 10/2017- CT (Rate) dated 28th June, 17 specifies that the person liable to pay tax in case of services supplied by any person who is located in non-taxable territory to any person located in taxable territory, as the person located in taxable territory.

8. We have procured services from a goods transport agency (GTA) who is registered under GST laws. On a plain reading of reverse charge concepts, it is understood there will not be any liability under reverse charge for the services procured from GTA, since he is registered. The reverse charge liability will arise only when purchases were made from unregistered suppliers. Is this accordance with the law?

No. GTA is one of the notified services under Section 9(3) of CGST Act and accordingly services procured from GTA shall be subjected to reverse charge in the hands of the recipient of supply. This holds good even the GTA is registered.

The liability under Section 9(3) of CGST Act does not depend upon the registration status of the supplier. It depends upon whether a particular service or good is notified to be under reverse charge as per Section 9(3).

Section 9(4):

9. What is the scope of Section 9(4) of CGST Act? Are there any goods or services which are notified under Section 9(4) of CGST Act to qualify for liability under reverse charge?

A s stated earlier, Section 9(4) of CGST Act casts an obligation to pay tax under reverse charge on supply of taxable goods or services or both when received from an unregistered supplier. Hence, if the supplier is unregistered, then there would be a liability under reverse charge vide Section 9(4) of CGST Act, irrespective of the fact that those goods or services are not notified.

10. We are a company purchasing goods or services from unregistered suppliers. As per Section 9(4), the liability under reverse charge exists. Is there any exemption from such liability or all purchases are taxable?

Vide Notification No 8/2017-CT (Rate) dated 28th June, 17, the government has exempted all intra-state supplies of goods or services or both received by a registered person from unregistered suppliers. However, such exemption shall not be available if the aggregate value of supplies of goods or services or both received by a registered person from any or all the unregistered suppliers when exceeds Rs 5,000/- rupees in a day.

11. We are a company engaged in providing software services. We procure daily certain items from 6 unregistered suppliers which would amount to Rs 3,000/- per vendor. In such a case, whether the exemption specified in Notification No 8/2017- CT (Rate) shall be applicable, since per vendor, the limit of Rs 5,000/- has not exceeded?

The exemption of Rs 5,000/- per day is not per vendor or supplier. The limit is for the purchases made from all the unregistered suppliers in a day. In the case of your company, since you are purchasing from 6 vendors, the total purchases will amount to Rs 18,000/- per day, which exceeds Rs 5,000/- limit and becomes taxable.

12. ***In the above case, whether the tax under reverse charge has to be paid on Rs 18,000/- or Rs 13,000/- (Rs 18,000 – 5,0000)? That is to say, whether Rs 5,000/- per day is a standard exemption?***

The exemption of Rs 5,000/- per day is not a standard exemption. If the purchases from all unregistered suppliers exceed Rs 5,000/- per day, then the total amount paid for such purchases shall be taxable. Rs 5,000/- is only for qualifying amount for such exemption. Hence, in the instant case, Rs 18,000/- becomes taxable and not Rs 13,000/-.

13. ***We are a firm of chartered accountants. We do not have regular purchases from unregistered suppliers. That is to say, the Rs 5,000/- per day limit is not exhausted many a times. In such case, whether such amount of Rs 5,000/- can be carried forward? That is to say, on 29th August, 17, we do not have any purchases from unregistered supplier. On 30th August, 17, we have purchased services from an unregistered supplier amount to Rs 10,000/-. Are we not required to pay tax on Rs 10,000/- since the limit available on 29th August can be used on 30th August?***

The limit of Rs 5,000/- exhausts every day. The amount cannot be carried forward and be utilised next day or subsequent period. Hence, the tax is required to be paid on Rs 10,000/- on 30th August, 17.

14. ***We are a company engaged in manufacture of pharma products. We make purchases from unregistered suppliers on a day to day basis like procurement of tea, coffee and snacks. However, the bill for such vendors is settled once in a month. Let us say, the monthly bill from such vendor is Rs 1,50,000/-. In such a case, whether we can take the exemption of Rs 5,000/- per day and not pay tax on such supplies?***

As stated above, the limit of Rs 5,000/- is per day and cannot be carried forward and utilised for entire month. Hence, the purchases from such vendor attracts tax under reverse charge on Rs 1,50,000/-.

