



GST – ON BEAT, OFF – BEAT AND BACK BEAT

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Invoice-1

Usually we always discuss topics which are current and may be important for recent changes. In this articles of On-Beat, Off Beat and Back Beat we will discuss various topics which may be nit very much importance in GST today but will come in limelight in future. Of-course having said this, topics of current importance will also be covered as On Beat topics but besides that Off Beat and Back Beat Topics also intended to cover.

In typical Western music 4 by 4 time, counted as "1 2 3 4, 1 2 3 4...", the first beat of the bar (downbeat) is usually the strongest accent in the melody and the likeliest place for a chord change, the third is the next strongest: these are "on" beats. The second and fourth are weaker—the "off-beats". Subdivisions (like eighth notes) that fall between the pulse beats are even weaker and these, if used frequently in a rhythm, can also make it "off-beat" A back beat, or backbeat, is a syncopated accentuation on the "off" beat. In a simple 4 by 4 rhythm these are beats 2 and 4. Wiki has good knowledge of music and we will try to cover topics of all beats possible in this series. Let's move to First Topic i. e Invoice.

Section 31 of CGST Act refers to Invoice and details needed for Invoice and further Rule 46 to Rule 55 deals with Invoice related matters. Section and Rules needs lot of interpretations and further clarified by various Case Laws/ Advance Ruling etc. We will see some aspects of Invoice this time. Today's focus is on Continuous supply of Goods and Services and its time of issuing invoice.

Invoice to be issued in case of Continuous Supply of Goods: We refer Section 2(32) wherein Definition of Continuous Supply says "*continuous supply of goods*" means a supply of goods which is provided, or agreed to be provided, continuously or on recurrent basis, under a contract, whether or not by means of a wire, cable, pipeline or other conduit, and for which the supplier invoices the recipient on a regular or periodic basis and includes supply of such goods as the Government may, subject to such conditions, as it may, by notification, specify;". Hence it's very clear that Supply to be continuous can be by any mode and should be continuously and recurrent basis under a contract. The issues arises what is the time of supply and when to issue invoice under such circumstances.

From above definition it is clear that goods like Pipe Line Gas, Mineral Water Bottles etc can be supplied as continuous supply in normal course of business and issuing Invoice each time on supply of goods is quite difficult. Hence it can be said that periodic issue of Invoice is solution to the same. Hence we should have enabling provisions in Section 31 for the same. Section 31(4) says "*In case of continuous supply of goods, where successive statements of accounts or successive payments are involved, the invoice shall be issued before or at the time each such statement is issued or, as the case may be, each such payment is received.*" Hence we can conclude that after a specific period invoice can be issued and each delivery can actually happen on the basis of Delivery Challan. Usually normal practice in case of Goods is to issue Invoice after each supply but in case of Continuous Supply the same can be followed as per Principles given in Section 31 (4). It is also critical to see principle given for statement to be issued by Supplier. Therefore not necessarily that every month end on last date invoice is to be issued but also in case if Statement issued in 10 or 15 days invoice can be issued along with the statement. So say all continuous supplies made in the month of January and if statement is to be issued after 10 days under specific contract for such continuous supply then Invoice can be issued along with statement i.e on 15th Feb and can be shown in Return for the month of February. Needless to say in case of Advance Payment is received the same will be governed by provisions of Rule 50 of CGST Rules, 2017 for Receipt Voucher and Rule 51 for Refund Voucher. The same is mentioned in Section 31(3)(d) which is read as follows: "*a registered person shall, on receipt of advance payment with*

respect to any supply of goods or services or both, issue a receipt voucher or any other document, containing such particulars as may be prescribed, evidencing receipt of such payment;”

Further in case of HP India Sales (P) Ltd AAR Maharashtra and Further AAAR Maharashtra also resolved query related to Mixed Supply and Composite Supply in Continuous Supply of Goods, Time of Supply of Goods and Invoice.

Invoice to be issued in case of Continuous Supply of Services: We refer Section 2(33) wherein Definition of Continuous Supply says ““continuous supply of services” means a supply of services which is provided, or agreed to be provided, continuously or on recurrent basis, under a contract, for a period exceeding three months with periodic payment obligations and includes supply of such services as the Government may, subject to such conditions, as it may, by notification, specify;”. Hence it’s very clear that Continuous Supply of services is quite different from Continuous Supply of Goods. In case of goods there is no such condition for contract 3 months exceeding 3 months with periodic payments. Hence application of Continuous supply of Services becomes more complicated than Goods.

