

IMPORTANT ASPECTS ON ISSUANCE OF TAX INVOICE FOR SUPPLY OF SERVICES

Brief of Tax Invoices in the field of Indirect Taxation:

In the Pre-GST era, the Tax Invoices involved for Intra and Inter-State Trade and Commerce were VAT Invoice, CST Invoice, Excise Invoice and Service Tax Invoice. But as per THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 (**No.12 of 2017**), the Tax Invoices involved for the supply of Goods and Services both for Intra and Inter State are the GST Invoices, and such GST Invoice becomes applicable from 1st July 2017.

Under the GST regime, “**Tax Invoice**” means the tax invoice which is raised as per Section 31 of the CGST Act, 2017. This Section mandates the issuance of a Tax Invoice or Bill of Supply against every supply of goods or services or both *(if a GST Registered person is making supplies, then a Tax Invoice is required to be issued against such supply of goods or services or both and if such registered person is dealing only in exempted supplies or registered as a “Composition Dealer,” then such registered person needs to raise Bill of Supply in lieu of Tax Invoice.)* The Tax Invoice should contain the description of the goods, services with quantity and value and such other particulars prescribed under Rule 46 of CGST Rules, 2017.

Importance of Tax Invoice under GST:

The issue of a Tax Invoice under GST not only acts as evidence against the supply of goods or services or both but also acts as an essential document for the recipient to avail the Input Tax Credit (ITC). As per Section 16(2)(a) of CGST Act, 2017, the registered recipient is eligible to claim ITC *if “he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed.”*

Note-

- (a) For supply of Goods:** As per Rule 48 of CGST Rules, 2017, the invoice shall be prepared in triplicate, namely- (a) the original copy being marked as ORIGINAL FOR RECIPIENT; (b) the duplicate copy being marked as DUPLICATE FOR TRANSPORTER, and (c) the triplicate copy being marked as TRIPLICATE FOR SUPPLIER.



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(b) For supply of Services: As per Rule 48 of CGST Rules, 2017, the invoice shall be prepared in duplicate, namely- (a) the original copy being marked as ORIGINAL FOR RECIPIENT, and (b) the duplicate copy being marked as DUPLICATE FOR SUPPLIER.

(c) In case of the e-invoice, it is not required to be issued in triplicate or duplicate copy of the invoice.

Time limit for issuance of Tax Invoice (For supply of Services):

Section 31(2) of the CGST Act 2017 states that in case of the supply of services (*for the non-continuous supply of services*), a registered person shall issue the Tax Invoice before or after the provision of service *but within a prescribed period*. The Tax Invoice should contain the description of the goods, services with quantity and value and such other particulars prescribed under Rule 46 of CGST Rules, 2017.

As per Rule 47 of CGST Rules, 2017, Tax Invoice referred to in Rule 46 of CGST Rules, 2017 shall be issued *within a period of 30 days* from the date of the supply of service:

Provided that where the supplier of services is an insurer or a banking company, or a financial institution, including a non-banking financial company, the period within which the invoice or any document in lieu thereof is to be issued shall be **45 days** from the date of the supply of service.

Section 31(5) of CGST Act 2017 states that in case of the supply of service (*for the continuous supply of services*), a Tax Invoice should be raised as per the following Clause of Section 31(5) of CGST Act, 2017 and the Tax Invoice should contain the description of the goods, services with quantity and value and such other particulars prescribed under Rule 46 of CGST Rules, 2017:

where the due date of payment is ascertainable from the contract, the invoice shall be issued on or before the due date of payment;

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;

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.

Consequences arise due to non-issuance of Tax Invoice for the supply of services beyond the time limit:

(A) Consequence arises before the Service Provider: If the supplier has not issued the Tax Invoice timely against the supply of services, a Showcase Notice Under Section 73 or 74 can be issued against the Service Provider. As per Section 122(1), (i) of CGST Act, 2017, supplying goods/ services without issuing of Tax Invoice is an offence, and the Supplier of Goods or Services shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the tax evaded.