15. ***We are a company engaged in provision of construction services. During the month, we have procured certain goods which has rate of tax as NIL from unregistered suppliers amounting to Rs 15,00,000/-. In such case, whether reverse charge is applicable on such purchases?***

The liability under reverse charge exists only when there is a supply of taxable goods or services from unregistered suppliers. Since, in the instant case, the purchases are of NIL rated, there cannot be any tax liability under reverse charge under Section 9(4) of CGST Act. Similar, is the case for exempted purchases also.

16. ***While calculating the daily limit of Rs 5,000/- per day, whether all purchases or only taxable purchases from unregistered suppliers shall be calculated? That is to say, a company has purchased goods which attracts NIL rate of tax Rs 3,000/- and goods of Rs 4,000/- which attracts rate of tax at 18%. Whether while calculatingRs 5,000/- limit, should we consider Rs 3,000/- value of goods, which attracts NIL rate of tax?***

While calculating the daily limit of Rs 5,000/-, only taxable supplies has to be considered. This is evident from the language used in the Notification No 08/2017 – CT (Rate) dated 28th June, 17. The language used is as under 'Provided that the said exemption shall not be applicable ***where the aggregate value of such supplies*** of goods or services or both received by a registered person from any or all of the suppliers, who is or are not registered, exceeds five thousand rupees in a day'.

The phrase 'such supplies' used in notification refers to the supplies referred in Section 9(4) of CGST Act. The said section uses the phrase '***supply of taxable goods or services or both……."***.Hence, it can be inferred that while calculating the daily limit of Rs 5,000/- only taxable goods or services has to be considered.

Further, the exemption under this Notification is a general exemption. It is well-established legal principle that what are exempt specifically cannot be exempt again by way of general exemption. Therefore, the phrase 'such supplies' used in this notification would mean the supply of those goods or services or both which are not exempt under any other notification.

Accordingly, in the question posed, the value of Rs 3,000/- which attracts NIL rate of tax is not to be considered and hence the purchase of Rs 4,000/- would qualify for exemption under Notification No 08/2017- CT (Rate) dated 28th June, 17.

Reverse Charge vis-à-vis Registration:

17. We are a company engaged in provision of services. Our turnover in the current financial year has not exceeded Rs 20 lakhs. We have purchases from unregistered suppliers for which tax has to be paid under reverse charge vide Section 9(4) of CGST Act. In such case, do we need to register under GST laws?

The exemption from registration based on the aggregate turnover as specified in Section 22 is subject to the persons who require registration under Section 24 of CGST Act. That is to say, Section 24 of CGST Act has an overriding effect on Section 22.

One of the persons that requires mandatory registration under Section 24 is *'persons who are required to pay tax under reverse charge'. T*he phrase 'reverse charge' has been defined vide Section 2(98) of CGST Act as *'means the liability to pay tax by the recipient of supply of goods or services or both instead of 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 Integrated Goods and Services Tax Act'.*

Since, there is a liability for the company under Section 9(4) of CGST Act, the company has to register mandatorily as per Section 24 despite of the fact there is eligibility for exemption under Section 22.

18. ***We are a company engaged in provision of health care services. Our services are exempted under Notification No 12/2017 – CT (Rate) dated 28th June, 17. We have made purchases from unregistered suppliers and hence there is a liability under Section 9(4) on us. However, we are of the opinion that since our supplies are completely exempted, we are eligible from exemption from registration under Section 23 of CGST Act and accordingly we are not supposed to pay GST under reverse charge. Are we right?***

Section 23 of CGST Act provides exemption from registration for any person who is engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax.

Since in the instant case, the company is engaged exclusively in the business of supplying services which are exempt from tax, they are eligible for exemption from registration under Section 23 of CGST Act.

However, in light of Section 24 of CGST Act, they have to obtain registration, since there is a liability to pay tax under reverse charge. The word ***'exclusively'*** used in Section 23 ibid assumes importance, since supplies liable to pay tax under reverse charge are deemed to be provided by the person who receives such supply by virtue of language used in Section 9(3) or 9(4) of CGST Act.

