

GST ON REVERSE CHARGE BASIS IS NOT APPLICABLE ON ALL TRANSACTION BETWEEN REGISTERED AND UNREGISTERED PERSON:

Section 9(4) of the Central Goods and Service Tax Act, 2017 ("the Act") [The said section is similar to Section 9(4) of the corresponding State GST Act, 2017 and Section 5(4) of the Integrated GST Act, 2017] imposes liability on a registered person to pay tax on reverse charge basis where he takes any taxable supply of goods and services from an unregistered person.

Section 9(4) of the Act provides that:-

"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."

On bare perusal of the above mentioned provision, one can interpret that tax on reverse charge basis shall be payable only when all the below mentioned four conditions are too satisfied simultaneously:

- a. There must be supply of goods or services
- b. Supply must be of taxable goods or services
- c. The supplier of goods or services is an unregistered person
- d. The recipient of goods or services must be a registered person.

Thus, all the four conditions specified above must be satisfied cumulatively.

Analysis of the above conditions:

Condition 1: There must be 'supply' of goods or services

Scope of 'Supply' under the Act is provided under section 7 which, inter alia, provides that the expression "supply" includes:-

"all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;"

On the basis of above reading of section 7 of the Act, it can be concluded that to constitute supply of goods or service, it must be made by a person in the course or furtherance of his business. Thus, to fall within the scope of supply provided under section 7 of the Act, fulfilment of following conditions shall be essential:-

a. Supplier should be engaged in a 'business'

Existence of 'business' is sine qua non to constitute to constitute a valid 'supply'. It is essential that the supplies should be made by a supplier who is engaged in a 'business'. ('Business' as defined in section 2(17) of Act)

b. Supply should be 'in course or furtherance of business'

This implies to constitute a valid 'supply' of goods or services, it must be 'in the course or furtherance of his business'. Thus supplies which are not 'in course or furtherance of business' would not qualify as 'supply' for levy of tax.

Example: When Ms. X, a salaried individual not registered under GST, sells her jewellery to a Jeweller registered under GST, the Jeweller will not be under obligation to pay tax on reverse charge basis on the jewellery purchased from Ms. X. This is because the transaction of sale of jewellery by Ms. X has not been made in the course or furtherance of business.

Under such cases, it will be important for the Registered Person to maintain appropriate documentation including declaration from supplier of goods or services to substantiate his claim that there was no obligation to pay tax on reverse charge basis on ground that the supplier was not acting in the course or furtherance of business.

Condition 2: Supply must be of 'taxable' goods or services

Supply must be of some taxable goods or services to trigger the obligation to pay tax on reverse charge basis under section 9(4) of the Act. Thus, when a good or service on which tax is not levied or is levied at NIL rate, the provisions contained in section 9(4) of the Act shall remain dormant.

This is a logical condition as tax on reverse charge is to be paid at rates applicable on the goods or service being supplied by the unregistered person to the registered person. And when the good or service being supplied is not taxable, there would be no obligation to pay any tax thereon.

Condition 3 and 4: Supply of goods or services by an unregistered person to a registered person

'Registered person' as defined in section 2(94) of the Act means a person who is registered under section 25.

Section 25 of the Act deals with the procedure for registration and inter alia, provides that every person liable to registration under section 22 or 24 must apply for registration within specified time and in prescribed manner. Section 22 of the Act deals with person liable for registration and section 24 deals with the cases where registration shall be compulsorily required.

Conclusion

Section 9(4) of the Act is not self-triggering on all or any transaction between a registered and unregistered person. Satisfaction of all the aforementioned conditions shall be essential to obligate a registered person to pay tax on reverse charge basis under section 9(4) of Act.
