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Some Unanswered Issues under GST

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GST in India celebrated its first birthday on 01/07/2018. It's been a roller coaster ride for the industry, trade, professional bodies and public at large. Coined as our country's largest indirect tax reform, GST brought with it a barge of unanswered queries and confusions. As a GST practitioner, it would be incorrect of me to say that issues have not been clarified. The CBIC, GST council and authorities at the helm of affairs have tried their best to address issues of public and trade bodies. However, there are multiple issues which need clarity and which have probably not been yet mulled over.

In this article, an effort has been taken to list down few of many such issues:

Export both under letter of undertaking (LUT) and on payment of IGST

The GST law provides for two options for an exporter, viz.:

- Export of goods or services or both under bond or LUT without paying any Integrated Tax and subsequent claim the refund of unutilized input credit
- Export of goods and service or both on the payment of Integrated Tax and subsequent claim the refund of the GST paid on such goods and services so exported. The above-mentioned refunds will be subject to certain rules, procedures, and safeguards as may be prescribed

A query that may arise in the mind of many is whether an exporter is allowed to export under both options

simultaneously in a financial year. It may be noted that no such restriction has been cast under the GST statute, however a clarification in this respect is much needed.



Pure Agent

The CGST Rules, under Rule 33 very beautifully elucidate the meaning and concept of the term Pure Agent. Vis-à-vis the service tax regime, the 12 conditions have been trimmed down or rather merged into 7, however there looms a large shadow of doubt on the very concept.

Take the example of a security service provider providing security service to various

banks and financial institutions. In the course of provision of services, the service provider receives reimbursement of toll taxes it expends for the client. The service provider keeps no mark up on the reimbursements received. The question that arises is whether such reimbursements received by the service provider fulfill all the conditions provided under Rule 33. This is primarily because the toll tax receipt does not bear the name of the client. Hence the obvious implications of not satisfying the conditions would be levy of GST.

Taking another example, will GST apply on reimbursements of electricity by a landlord from its tenant. Note in such cases, the electricity is reimbursed at actual. However, the electricity meter is not in name of the tenant but the landlord. Some food for thought indeed!

Section 17(5) of the CGST Act

Another point to mull over is whether section 17(5) of the

Act casts a restriction just on the availment of credit, or does it cast a restriction even on the utilization of credit. Let's take an example of an assessee who is in the business of developing properties and also manufacturing jute. Both businesses are under a common GSTIN. The assessee being into the business of construction, it can very well avail the credit arising on account of input services in respect of construction activities. The question that arises is whether the assessee can utilize such credit against the output tax arising out of the supply of manufacturing jute. Does section 17(5) come into play in cases of utilization of credit?

Registration

Section 22 of the CGST Act prescribes that every supplier shall be liable to be registered under the Act in the State from where it makes a taxable supply. Considering that GST is a destination based consumption tax, the concepts laid down under section 22 seem very logical. However, will a works contractor having sites at multiple locations across India need to be registered in each such State where it has a site. In other words, from where will he be considered to be providing taxable services? If provisions of section 22 of the Act provide for separate registrations in each State, one can well imagine the plight of such an assessee.

Valuation

Rule 32(3) of the CGST Rules provide for valuation in case of a travel agent providing services of booking of tickets for travel by air. The Rules using the word 'shall' mention that in case of the above mentioned services, the valuation shall be '5% of basic fare in case of domestic bookings' and '10% of basic fare in case of international bookings'. There have been several judgments which have laid down that the term 'shall' implies a mandate and not a choice. Further, many travel agents earn income from two sources against booking of an air ticket, viz., the commission from the airlines and the service charge / fee from the clients. The Rule provides no clarity on whether the valuation

rules cover both these income or not. Further, many travel agents across board are still wondering whether the law permits them to charge GST on the service fee charged to the client and on the commission respectively or is the valuation given under Rule 32 mandatory.

Non Taxable supply vs. Non GST supply

Non taxable supplies are those which are not leviable to tax under the GST Act. Further, the CGST Act defines the term non taxable supply under section 2(78). However, the term Non GST supply has nowhere been defined under the Act. Does it imply that schedule III of the Act tantamount to Non GST supply?

Likewise what the difference between Exempt and Nil rated supplies? The term exempt supplies being defined in the Act, but the term Nil rated supplies has not been defined in the Act.

Import of Service

As per section 13(4) of the IGST Act, the place of supply of services supplied directly in relation to an immovable property, including services supplied in regard by experts, accommodation in hotels etc., shall be the place where the immovable property is located or intended to be located.

Now, taking an example of a travel agent who is to book a hotel (outside India) for its client in India, it has two options. The travel agent may either book the hotel directly or may book through another travel agent located abroad. In the first case, per the provisions of section 13(4) of the IGST Act, the place of supply is outside India. However, in case the hotel is booked through another travel agent outside India, the place of supply, as per provision of section 13(1) will be the location of the service recipient, i.e. India. Hence this will attract the payment of GST under reverse charge mechanism under Import of Services. However, most travel agents across board are not complying with this provision either out of ignorance or sheer will.

(views expressed are strictly of the author)

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"The people you meet in this life, all won't be good to you. Some will criticize, some will de-motivate and some will try to pull you down. All you have to do is ignore them and move on. You don't need to explain them your journey nor let them control your dreams. This is your life, live as you want."

– Ratan Tata