19. ***I am engaged in trading of goods and my turnover in the previous financial year has not exceeded Rs 75 lakhs and hence I have opted for composition under GST laws. I have made certain purchases from unregistered suppliers. Am I required to pay tax under reverse charge?***

Yes, the provisions of Section 9(4) of CGST Act, shall be applicable to a registered person. Since the pre-requisite for opting for composition scheme is to obtain registration, there shall be a liability under reverse charge on you.

20. ***We are a partnership firm engaged in manufacture of goods. We have obtained registration under GST laws for making supplies. During the course of the year, we have procured certain materials from a composition dealer. Are we required to pay tax under Section 9(4) of CGST Act?***

Section 9(4) of CGST Act applies only when purchases are made from unregistered suppliers. Since the pre-requisite for opting for composition is to obtain registration, the purchases made from composition dealer shall be treated as purchases from registered person and accordingly there will be no liability under Section 9(4) ibid.

21. ***We are a company engaged in development of software and located in SEZ. We have made certain purchases from unregistered dealers. Are we liable to pay tax under Section 9(4) of CGST Act?***

Yes. There shall be a liability to pay tax under reverse charge since purchases were made from unregistered suppliers. The same can be claimed as credit and applied for refund under Section 54 of CGST Act.

Notification No 18/2017- IT (Rate) dated 05th July, 2017 exempts services imported by a unit or a developer in the SEZ from the whole of the integrated tax leviable under Section 5 of IGST Act. Hence, accordingly, it can be concluded that there cannot be any liability under reverse charge even if SEZ developer or unit purchases from unregistered supplier. However, such a view can be aggressive since the word 'import' cannot be applied to services procured from domestic tariff area.

22. We are a company engaged in restaurant services. We procure goods or services from various unregistered suppliers. Recently, we have come to know that purchases from unregistered suppliers would attract compliance under reverse charge vide Section 9(4) of CGST Act. In this regard, we have asked our vendors to register under GST laws and charge us GST. However, they have stated that they are eligible to claim the exemption from registration if the turnover is less than Rs 20 lakhs as specified in Section 22 of CGST Act and accordingly they are not required to register. In such case, whether we are required to pay under reverse charge even the vendor qualifies exemption from registration under Section 22?

The reverse charge under Section 9(4) exists even when the vendor is not required to register because of the exemption mentioned in Section 22 of CGST Act. The liability under Section 9(4) is not dependent on whether the vendor is required to register or not.

General:

23. Whether the liability under reverse charge can be paid using the input tax credit?

As per Section 49(4) of CGST Act, 'the amount available in electronic credit ledger may be used for making any payment towards ***output tax……'.***

The phrase 'output tax' has been defined vide Section 2(82) of CGST Act *'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 under reverse charge'.***

Hence, the liability under reverse charge either under Section 9(3) or Section 9(4) of CGST Act cannot be paid using input tax credit.

24. Whether the tax paid under reverse charge can be taken as credit?

The phrase 'input tax' has been defined vide Section 2(62) of CGST Act to include ***'tax payable under the provisions of sub-sections (3) and (4) of Section 9.***Hence, the tax paid under reverse charge can be availed as input tax credit.

25. We procure services of rent-a-cab from unregistered vendors and we pay tax under Section 9(4). We heard that all the taxes paid under reverse charge can be availed as input tax credit. Is our understanding in accordance with the law?

The tax paid under reverse charge can be availed as credit subject to the provisions of Section 16 and Section 17 of CGST Act. The credit entitlement under GST laws is dealt by Section 16 of CGST Act. Section 17(5) ibid specifies the credits which are not available for the registered person, where tax paid on renting of motor vehicles is one of the item.

It is to be noted that Section 17(5) overrides Section 16 because of the language used in the former provision. Section 17(5) of CGST Act starts with the phrase ***'Notwithstanding anything contained in sub-section (1) of Section 16…..".***

Hence, the credits which are not available because of Section 17(5) of CGST Act cannot be availed even they are paid under reverse charge. Hence, tax paid on reverse charge for rent-a-cab service shall not be eligible for credit.

