

WELCOME

to the Session on

Time of Supply in GST

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- **2021 (12) TMI 1299 - APPELLATE AUTHORITY FOR ADVANCE RULING, KARNARAKA**
 - **IN RE: PREMIER SALES PROMOTION PVT. LTD.**
- Applicability of GST - transactions of sale of vouchers - the vouchers traded by the Appellant are goods or actionable claims - Whether the vouchers themselves, or the act of supplying them is taxable, and at what stage, for each of the three categories of transactions undertaken by the Appellant? - rate of tax at which this would be taxable i.e what category would this be taxed under - HELD THAT:- The vouchers in question are undoubtedly payment instruments recognised by RBI. The question is however, whether these vouchers can be considered as 'money'. The finding of the lower Authority is that these vouchers are not used by the Appellant to settle an obligation and hence cannot be considered as 'money' ; that it takes on the colour of money only when it is redeemed by the beneficiary at the time of purchase of goods and/or services - The voucher in the hands of the Appellant, does not settle an obligation but rather creates an obligation. The settlement of the obligation occurs at the time when the ultimate beneficiary uses the voucher to purchase goods and/or services. The definition of money also makes it clear that it is only when the payment instrument is used as consideration to settle an obligation, does it qualify as 'money'. This occurs only when the voucher is redeemed. Until then it is just an instrument recognised by the RBI but is not 'money'. Therefore, the voucher in the hands of the Appellant cannot be termed as 'money'.

- **2021 (12) TMI 1299 - APPELLATE AUTHORITY FOR ADVANCE RULING, KARNARAKA**
 - **IN RE: PREMIER SALES PROMOTION PVT. LTD.**
- In the instant case, the definition of goods in the CGST Act is much more explicit and states clearly what goods mean, what is excluded from the meaning of goods and what is included in the meaning. Further, the nature of the transaction in the case before us is different from the nature of the transaction by Sodexo in as much as the Appellant is clearly not the issuer of the vouchers nor is he authorized by RBI to issue vouchers. The Appellant is buying vouchers from entities authorized to issue them and is selling the same to his clients. In other words, the Appellant is purely trading in vouchers - the vouchers being traded by the Appellant are in the nature of goods.
- The supply of vouchers by the Appellant is a supply of goods in terms of Section 7 of the CGST Act - on the aspect of value of the vouchers for the purpose of GST, the rate of tax and the time of supply of the vouchers by the Appellant. Since the Appellant is not the issuer of the voucher, the provisions of time of supply under Section 12(4) will not apply and the time of supply will be governed by the provisions of Section 12(5) of the CGST Act.

- IN RE : SIEMENS LTD.
- Order No. 18/WBAAR/2019-20, dated 19-8-2019 in Case No. 22/2019
- Valuation (GST) - **Mobilization Advances** - Works Contract services to Government - Taxability - Applicant seeking as to whether lump sum advances received during pre-GST regime and pending as on 1-7-2017 liable to GST - **HELD** : Statutory provisions under GST law providing that date of receipt of payment is time of supply if it precedes date of issuance of invoice and that supply shall be deemed to have been completed to extent of receipt of advance - It is further provided that a deposits, if not made as consideration for supply are not taxable - **In instant case, clearly interest free amount has been received by applicant as a financial assistance and as an inducement of supply - Therefore, it is a consideration for supply** - Submission of Bank Guarantee is only for ensuring compliance of works and would not take out such payment out of purview of consideration for main supply of works contract - Further, such advances as pending on date of introduction of GST have not suffered any VAT on divisible portion of goods, nor any Service Tax as no service bill has been raised by appellant to recipient in terms of provisions as existed then under Finance Act, 1994 - Post-GST, works contract is taxable as supply of service and no longer divisible between goods and services - Since valuation provisions under GST law do not restrict time of supply, **entire unadjusted mobilization advance pending as on 1-7-2017 is taxable to GST** - Case laws relied by applicant pertain to Service Tax regime and hence distinguishable - However, while receiving final payment, applicant would be eligible for getting this amount adjusted for payment of GST - Sections 13 and 15 of Central Goods and Services Tax Act, 2017.
- Ruling in favour of department

According to the new rule, the online food delivery giants Zomato and Swiggy will have to pay GST on the restaurant services they provided and charge the tax at the delivery point, said FM Nirmala Sitharaman.

"Concerning Zomato-like operators and gig officers, the decision has been made that since the place where food is delivered would be the point where tax is collected, the Zomato-like operator who collects tax will pay up the GST on it," stated Sitharaman (1).