(B) Consequence arises before the Recipient: On non-receipt of Tax Invoice from the service provider, the Service Receiver can not claim the ITC against procurement of such services. *As per Section 16(2)(a) of CGST Act, 2017, the registered recipient is eligible to claim ITC if “he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed.”*

Note- Practically, it is followed that the Service Receiver (where such Service Receiver is supplying the exempted goods or services or both such as Generation and Supply of Electricity and can not claim the ITC on procurement of supply of goods or services) has not received the Tax Invoice timely and the Service Providers have raised the Tax Invoice beyond a long span of time. As the Service Receiver can not avail the ITC, there is a lack of good Corporate Governance from their end against such issues. Here, the Service Receiver has to adopt Good Corporate Governance with True Letter and Spirit, and there should be regular monitoring so that the Service Providers are bound to submit the Tax Invoice timely as a part of compliance with the CGST Act, 2017. Good Corporate Governance within the Taxation Cell of the Service Receiver can minimize such kind of issues.

If the Tax Invoice is not issued by the supplier timely, the recipient will not get the GST Credit on Input and hence, such credit can not be adjusted with the GST Outward Liability and hence, it will directly effect on the Working Capital.

CASE STUDY

Advance Ruling: In the case of M/s. Vishnu Chemicals Limited (AAR No.21/AP/GST/ 2021 dated 20th July

2021), no ITC is eligible on the monthly rental tax invoices raised after the expiry of the limitation period.

Brief of the facts: M/s Vishnu Chemicals Limited (the Applicant) is a manufacturer of basic chromium sulphate, Sodium Sulphate and Chromic Acid. The Applicant needed additional space for storing the raw materials and finished goods. Hence, a Lease Agreement was made between M/s Vishnu Chemicals Limited (**GSTIN- 37AACCV1903A3ZU**) and M/s Usha Tubes and Pipes Pvt. Ltd (M/s UTPL) (**GSTIN: 37AAACU7175R1ZG**).

The applicant acknowledged that monthly rental bills were received from M/s UTPL regularly till March 2018. But for the months from **“April 2018 to March 2019”**, M/s UTPL issued a single tax invoice bearing No UTPLog19117KVC dated 01/04/2020 mentioning in the description as Rental charges for the months from April 2018 to March 2019 by showing rent month-wise for 12 months. The invoice mentioned CGST as ₹26,64,090/- and SGST of ₹26,64,090/- on the total taxable value of ₹ 2,96,01,000.

Questions raised before the Authority: The applicant seeks advance ruling on the following:

- (1) Whether the tax invoice dated 01/04/2020 issued by the supplier of service for the rental service supplied for the period 01/ 04/2018 to 31/ 03/2019 is hit by the limitation for claiming ITC under sub-section (4) of Section 16 of the CGST/SGST Act,2017.
- (2) If the applicant avails ITC on such invoice after 01/04/2020 and before filing GST returns for September 2021/Annual Return for 2020-2021, whether it violates the condition mentioned under sub-section (4).

Remarks and decisions raised by the Authority of Advance Ruling:

As per Rule 47 of CGST Rules, 2017, Tax Invoice referred to in Rule 46 of CGST Rules, 2017 shall be issued **within a**

period of 30 days from the date of the supply of service, and here, the said invoice has not been raised as per the said Rule.

In view of the above, in the instant case, the invoice which was raised on 01/04/2020 does not Pertain to the financial year of 2020-2021 but pertains to the financial year of 2018-2019 in Which the services were received. Moreover, as per section 16(4), the applicant was mandated to claim input tax credit before the due date of furnishing of the return Under section 39 for the month of September 2019 following the end of the financial year 2018-2019, to which such invoice pertains or furnishing of the relevant annual return for the year 2018-2019, whichever is earlier. Hence, the tax invoice dated 01/04/2020 issued by the supplier of service for the rental service supplied for the period 01/ 04/2018 to 31/ 03/2019 is hit by the limitation for claiming ITC under sub-section (4) of Section 16 of the CGST/SGST Act,2017.

Section 16(4) of CGST Act 2017 states that “A registered person shall not be entitled to take the input tax credit in respect of any invoice or debit note for the supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of the financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier.”

Please refer to Notification No 92/2020-Central Tax dated 22nd December, 2020 for Section 120 of the Finance Act,2020(Amendment of Section 16(4) of CGST Act,2017)

Section 120 omitted the words “invoice relating to such” from the section 16(4) of the Central Goods and Services Tax Act.

Conclusion: Based on the discussion, it can be concluded that the aforesaid Sections read with other relevant Sections of CGST Act,2017 and Rules read with other relevant Rules of CGST Rules, 2017 should be followed as a part of Good Corporate Governance.