26. We have procured certain services from registered vendors, where they have charged GST and compensation cess. Similar items are purchased from unregistered vendors. When we are paying under reverse charge, are we required to pay the compensation cess or only the GST?

The concept of reverse charge is shifting the tax liability from the supplier to the recipient. Except that there are no changes in tax payments. Hence, if a supply attracts GST and compensation cess, the recipient has to pay both GST and compensation cess even under reverse charge. The compensation cess paid can be taken as credit (if it is not falling under the ambit of Section 17(5) of CGST Act) and can be used against payment of compensation cess on output liability of the recipient, if any.

This article is contributed by CA Sri Harsha Vardhan K & CA Manindar K Partners of SBS and Company LLP, Chartered Accountants. The authors can be reached at harsha@sbsandco.com & manindar@sbsandco.com

DIRECT TAX

SPECIFIED AGREEMENT - TDS ASPECT

Contributed by CA Ramprasad T

Finance Act 2017 has introduced Section 45(5A) providing that income arising to individual or HUF from transfer of capital asset, being land or building or both under a specified agreement is chargeable to tax in the previous year in which certificate of completion for the whole or part of the project is issued by the competent authority.

"Specified Agreement" refers registered agreement under which the owner of the land or building or both agrees to allow other person to construct property on it in consideration for share in the building or land or both in the project with or without payment of consideration in cash.- In common parlance referred to as " Joint Development Agreement" (Simplified for understanding) .

A new section194IC inserted providing for deduction of tax at source @ 10% on payment of any sum byway of monetary consideration under the agreement referred to in section 45(5A). The provisions of section 206AA will apply for failure on part of the payee to submit his PAN to the payer.

The section 194IC is attracted to when the payment is made to resident under the agreement referred to in section 45(5A) by any person, resident or non-resident. There is no monetary limit set under the section for deduction of tax at source.

The monetary limit mentioned in section 194IA is not applicable as the section194IC starts with ' notwithstanding anything contained in section 194IA'.

If the payee is non-resident, tax has to be deducted U/S 195 and not U/S 194IC.

The timing of deduction of tax at source would be earliest of credit of such sum to the account of the payee or payment thereof in cash[1] or by way of issue of a cheque or draft or any other mode.

Though the tax is deducted at the earliest of credit or payment under the agreement the income is chargeable to tax in the year in which certificate of completion for the whole or part of the project is issued by the competent authority. As a result the deductee has to carry forward the credit of tax to the previous year in which capital gain become taxable.

As per section 199 read with rule 37BA(3)(I) credit for the tax deducted at source and paid to the Central Government shall be given for the assessment year for which such income is assessable.

[1]Beware of provisions of section 269SS.

For the purpose of section 194IC the provisions of section 50C are not relevant as the section provides for deduction of tax at source on the monetary consideration paid under the specified agreement. The stamp duty value on the date issue of certificate of completion for whole or part of the project is relevant for computation of capital gains in the hands of land owner.

Section 197 provides issue of certificate for deduction of tax at lower rate or non-deduction of tax by the Assessing Officer. However, section 197 has not provided for such benefit for the amount covered U/S 194IC.

This article is contributed by CA Ram Prasad Partner of SBS and Company LLP, Chartered Accountant. The author can be reached at caram@sbsandco.com

AUDIT

THE RISK IN CONTROL ENVIORNMENT

Contribauted by CA Sandeep Das

Risk Management :

Risk management is an integral part of the group's business control. Risks that may pose a threat to achieving business objectives are identified, and measures are implemented to mitigate and monitor the identified risks.

Responsibility for Risk Management:

The line organization has the primary responsibility for managing business risks. Line managers are responsible for identifying, monitoring, implementing measures and reporting all relevant business risks. The Chief Risk Officer is responsible for coordinating and monitoring the risk management processes in the group and consolidating the quarterly risk reports for Group Management and the Board of Directors. To support the Chief Risk Officer a Risk Management Committee has been established.

Risk Areas

The risk assessment and follow-up is divided into three areas;

1. Business and financial risks: Business units and head office functions manage business continuity within their respective operational area of responsibility based on specified requirements. A process exists to regularly identify business and financial risks that could lead to material misstatements of financial information. The risks are reported by each sub-entity in a bottom-up process, and presented in quarterly business review meetings.