TIME OF SUPPLY

[Ch IV, S.12 r/w 31(1), 13 r/w 31(2), 14 of CGST Act, 2017]

- **Section 12 of the CGST Act, 2017 made applicable to IGST vide Section 20 of the IGST Act, 2017 and UTGST vide Section 21 of the UTGST Act, 2017**

To start with

- What Tax?
- Why Tax?
- At what?
- When?
- How much?
 - Rate
 - Value
- GST
- Constitutional Authorization (Art.246A, 269A)
- Supply of goods and services
- At the time of supply (TOS)
 - Rate: mainly 5, 12, 18, 28 %
 - Value: As per S.15

Significance of TOS

- The liability point
 - tax liability is fastened onto supplier
- The charging point
 - Supplier gets entitled to charge tax from the recipient.
- The Recording Point
 - Transaction details to be shown in the return for the period in which TOS falls.
- Discount Threshold point
 - Pre supply discounts allowed, post supply not.

Statutory Framework for TOS & VOS

- Liability arises at the time of supply
- Time of supply is determined on many parameters.
- The governing provisions are
 - Section 12(1to6) [for goods only]
 - Section 13 (1to6) [for services only]
 - Section 14 [Both for goods & Services]
 - Section 15 :Valuation [both for goods & services]

Also, CGST Rules 27 to 35

Situations covered under Ss. 12 & 13

Covers 5 situations for determination of TOS

1. Generic
2. Reverse charge liability
3. Supply of Vouchers
4. Receipt of Additional Value of supply
5. Any other situation

S. 12(1):- Tax liability arises at the TOS determined as below.

S. 12(2)- Time of supply of goods under FCM shall be the earlier of the following dates: [i.e. Earlier of IP]

- (a) The date when supplier issues or is required to issue the invoice under S.31; or
- (b) Date on which supplier receives the payment with respect to the supply.

➤ the **date of payment** shall be the earliest of the following dates: [Expln 2 to S.12]

- (a) Date on which payment is entered in books of accounts of the supplier; or
- (b) Date on which payment is credited to the bank account of the supplier.

S. 12(3)- Time of supply of goods under RCM shall be the earliest of the following: [i.e. Earlier of GP31, and if it fails, then dt of purchase booking]

- (a) Date of receipt of goods by the recipient; or
- (b) Date on which the payment is entered in the books of accounts of the recipient; or
- (c) Date on which payment is debited in the bank account of the recipient; or
- (d) Date immediately following 30 days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier.

➤ **If not ascertainable** as above, then-

The date of entry in the books of accounts of the recipient shall be the time of supply of goods.

S. 12(4):TOS of vouchers shall be the earliest of the following:

- (a) date of issue of voucher, if the supply is identifiable at that point; or
- (b) date of redemption of voucher, in all other cases.

Note 1- Amount received in excess of the invoice amount will be [for both goods and services]-

- (i) If the excess amount is up to Rs 1000/-, then at the option of the supplier, the time of supply will be the date whenever the supplier raises invoice in respect of the excess amount. [i.e next invoice]
- (ii) If the excess amount is more than Rs 1000/-, then the time of supply of goods shall be the date of receipt of such excess amount. i.e., earliest of the following: [i.e. Earlier of book or passbook entry]
 - (a) Date on which payment is entered in books of accounts of the supplier; or
 - (b) Date on which payment is credited to the bank account.

Example:- Inv. No 10/15.10.18 issued for Rs 99,000. Payment of 1 lakh is received on 15.12.18. for Rs. 1 lakh. Next invoice to the same party is issued on 15.01.19. TOS may be taken as 15.01.19.

Note 2- if a part of the consideration is paid in advance (eg. 5 lakh advance against supply of a Service costing 10 lakh) or invoice is issued for part payment (eg. Interior decoration of 10 rooms in a hotel is contracted for Rs 10 lakh. Advance of Rs 5 lakh given for which invoice is issued. It will be deemed that 5 rooms are done with), the time of supply will not cover the full supply. Instead, the supply shall be deemed to have been made to the extent it is covered by the invoice or the part advance payment.

S. 12(6):TOS in value addition by way of interest, late fee or penalty :-

Date on which the supplier receives interest, penalty or late fee which forms part of value of the original transaction.

