

Why to pay GST under reverse Charge?

The concept of payment of tax under reverse charge is not new. In Finance Act, 1994, Section 68(2) prescribed that the Central Government, by notification, may fix up the liability to pay service tax on “such persons” as if he is the person liable for paying the service tax in relation to “such taxable services”. Such person was in a position to avail CENVAT Credit of same under CENVAT Credit Rules, 2004, if such services are covered under definition of input services. The Central Government issued Notification No. 30/2012-ST dated 20.06.2012 notifying the services where the tax was to be paid by so notified person other than service provider. Such person may not necessarily be recipient of service.

No such provision was there as far as Central Excise Act, 1944 was concerned.

Now under CGST Act, 2017 Section 9(3) and 9(4) lays down the provisions of reverse charge mechanism. These are as follows: -

***“9(3) :** The government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.*

9(4) : *The central 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”.*

In both these sub-sections, the word used is “Recipient” in contrast to words “such person” in earlier law. The recipient is eligible to avail the input tax credit of same under Section 16 of the CGST Act, 2017 (subject to blocking under Section 17(5) of the Act). Notification No. 13/2017 dated 28.06.2017 for services and Notification No. 3/2017 dated 28.06.2017 for goods have been issued.

Similar provisions are there in Section 5(3) and 5(4) of the IGST Act, 2017.

The Central Government has issued notification No. 8/2017 dated 28.06.2017 exempting recipient of goods / services from unregistered person (under Sec. 9(4) of CGST) and which exemption is being extended repeatedly from time to time.

As far as provision of Section 9(4) are concerned, the liability on recipient arises only if the recipient is a registered person whereas in Section 9(3), the words registered person has not been used. However, as per Section 24 of the CGST Act, 2017, compulsory registration has been prescribed for person who are required to pay tax under reverse charge. Moreover, on going through the column 4 of the Notification No. 13/2017 dated 28.06.2017, the recipients mentioned are business entities.

The above provisions show that any recipient paying tax under reverse charge is in a position to avail input tax credit of same and utilize the same for payment of tax on outward supplies. First the recipient himself pays the tax, takes the credit in his electronic credit ledger and utilize the same. In nutshell it gets nullified.

One can compare the parallel provisions relating to reverse charge as applicable elsewhere. The European Union also has the concept of reverse charge. The reverse charge moves the liability for reporting of VAT transaction from the seller to the buyer of a goods or services. When a transaction is subject to reverse charge, the recipient reports both their purchase (input VAT) and the sale (Output VAT) in their VAT returns. These two declarations offset each other from a cash payment point of view but the authorities have full visibility of transactions VAT Notice 741A of H.M. Revenue & Customs Government of UK. It explains that one has to simply credit VAT account with an amount of output tax, calculated in the full value of supply and at the same time debit your VAT account with the input tax. The net effect is that one does not have to pay the tax under reverse charge, if one is in a position to reclaim it. Well, if one is making exempt supply, the effect is to pay VAT on input supply. Not otherwise. In Canada, the rules of GST broadly follow the European Union. In New Zealand, the application of reverse charge is limited to services to the extent that they are acquired by registered person for purposes other than of making taxable supplies. This approach removes the necessity for tax payer to pay GST for which they are fully reimbursed through Input Tax Credit. The Federal Decree Law of UAE also has a provision of reverse charge under Article 48. As per this, the businesses will not have to physically pay VAT under reverse charge. The responsibility of reporting VAT transaction is shifted from

the seller to the buyer. Here the buyer reports the input VAT as well as output VAT in their VAT returns for the same Quarter.

In India, a recipient is necessarily required to pay GST and then take the credit. What is the logic? There seems to be no logic, particularly when the same is adjustable against output GST. Only in two situations, the recipient shall be made to pay the GST under reverse charge.

- When the recipient is making supplies other than taxable supplies
- When the availment of input tax credit is not allowed as per provision of Section 17 of the CGST Act, 2017.

In order to simplify reverse charge mechanism, law prevalent all over could have been followed and a business entity may be spared from making two transactions unnecessarily.