2. Corporate responsibility: Corporate responsibility is integrated into the day-to-day business as well as M&A and strategic purchasing processes.

3. IT and security: Within IT and security, potential threats to the IT environment are identified and plans are established to prevent problems in the continuity of the business. This area also covers preventive security measures and crisis management.

Challenges in Control Environment:

The control environment was not routinely discussed in executive or board discussions before the U.S. Sarbanes-Oxley Act of 2002 was enacted. Since that time, auditors have focused on evaluating the existence and execution of elements of the environment. Most discussions reflect how a positive control environment can strengthen the organization's overall culture and ethics program. However, it can also be viewed in reverse — what risk does a poor control environment bring to the organization?

"Tone at the top," "management philosophy and operating style," and "segregation of duties" are phrases commonly used to describe the control environment. These attributes are difficult to measure accurately. An environment that is not effectively evaluated, measured, and monitored may spawn many unacceptable internal and external risks.

As if the risk of an improperly functioning control environment is not enough, the concept is com- plicated when internal auditors attempt to communicate control environment weaknesses to management. Many organizations rely on questionnaires and anonymous surveys for their assessments. Organizations must proactively peer through these techniques and evaluate the overall transparency of their assessment methods.

The subjective, non- transaction oriented nature of the control environment creates many challenges. Organizations establish policies, but as changes occur, those policies may no longer be effective. The control environment changes, as well. To address the risk of a poor control environment, organizations must evolve their assessment methods.

1. Tone at the Top

An organization's tone is often interpreted as the tone conveyed by senior leaders. This makes evaluation a political hot potato. It can be perilous for internal auditors to advise management that certain actions may not be "setting the right tone." Yet, to address the risk appropriately, auditors must provide assurance that the policies management has put in place are executed effectively. For example, Company A maintains an authorization policy for procurement professionals. On the surface, this appears to contribute to a strong control environment while mitigating the risk of conflict of interests. However, what if the policy does not cover strategic areas such as contract approvals, management overrides, and monitoring methods? Also, assume the policy was created strictly by the finance organization. Taken in the aggregate, each of these factors could create risk to the control environment.

This situation creates a dilemma. How should theserisks be communicated to management? What if issues are communicated, but management concludes the gaps are not significant concerns? Management's basis for this conclusion may be that no actual problems have been identified to date. To address the risk appropriately, auditors must ask, "If an issue has not yet come to light or been identified, should that fact minimize the finding?"

What if the auditor's opinion of the gap's severity differs from management's opinion? Organizational leaders may push back if they receive a poor control environment assessment. An obvious step for internal auditors may be to speak to the audit committee, but this can be challenging. It may be difficult to communicate a control environment gap to an audience that has been preconditioned by management's view.

To resolve these dilemmas, auditors can:

Ensure they have authority to analyze and communicate the situation beyond just the existence of policies.

Ensure management understands the difference between a control gap and a control failure. It is important to know whether the gap has created a failure, but just because it hasn't failed to date should not minimize the impact of the gap. The inability to recognize this cause- and-effect relationship will put the control environment at significant risk

Encourage independent communication with board members. If management and the auditor disagree about the severity of the issue, the board must be open to both sides of the argument.

2. Management Philosophy and Operating Style

Philosophy and operating style include how management executes its day to day responsibilities and the manner in which executives provide overall direction. Consider an example of quarterly attestations and their impact on the control environment. These procedures often involve business-unit managers providing personal subcertifications on controls for their areas of responsibility.

Assume the procedure for quarterly attestations was established several years ago. The subcertification states: "To the best of my knowledge, internal control procedures and financial information within my area of responsibility are accurate and complete." The certification was originally accompanied by specific training for the business-unit leaders. Fast forward several years. Many personnel signing the attestations are individuals who have been promoted into new positions but have not been trained on the attestation requirements. New management views the process as a "step" they must complete each quarter because of compliance requirements. If the auditor assumes the standard process of attestation is effective, there may be a risk to the control environment. Because the attestation is a simple signature, the risk exists that management is simply following alegacy process and does not understand the need for disclosure controls. Outlining the risk may convince management to re-evaluate and solidify the process.