S. 12(5): Residual Rule-

Where Rules 12 (2, 3, 4) fails to determine TOS, then TOS shall be-

- (a) Due date of the periodical return (where it has to be filed), or
- (b) Date on which tax is paid (in any other case)

TOS of services under FCM ; S. 13(2) r/w 31(2) r/w Rule 47: :

- (i) if the invoice is issued before supply of service or within a period of thirty days from the date of supply of service, the time of supply of services shall be the earliest of [i.e. Earlier of IP if Timely invoice]
 - (a) Date of issue of invoice; or
 - (b) Date when the payment entry in relation to supply of services is recorded in books of accounts of the supplier; or
 - (c) Date on which the payment is credited to supplier's bank account.
- (ii) if the invoice is not issued within a period of thirty days from the date of supply of service, TOS will be the earliest of – [i.e. Earlier of PS, if delayed invoice or not yet issued]
 - (a) Date of provision of service; or
 - (b) Date when the payment entry in relation to supply of services is recorded in books of accounts of the supplier; or
 - (c) Date on which the payment is credited to supplier's bank account.
- (iii) If (i) & (ii) fail, then the date on which the recipient shows the receipt of services in his books of account. [i.e. Date of purchase booking]

TOS of services under RCM ; S. 13(3): The earliest of the following:
[i.e. P61, and if it fails, then purchase booking date]

- (a) Date of payment recorded in the books of accounts of the recipient;
- (b) Date of debit in bank account of the recipient;
- (c) 60 days from the date of issue of invoice or any other document in lieu thereof by the supplier; or
- If it is **not possible to determine** the time of supply under the aforesaid clauses, the time of supply shall be the date of entry in the books of account of the recipient of supply.[purchase booking date]
- In case of **associated enterprises**, where the supplier of service is located outside India, the time of supply shall be the date of entry in the books of account of the recipient of supply or the date of payment, whichever is earlier.[earlier of payment or purchase booking]

Comparative TOS provisions for Goods and Services

S. 12 For GOODS

1. Generic – Earlier of IP [only I after 15.11.17]

[I – date when supplier issued invoice, or its last due date]

[P- when supplier received payment i.e. earlier of entry in his books of account or credit in his bank account]

Note –(i)Quantum of service supply = to the extent covered by I/P (ii) TOS for excess receipt is next inv date. If amt is below 1000, then receipt dt or next inv dt at party's option

2. Reverse charge liability- Earliest of [GP31], then purchase booking

1. When RCM recipient received goods
2. When he made payment (as per his book or A/c entry)
3. 31st day from supplier's invoice date.
4. If above fail, then date when recipient entered supply in his books of a/c.[purchase booking]

S. 13 For SERVICES

1. Generic – Earlier of IP/PS, then PB

1. Earlier of IP (if invoice within time)
2. Earlier of PS ie payment received or service completed (If invoice delayed)
3. If above fail, then When service received in recipient's books (ie purchase booking)

2. Reverse charge liability- Earliest of- [P61], then purchase booking. For supply by out-India associate, earlier of P or PB

1. When RCM recipient made payment (as per his book or A/c entry)
2. 61st day from supplier's invoice / document date.
3. If above fail, then date when recipient entered supply in his books of account.

Note- if supplier is out-India **Associated enterprise**, then earlier of – when recipient entered in his books or when he made payments. [P or PB]

S. 12 For GOODS

3. Supply of Vouchers

1. For supply-identifying vouchers > Date of issue of voucher
2. For other vouchers > Date of redemption of voucher.

3. If TOS determination by above three not possible- [ie Earlier of IP for FCM/ Earliest of receipt of goods or payment & 31st day from supplier's invoice date in case of RCM/ Issue date or redemption date of voucher], then TOS will be-

1. Due date of return filing (where to be filed)
2. If return not to be filed, then date of tax payment.

4. Additional value (int/fee/penalty) received for delayed payment – TOS will be-

Date of receipt of additional value by supplier.

S. 13 For SERVICES

3. Supply of Vouchers

same as for goods

3. If TOS determination of above three not possible-

Same as for good

4. Additional value (int/fee/penalty) received for delayed payment –

Same as for goods

A glance of Invoicing in GST:-

❖ Who will issue ? – Registered & \geq Rs.200/-

❖ What to Issue? –

- If eligible to collect tax-
 - Invoice [R-46/S.31(1)];
 - Revised invoice [R-53, for time gap between liability and RC grant]
- If not eligible to collect tax-
 - Bill of Supply [R-49/S.39(3)(c);
[by composition payer & exempt G/S supplier]
- Other documents-
 - Receipt voucher [R-50]
 - Refund voucher [R-51]
 - Payment Voucher [R-52]
 - Delivery challan [R-55] liquid gas, job work, non-supply, CKD

❖ When to Issue?