There can be various services falling under Continuous Supply of Services like Many types of Contract Services, Telephone and Communication services can be covered here. Even in case of supply of services for many times a day it is allowed to issue one invoice at end of the day but this discussion for Continuous supply for more than 3 months as defined in Section 2(34). For the Invoice to be issued for Continuous supply of Services Section 31(5) is relevant. The section is as follows “ *Subject to the provisions of clause (d) of sub-section (3), in case of continuous supply of services,—*

- a) *where the due date of payment is ascertainable from the contract, the invoice shall be issued on or before the due date of payment;*
- b) *where the due date of payment is not ascertainable from the contract, the invoice shall be issued before or at the time when the supplier of service receives the payment;*
- c) *where the payment is linked to the completion of an event, the invoice shall be issued on or before the date of completion of that event.”*

In case of Continuous Supply of Services the time of issue of Invoice is given clearly in 3 conditions which echo principles of time of supply of services.

In a typical metal factory end to end system solutions for controlled casting of iron and steel which includes supply of refractory components and associated services is considered as Continuous Supply provided that contract is for more than 3 months, as it was held in AAT of West Bengal in case of Vesuvius India Ltd. Similarly Renting of Properties through Lease is considered as Continuous Services u/s 2(33) and time of supply is based on principles given in Section 31(5) or Section 13(2) as the case may be as held in Chennai Port Trust AAR, Tamilnadu.

In an interesting case of Safari Retreats (P) Ltd. Vs Chief Commissioner of CGST Hon. High Court of Orissa refused to allow 17(5) blocked credits to be applied on rental income by company. Wherein petitioner constructed Shopping Mall and used huge quantities of materials and taxes were paid. Later in Petitioner rented out units of said mall and claimed ITC on the same. The below para from judgement given different angle altogether to definition of Continuous Supply of Services and widens its scope to business as whole. The para i in the judgement is as follows “ *The interpretation of Section 17(5) (d) of both CGST Act and OGST Act which leads to the conclusion that on the facts and circumstances of the present case the petitioner No.1 is not entitled to avail the benefit of taking input tax credit while paying CGST and OGST on rent received from different tenants of the shopping mall, clearly goes against the intention of the Legislature and also frustrates the object sought to be achieved by the Legislature in enacting the said CGST Act and OGST Act. It is an undisputed fact that CGST Act and OGST Act are implemented to obviate the cascading effect of various indirect taxes and to reduce multiplicity of indirect taxes. It cannot be disputed that in the business of the petitioner No.1 Company right from the starting point of construction of the shopping mall and upto letting out of different units of the said shopping mall, there is no break in the business activity of the petitioner and it is a continuous business of the petitioner No.1 and the supply of services to the tenants of the shopping mall are a continuous supply of services as defined in Section 2 (33) of the CGST Act and OGST Act. There is also no break or interruption in the tax chain. Therefore, when there is no break in supply of services, which implies the continuation of the business activity of the petitioner No. 1 and there is no break in the tax chain and if that is the undisputed clear position then by interpreting Section 17(5) (d) of both CGST Act and*

OGST Act, the authorities under both the Acts cannot contend that in the middle of the business the petitioner No.1 is not entitled to take credit of input tax, against the CGST and OGST paid on rent received from the tenants of the shopping mall and such an interpretation clearly goes against the intention of the Legislature and also frustrates the object for which the aforesaid Acts were enacted. Such an interpretation will debar those taxable persons like the petitioner No.1, who carry on a continuous business without any break but in spite of that they would be treated differently being denied the benefit of taking input tax credit as available to those taxable person under Section 16 of both CGST Act and OGST Act and such classification of taxable persons into two category even though both have continuous business activities and both have an unbroken tax chain is a clear violation of the fundamental rights of the petitioner as guaranteed under Article 14 and 19(1) (g) of the Constitution of India”

Typical in Accounting world contracts are entered into for supply of services like GST Consulting or Internal Audit which are continuous in nature. In such case payment is received at end of year in case contract specifies the same or it may be periodical payments after a Month or Quarter etc. In all such cases principles laid down in Section 31(5) needs to be followed for time of issue of Invoice.

Hence we can conclude that Continuous supply of Services and Goods is possible alternative for Businesses in case of any difficulties while issuing repeated invoices. Legal provisions have provided ample scope to reduce burden on Registered Persons.