3. Segregation of Duties

A strong control environment can only be supported through appropriate segregation of duties. Segregation of duties assist in mitigating the potential for one person to maintain control over an entire process, thus having the opportunity to perpetrate some undesirable behavior. When evaluating the sufficiency of segregation of duties, internal auditors examine responsibilities around transaction authorization, recording, custody of asset, and reconciliation. Depending on organizational resources, it may not be possible for the organization to fully implement appropriate segregation of duties. In this situation, auditors must assess the risk embedded in the processes, attempt to quantify the risk, communicate to management their observations, and provide alternative methods in which management can monitor transaction activity or provide additional checks and balances for the process

A Thorough Assessment of Control Environment

The control environment is the foundation upon which an organization can effectively execute strategy. If management focuses only on "check the box" activities, it will miss critical attributes that may result in major gaps that ultimately impact the organization's viability and control environment. That is why it is important for internal auditors to fully assess gaps or flaws and provide adequate assurance regarding the sufficiency of controls.

This article is contributed by CA Sandeep Das, Partner of SBS and Company LLP, Chartered Accountants. The author can be reached at sandeepd@sbsandco.com

TECHNICAL SESSIONS:

S.No.	Event	Date	Speaker	Venue
1	Congruence of FEMA and AML – Part 2	15/09/2017	CA Murali Krishna G	SBS - Hyd
2	SIA 16 - Using the work of an Expert	22/09/2017	CA Bhyrav MHS	SBS - Hyd
3	Valuation under GST	06/10/2017	CA Manindar K	SBS - Hyd

Note:

The timings for the above events shall be from 16:30 hrs to 18:30 hrs. We request the recipients of "SBS Wiki" who are interested to attend the above events to send confirmation of your participation two days in advance to make appropriate arrangements. The relevant material will be hosted at slideshare shortly after the session. The link to download is *http://www.slideshare.net/Team-SBS*

Congruence of FEMA and AML - What and How - CA MuraliKrishna

Insight into Real Estate Business- Discussion on Key Practical Aspects - CA Suresh Babu S

Internal Audit and Role of Audit Commitee - Sandeep Das

PE-Judicial Interpretation - CA Ramprasad

By

Team SBS

Hyderabad: 6-3-900/6-9, #103 & 104, Veeru Castle, Durganagar Colony, Panjagutta, Hyderabad, Telangana
Kurnool: No. 302, 3rd Floor, V V Complex, 40/838, R.S. Road, Near SBI Main Branch, Kurnool, Andhra Pradesh
Nellore: 16-6-259, 1st Floor, Near Santi Sweets Opp: SBI ATM, Vijayamahal Centre, SPSR Nellore, Andhra Pradesh
Tada: 8-3-425/2, Flat No. 202, 2nd Floor, Bigsun Avenue, Near SRICITY, TADA, SPSR Nellore Dist, Andhra Pradesh
Visakhapatnam: # 39-20-40/6, Flat No.7, Sai Yasoda Apartments, Madhavadhara,Visakhapatnam (Urban),Vizag, Andhra Pradesh
Bengaluru: B104,RIRCO, Santosh Apartments, Wind Tunnel Road, Murugeshpalya, Old Airport Road, Bengaluru, Karnataka.

Disclaimer:

*The articles contained in **SBS Wiki**, are contributed by the respective resource persons and any opinion mentioned therein is his/their personal opInion. **SBS Wiki** is intended to be circulated among fellow professional and clients of the Firm, to provide general information on a particular subject or subjects and is not an exhaustive treatment of such subject(s). The information provided is not for solicitation of any kind of work and the Firm does not intend to advertise its services or solicit work through **SBS Wiki.** The information is not intended to be relied upon as the sole basis for any decision. Before making any decision or taking any action that might affect your personal finances or business, you should consult a qualified professional adviser.*

***SBS AND COMPANY LLP [Firm]** does not endorse any of the content/opinion contained in any of the articles in **SBS Wiki,** and shall not be responsible for any loss whatsoever sustained by any person who relies on the same.*

To unsubscribe, kindly drop us a mail at kr@sbsandco.com with subject 'unsubscribe'.