➤ General Cases-

- goods – on/before removal; on/before delivery
- services – within 30 days of supply. 45 days for banking co., financial institution, or NBFC [Rule 47]
- special services (R-54)- ISD, Banking, Insurance, GTA, PTA

Note- ‘Removal’ means- [S.2(96)]

- (a) dispatch for delivery by supplier or any other person acting on his behalf, or
- (b) collection by the recipient or any other person acting on his behalf

➤ Special Cases-

1) Sale on approval

– when approval granted; or 6 months from clearance

[Circular 10/10/17-GST dt 18.10.17 for jewellery and other
& Cir 22/22/17-GST dt 21.12.17 for Art work to gallery]

Remove on Delivery challan + Eway bill (if applicable); carry invoice book]

2) RCM supply

- **Self invoice**- on the date of receipt for S9(3); or at month end for s.9(4)
- **Payment voucher** – at the time of payment
- **E-way bill** (where applicable)

3) SKD/CKD- Transportation of goods in knocked down condition in more than one consignment:- [Rule 55(5)]

- Issue the complete invoice before dispatch of the first consignment.
- Issue delivery challan for each of the subsequent (?) consignments, giving reference of the invoice
- Consignment will move on delivery challan + duly certified copy of invoice + e-way bill (full value on each DC)
- Send original copy of invoice with the last consignment.

Note- seems impracticable where all consignments are spread over span of months or years.

4) **Continuous supply** [S.2(32)-continuous/recurrent under a contract, whether or not by pipeline etc, for which regular/periodical invoices are issued + Govt notified supplies]

--Of Goods-

- a. Before / at each successive statements
- b. At the time of each payment

--Of Services-

- i. If payment linked with event – event completion date
[eg milestones like plinth, floor, plastering in building line]
- ii. If not linked –
 - date of payment (if identifiable)
 - date of receipt of payment (if not identifiable)

5) **If supply ceased** – on the date of cessation

6) If invoice can not be issued at removal:- [eg when weighment is to be done after clearance of goods]

-- Delivery challan to be issued.

-- No e-way bill for distance up to 20 km.

7) **GTA**- shall issue a tax invoice or any other document in lieu thereof (by whatever name called) containing:

- Gross weight of consignment
- Name of the consignor and the consignee
- Registration number of carriage (vehicle)
- Details of goods transported.
- Details of place of origin and destination
- GSTIN number of the person liable for paying tax (whether as consignor, consignee or GTA)
- Other prescribed information u/Rule 46.

8) Passenger Transport:- [Rule 54(4)]

Ticket issued in case of passenger transportation service is tax invoice (form, name, serial number, recipient's address immaterial. But other information of rule 46 should be there.)

9) Invoice by bank, FI, NBFC and insurance company

- May issue consolidated tax invoice on monthly basis. [the word 'consolidated'-wef 13.10.17. 'May' wef 15.11.17]
- Can be made available physically or electronically.
- May not have serial number and address of recipient.
- However, other details of rule 46 should be there.

Illustration of service supply-

- I supplied service on 31st May [then last day for issuing invoice will be 29th June]
- I issue invoice upto 29th June – the Tax liability will accrue on 29th June (ie like goods, liability will trigger with invoice). Accordingly I will pay the tax on 20th July. **Interest, if any, will start only from 21st July.**
- I don't issue inv upto 29th June – then the tax liability will accrue on 31st May only, and therefore, I will pay tax along with interest. **The interest will start from 21st June.**

Relaxation from tax payment on receipt of advances [Notfn 66/17-CT 15.11.17]:-

-available only to goods suppliers.

- Upto 12.10.17– no relaxation to any G/S supplier
- From 13.10.17 to 15.11.17– relaxation **only to goods** suppliers with **below 1.5 cr** ATO [in last yr, or expected ATO in current yr]. [Notfn 66/17-CT 15.11.17]
- After 15.11.17– relaxation to all suppliers of goods [irrespective of turnover.] [but not to Composition payer & RCM payer]

Thus, GST on advances received was payable by--

- Upto 12th Oct 17- Entire goods sector + entire service sector (uniformly)
- 13th Oct to 14th Nov 17– only large goods sector (+composition & RCM payer) + entire service sector.
- From 15 Nov 17– Entire service sector + composition & RCM payer

[Thus, small businesses in goods sector were to pay till 12th Oct 17; Big businesses in goods sector were to pay till 14th Nov 17; but every one in Service Sector was to pay always.]

Example of S.12(2) i.e FCM goods- Seller 'A' sold goods to buyer 'B' and issued invoice on 1st October 2017. Find TOS if-

- (a) A removes the goods for delivery to B on 15 October.
- (b) A delivers the goods to B on 30 September.
- (c) B collects goods from A on 10 October.
- (d) B makes full payment on 30 September.
- (e) $\frac{3}{4}$ of Payment from B comes into the bank account of A on 29 September. A records it into his books of accounts on 2 November. The goods were dispatched from the warehouse of A on 5th October.

