

GST GOOGLIES - 1

MISSION IMPOSSIBLE

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On 1st July 2017, India woke up to GST, a reform boasted to be the second independence, after 70 years, but this time economically. In this series, I am planning to address the most common, relevant and impacting issues relating to GST. Lets start this series along the firing line – Threshold Exemptions.

GST has put many of the prevailing tax exemptions to rest, be it territory based or commodity based. The threshold exemptions have also been shrunk and rationalized to a mere 20 lakhs rupees in a financial year (only 10 lakhs rupees for special category States, mainly NE States). Though a person need not register himself and pay GST if his annual turnover is less than 20 lakhs, the “turnover” has to be computed calculating his entire supply of goods and services including taxable supplies, exempted supplies, exports **on all India basis under the same PAN.**

Now lets see, whether this threshold exemption would be any of help to anyone, to survive in business.

Firstly, being an unregistered person under GST and opting not to pay tax appears to be an unviable business proposition for the reason that, on all supplies (supply of goods or supply of services or both) made by an unregistered person to any other registered person, such registered buyer / receiver has to pay the full GST on behalf of the unregistered person on a "reverse charge" basis. To amplify, this payment of GST on reverse charge would be applicable only if the buyer/receiver is a registered person under GST and would not be there if the buyer/ seller is also an unregistered person, thus benefitting mostly the B2C transactions.

Secondly, the registered buyer/receiver who receives supply from an unregistered person has to raise a self-invoice on behalf of the unregistered person and pay the full GST in CASH not by using his available Input Tax Credit (ITC). This would only increase the cost of the supply by the unregistered person as the GST paid on the inputs used by the unregistered person cannot be availed as ITC at the hands of the unregistered person and would add as cost to the supply, thus making him uncompetitive. Further, such unregistered person has to run his business only within the State or the Union territory and is barred from making any Inter-State supplies.

Hence being an unregistered person may be a possibility when the business is done mostly in a B2C transaction but to survive in a B2B environment, it appears to be a completely unviable proposition.

Another important question addressed here is whether the unregistered person has the option to remain unregistered as long as his turnover is below Rupees Twenty Lakhs. Section 9 (3) of CGST/SGST Act gives power to the respective government to specify categories of supply of goods or services or both, in respect of which tax shall be paid by the recipient and all provisions of GST law will apply as if he is the person liable for paying tax in relation to such supply. Deriving power from said Section, certain Services are notified for reverse charge. The following services notified under reverse will have an impact on person opting for threshold exemption

Services provided by

- : Goods Transport Agency ;*
- : Advocate or firm of Advocates by way of legal services*
- : Sponsorship Service*
- : transportation of goods by vessel from place outside India to Customs Station in India.*
- : any person who is located in a non-taxable territory and received by any person located in the taxable territory other than non-assessee online recipient*

: government or local authority to any business entity except services as Renting of Immovable Property, services by Department of Post, services in relation to aircraft or vessel, transportation of passengers or goods etc.

Section 24 (4) list down categories of persons liable for compulsory registration. As per Sl. No. (iii) of said Section, a person required to pay tax under reverse charge require mandatory registration. A conjoint reading of Section 24 read with Section 9 (3) shows that a person who is otherwise eligible for threshold exemption would still have a liability to discharge GST under reverse charge. Once such person is registered for the purpose of reverse charge, he is treated as a taxable person and hence his supplies would thereafter be liable for GST inspite of the fact that the aggregate turnover of his supplies is less than twenty lakhs.

However, the government has notified certain exemption in respect of services notified under reverse charge which could be availed by person under threshold as well. Such instances are :

-Goods Transport Agency service is liable for reverse charge only when the recipient is a factory, society, Co-operative society, body corporate, partnership firm, casual

taxable person or any person registered under CGST/SGST/UTGST Act. For example, a trader enjoying benefit of threshold exemption is not liable for reverse charge even when he is availing service of GTA.

- **Services** by an advocate or Senior advocate or firm of advocates to a business entity is notified for reverse charge. But if such services are provided to a business entity with an aggregate turnover up to twenty lakh rupees (ten lakh rupees in the case of special category states) in the preceding financial year, there is a specific exemption as per Sl. No. 45 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017.

- Similarly in respect of **services provided by the Central Government, State Government, Union territory or local authority** to a business entity with an aggregate turnover of up to twenty lakh rupees (ten lakh rupees in case of a special category state) in the preceding financial year is exempted vide Sl.No. 7 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017.

- There is also exemption in respect of services provided by **Arbitral Tribunal** to business entity with an aggregate turnover of up to twenty lakh rupees (ten lakh rupees in case of a special category state) in the preceding financial year.

It may be presumed that the above exemptions have been given with the intention of protecting a person availing

threshold exemption from liability under reverse charge, so that the exemption is absolute in all respects. But what will happen when the service of GTA is availed by a factory run by an individual whose turnover is below twenty lakhs. Now, is it possible to say that such factory is not registered under GST and hence there is no liability to pay reverse charge ? . Also when it comes to other services notified for reverse charge as Sponsorship service, the intention is a little bit diluted. In respect of sponsorship service, reverse charge is applicable if the recipient is a body corporate or partnership firm. This would mean that a partnership firm availing sponsorship service would be liable for reverse charge even when they are under threshold exemption. Such liability would automatically result in denying the benefit of threshold and such person would be treated as a taxpayer for all purposes.

Same is the case in respect of reverse charge liability on services received from non taxable territory. There is no protection to a person enjoying threshold in respect of liability from such reverse charge.

While appreciating the intention of government in trying to make the exemption absolute, in absence of blanket exemption from all services listed under reverse charge,

the threshold exemption may fail to achieve its purpose for the person claiming such exemption.

Before Parting...

There is also a common question that if a registered person had to buy a coffee or a tea from a street side shop or repair a puncture with a roadside vendor, who are generally unregistered, whether the registered person would be required to pay GST on such supplies on reverse charge. Though the answer is yes, the Central Government has issued a Notification 8/2017 – CT (and corresponding State exemption by all states) has been issued to provide an exemption up to 5000 rupees in a day, for such supplies received by a registered person from an unregistered person.