Answers:

- (a) 1st October. [Earlier of IP. No advance payment is there. So Invoice date is the TOS]
- (b) 30 Sept. Further, It will be an offence i.e. supply without invoice. For goods, the last date of raising invoice is before or at the time of removal / delivery.
- (c) 1st October. [earlier of IP. Invoice can be issued before / at removal]
- (d) 30th September [earlier of IP]
- (e) For three fourth supply, TOS is 29th September (earlier of IP. Payment date is earlier of book & pass book entry). For rest one forth supply, TOS is 1st October i.e. date of invoice.]

S. 12 (2) Goods – FCM (slide-1). TOS = earlier of IP [tax on advance payment was for all upto 12.10.17; For bigger ones upto 15.11.17; & for none thereafter]				
Supply of shampoo / detergent (Movable goods)				
Date of removal	Date of invoice	Date of payment	Date of receipt shown by recipient i.e. purchase booking	Time of Supply
25/08/2017	21/08/2017	Bank credit- 05/09/17 In books- 04/09/17	01/09/2017	21/08/2017
25/08/2017	31/08/2017	Bank credit- 19/08/17 In books- 16/08/17	01/09/2017	16/08/2017
25/08/2017	31/08/2017	Bank credit-05/09/17 In books- 04/09/17	23/08/2017	25/08/2017

S.12(2) - Goods FCM (slide 2)– Sale on ‘As is where is’ condition. Where no movement involved, due date of invoice as per S.31(1)(b) is ‘when delivered or when made available, as the case may be.

Eg. Goods sold as it is while lying at warehouse.

Date of removal	Date when delivered or made available	Date of invoice	Date of payment	Date of receipt shown by recipient i.e. purchase booking date	Time of Supply
30/08/2017	29/08/2017	21/08/2017	Bank credit-05/09/17 In books- 04/09/17	01/09/2017	21/08/2017

Supply of Lifts/Escalator

25/08/2017	31.10.2017	02/11/2017	Bank credit-08/11/17 In books- 04/11/17	04/11/2017	31/10/2017
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S.12(3) Goods – RCM (Slide1). TOS= GP31, then PB; Bidi manufacturer purchases bidi leaves						
Remarks	I received goods on (a)	My Bank A/C debited i.e. I made payment on (b)	My supplier issued sales invoice on	31 st day after sales invoice date falls on (c)	I booked the purchase in my books of account	TOS [Earlier of (a) &(b). If it fails then (c)]
No advance paid	15/07/2017	20/07/2017	10/07/2017	10/08/2017		15/07/2017
Advance paid	20/07/2017	15/07/2017	10/07/2017	10/08/2017		15/07/2017
Supply & payment delayed after issue of invoice	--	--	10/07/2017	10/08/2017		10/08/2017
No advance, no invoice	--	--	--	--	30.09.17	30.09.2017

S.12(3) Goods – RCM (Slide 2).
purchases bidi leaves

TOS= GP31,then PB

Bidi manufacturer

Date of Receipts of goods	Date of receipt of invoice	Date of supplier's Invoice	Date of Payment	Date when recipient booked the supply in his books	Time of Supply
30/08/2017	29/08/2017	21/08/2017	Bank debit-05/09/2017 In books- 04/09/2017	01/09/2017	30/08/2017
30/08/2017	01/09/2017	21/08/2017	Bank debit-05/09/2017 In books- 04/09/2017	01/09/2017	30/08/2017
30/08/2017	01/09/2017	21/08/2017	Bank debit-09/08/2017 In books- 04/08/2017	01/09/2017	04/08/2017

S.13(2) Services – FCM. TOS= earliest of IP/PS, then purchase booking date.

Service Invoice issued on	Invoice was due latest by	Payment credited in supplier's bank account	Payment entered in supplier's books of accounts	Services supply started on	Services supply completed on	Recipient entered the purchase in his books on	Time of Supply
12.10.17	15.10.17	01.12.17	03.12.17	15.08.17	15.09.17	30.08.17	12.10.17
14.11.17	10.10.17	14.08.17	10.08.17	15.08.17	10.09.17	31.12.17	10.08.17

- Row 1:- Since invoice is timely one, we will take earlier of IP ie I=12 oct; P= 1 December.
- Row 2:- Since invoice is delayed one, we will ignore the invoice and take earlier of PS ie P= 10 August, S= 10 Sept.

S.13(3) Services – RCM. TOS= P61. If this fails (not otherwise)- then purchase booking date. For overseas associated enterprise – earlier of payment or purchase booking.					
Reverse charge section 13(3)	Dt of invoice issued by supplier	Date of completion of service	Payment by recipient	Entry of receipt of services in recipient’s book	Time of supply
General	31-Oct-17	31-Oct-17	20-Nov-17	30-Nov-17	20-Nov-17
Advance paid(service)	31-Jan-18	31-Dec-17	05-Nov-17	31-Oct-17	05-Nov-17
Delay in payment (Max. 60 days from date of invoice)	31-Oct-17	31-Oct-17	Not yet done	31-Oct-17	01-Jan-18
Where P61 fails	No inv issued	31-Oct-17	Not yet made	31-Dec-17	31-Dec-17
Service received from associated enterprise located outside India (Inv irrelevant. Decided by payment & purchase booking)	31-Oct-17	30-Nov-17	5-Apr-18	31-Mar-18	31-Mar-18
Service by unregistered person, no payment made, no inv issued		30-Nov-17		05-Dec-17	05-Dec-17

➤ Rate Change (Goods) [Section 14] [notwithstanding s.12, 13]

Three dates to be considered

1. Due date of issuing invoice
2. Actual date of invoice
3. Supply Completion date [?]

If any two events of 1, 2, 3 above occur before change, then old rate will apply.

➤ Rate change (Services)

Three dates to be considered

1. Actual date of invoice
2. Date of payment-receipt
3. Date of supply-completion

If any two occur before change, then old rate will apply

Change in Tax Rate i/r/o Goods / Service Supply [S.14]

Supply made before
tax change

Earlier of
Invoice or
Payment

Supply made after
tax change

If both(inv and payment
dt) are before change
then the earlier one,
otherwise date of that
one(inv or payment)
which occurs after
change

GOODS / SERVICE

BEFORE

AFTER

TOS

i)	Invoice issued, payment Received	Earlier one
ii) Invoice Issued	Payment Received	Invoice issue date
iii) Payment Received	Invoice Issued	Payment Receipt dt.

[i.e. if supply is before change- then earlier of inv or payment]

Note- Date of receipt of payment will be earlier of suppliers book entry or his account credit dt. However if a/c crediting is after 4 working days from the rate change then crediting date(and not the book entry date will be taken as the date of payment.

GOODS / SERVICE

BEFORE

i) Invoice issued,
payment Received

ii) Invoice Issued

iii) Payment
Received

AFTER

Payment Received

Invoice Issued

TOS

Earlier one

Payment receipt date

Invoice Issue date

[i.e. if supply is after change- then – if both IP are before change (same sided), then earlier one; and if they are different sided, then latter one.]

Q . What is the rate of GST to be charged on advances received before the change in rate of tax if the supply is completed after the change in rate of tax?

Ans. If the invoices is also raised before the change in rate of tax then the old rate will be applicable even though the supply is complete after the change in rate of tax. Else, the new rate will be applicable.

Q If 95% of the work is complete before the change in rate of tax but invoice can be raised only after completion of supply, then what is the rate of tax to be applied?

Ans. Assuming the supply is completed after the change in rate of tax, new rate will apply.

Point when liability triggers:-

If service invoice issued at/before/after(but within 30/45 days) of supply (ie timely invoice), then-

Earlier of IP ie. Actual dt of inv or payment entry in book / pass book

Thus,

[i.e. you give the services, but tax-payment-liability will not trigger until you either issue the timely invoice, or receive the payment]

[i.e. For goods, the tax-payment-liability will triggers right on supply, while for services, it triggers on supply only when invoice and payment are delayed.]

Illustration-1:-

- The consultancy service is given on 5th January.
 - If invoice is issued within permissible time i.e. by 4th February, then it is the supply of February and tax will be paid on 20th March with no interest.
 - But if the invoice is delayed and issued on 6th February (ie beyond 30 days), then it will be a supply of the supply- month itself ie of January, and accordingly, tax will be paid on 20th February.
- In any other case, TOS will be when purchase is booked.

Illustration-2: -

- I supplied service on 31st May [then last day for issuing invoice will be 29th June]
- I issue invoice upto 29th June – the Tax liability will accrue on 29th June (ie like goods, liability will trigger with invoice). Accordingly I will pay the tax on 20th July. **Interest, if any, will start only from 21st July.**
- I don't issue inv upto 29th June – then the tax liability will accrue on 31st May only, and therefore, I will pay tax along with interest. **The interest will start from 21st June.**

➤ For goods, the TOS will generally be actual or due date of invoice, ie. Date of removal / delivery (unless invoice issued any earlier)

➤ **Special TOS rules for**

➤ Continuous supply

➤ Sale on approval

➤ TDR

- TOS in **Composite supply**- Every composite supply is treated as supply either of goods or services on the basis of principal supply component of it. Accordingly TOS for goods or services will apply.
- TOS in **Continuous supply** – based on ‘date of invoice’, which in case of goods is to be issued at/before successive billing/payment; and in case of services, will be - [r/w invoice Section 31(4, 5)]
 - On/before Due date of payment in contract; or
 - If not there in contract, then at/before time when supplier receives payment; or
 - On event completion (if it is pre-requisite for payment)
- **Service supply online**:- No separate provision
- **Supply made through E-commerce operator**:- No separate provision. Accordingly, the same provisions as to time of supply of goods will be applicable whether a supplier makes supply through e-commerce entity or the e-commerce entity himself makes the supply.
- **Service import**- No separate provision. So, apply TOS for RCM

Time of Supply for TDR (transferable development rights):

- The tax liability of builder / developer and transferor of TDR arises when the possession of constructed complex, building or civil structure is handed over to the owner of TDR. [N/N 4/2018 CTR & 4/2018 ITR both dated 25.1.2018]
- When builder agrees to supply free flats/building/civil construction as a consideration for TDR, there happens two supplies-
 - Supply of development right by land owner to builder
 - Supply of construction service by the builder to land owner.

Both are subject to GST.

- TDR means certificates issued in respect of category of land acquired for public purposes either by Central or State Governments in consideration of surrender of land by the owner without monetary compensation, which are transferable in part or whole.
- TDR allows the owner of TDR additional Construction area (FSI). Sale of TDR is not sale of land. It is also not actionable claim. GST is payable on it.
- Earlier TDR was subject to sales tax. In **Sumer Corpn V State of Maharashtra (2017)** it was held that TDR received by developer from SRA (Slum Rehab. Auth.) is 'other valuable consideration' and is subject to sales tax (works contract tax) on the construction of flats.

Time of supply of gift vouchers / gift cards under GST

In re Kalyan Jewellers India Limited (GST AAAR Tamilnadu)

- The time of supply of the gift vouchers / gift cards by the applicant to the customers shall be the **date of issue of such vouchers** and the applicable **rate of tax is that applicable to that of the goods.**

➤ Multiple invoice for single consignment-

- Actual/due date of respective invoice – for non-composition RD
- Actual/due date of invoice or payment date (whichever earlier) – for composition RD

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Note:- Payment of tax on receipt of advance is applicable on composition dealer, and also on Reverse charge payer.

➤ Reverse charge payment- (eg Govt auction)-

➤ GP 31

➤ Vouchers etc

➤ Date of issue of voucher, if the supply is identifiable at that point. Or

➤ Date of redemption of voucher, in all other cases

➤ TOS of composite supply-

➤ That of the principal supply

➤ TOS in continuous supply

➤ For non-composition payers

- Actual/due date of invoice for successive statement of accounts (SSOA). Invoice will be issued at / before SSOA.

➤ For Composition payers

- Earlier of such invoice or payment. [Payment dt means date of book/pass-book entry of supplier]

➤ Goods by or through E-com operators

- No separate TOS rule prescribed

➤ TOS for value addition by interest, late fee, penalty etc

- Date when interest, fee etc received. [or earlier of IP/PS ?]

➤ Excess amount than invoiced is received:-

- For upto Rs 1000/-, you may take it as on next invoice date or payment receipt date at your option.
- For above Rs 1000/- - Earlier of IP/PS, then purchase booking. [how to do in GSTR-1?]

➤ RCM:-

- P61 or purchase or payment entry in books.[Date of service completion will be relevant for deciding 30 days for invoicing.]

➤ RCM services received from-

- Associated enterprise within India-
 - Same rule as for other supplier. [ie P61 or purchase /payment booking.
- Associated enterprise outside India
 - P (and not 61) or purchase / payment booking [because there happens cross charging, and not invoicing in inter branch transfers]

➤ When to issue service invoice?

- At/before/after (but within 30 days for others & 45 days for Fis/NBFCs) [S.31(2) read with Rule 47]

➤ TOS in case of Works Contract / composite supply

- As for services

➤ TOS for mixed supply

- As for supply of highest rated component.

2018 (17) G.S.T.L. 451 (App. A.A.R. - GST)

BEFORE THE APPELLATE AUTHORITY FOR ADVANCE RULING UNDER GST, MAHARASHTRA

Smt. Sungita Sharma and Shri Rajiv Jalota, Members

IN RE : MAHARASHTRA STATE POWER GENERATION COMPANY LIMITED

Order No. MAH/AAAR/SS-RJ/09/2018-19, dated 11-9-2018 in Appeal No. MAH/GST-AAAR-09/2018-19

Liquidated Damages for delay - Specific provision being made for levy of liquidated damages if project completion delayed beyond the scheduled date, **appellant agrees to tolerate the delay done by contractor in return for payment of money** - Value of work done remains unaltered and no price variation occurs because of liquidated damages - Therefore, **liquidated damages falls under Clause 5(e) of Schedule-II** of Central Goods and Services Tax Act, 2017 vide **HSN Code 9997** attracting GST @ 18% (9% CGST + 9% SGST) under Notification No. 11/2017-C.T. (Rate)/State Tax (Rate) as amended. [paras 48, 51]

Time of supply - Liquidated damages - **Liability of payment of liquidated damages by contractor established once the delay in successful completion of trial operation is established on the part of contractor and therefore, that would be the time of supply** - However, precise facts being not before the authorities, tax to be levied as per Section 14 of Central Goods and Services Tax Act, 2017. [para 51]

Input Tax Credit - Liquidated damages - Input Tax Credit admissible to contractor/vendor on whom such damages imposed subject to satisfying all other conditions. [para 51]

2018 (15) G.S.T.L. 712 (A.A.R. - GST)

BEFORE THE AUTHORITY FOR ADVANCE RULING UNDER GST, WEST BENGAL

S/Shri Parthasarathi Dey and Vishwanath, Members

IN RE : VESUVIUS INDIA LTD.

Order No. 13/WBAAR/2018-19, dated 20-7-2018 in Case/ARN No. 15/2018

Continuous supply of services - Contract Management System (CMS) - Applicant manufactures refractories which are supplied free of cost to service recipient and used as inputs as defined under Section 2(59) of Central Goods and Services Tax Act, 2017 - **Applicant to be paid only for managing the flow of hot metal in production of iron and steel at an agreed rate per tonne of liquid metal manufactured by service recipient on monthly basis - Round-the-clock monitoring of the production process during the entire contract period, and continuous evaluation of the requirement of refractories, quality control, replacement and disposal of used refractories, etc. amounts to continuous supply of service within the meaning of Section 2(33) ibid provided service is agreed to be provisioned for a period exceeding three months** - Section 2(33) of Central Goods and Services Tax Act, 2017. [paras 5, 6, 7, 8]

Time of supply - Contract Management System services involving monitoring of production process, quality control, supply and replacement of refractories provided to service recipient/manufacturer of hot metal - Provisioning of **service being measured on monthly basis, and date of payment is within thirty days from end of the month** (as per Agreement with the Customers), tax **invoice to be issued** in terms of Section 31(5)(b) of Central Goods and Services Tax Act, 2017 **on or before the supplier receives the payment** - Accordingly, **time of supply shall be the date of issue of invoice** in terms of Section 13(2)(a) read with Section 31(2) of Central Goods and Services Tax Act, 2017 and Rule 47 of Central Goods and Services Tax Rules, 2017. [para 9]

Few FAQs from the IDTC study material

Q. I have received the payment but I have not deposited the cheque in the bank account. What is the date of receipt of payment?

Ans. The date of receipt of payment is date of entry in the books of the supplier or date of credit in his bank account, whichever is earlier.

Q 2. What is the rate of GST to be charged on advances received before the change in rate of tax if the supply is completed after the change in rate of tax?

Ans. If the invoices is also raised before the change in rate of tax then the old rate will be applicable even though the supply is complete after the change in rate of tax. Else, the new rate will be applicable.

Q 3. If 95% of the work is complete before the change in rate of tax but invoice can be raised only after completion of supply, then what is the rate of tax to be applied?

Ans. Assuming the supply is completed after the change in rate of tax, new rate will apply.

Q 4. In case of Construction Contracts, builders remit taxes on receipt of payment or completion of slabs as provided in the contract. What will the impact due to change in the tax rates?

Ans. For payments received before the change in rate of tax, if invoices are also raised before the change in rate of tax, old rate will be applicable. Else the new rate will be applicable.

For slab completion before the change in rate of tax, if invoices are also raised before the change in rate of tax, old rate will be applicable. Else the new rate will be applicable.

Q 5. How do we compute GST liability on supplies which are liable to tax under reverse charge?

Ans. Separate provisions had been provided under the erstwhile service tax laws to determine the service tax payable on reverse charge mechanism which is linked to date of payment to the service provider unless the payment is made within 3 months of the date of invoice. However, such provisions are not there in the CGST Act, 2017.

Accordingly, general provisions relating to change in rate of tax shall be applicable in determining the appropriate rate of tax.

Q6. Will I be required to pay GST at the new GST rate on Debtors outstanding as on the date of change in the rate of tax?

Ans. If the supply was complete for such outstanding balances and the invoice is also issued before change in rate of tax then old rate will be applicable. Else the new rate will be applicable.

Q 7. I have raised the invoice with old rate of tax but now I am required to remit the taxes based on new rate of tax. Can I recover the additional tax payable from my customer?

Ans. Yes, you can raise a supplementary invoice / debit note to recover the additional tax from the customer.

Q 8. In case of payment received more than invoiced amount, will the customer be able to take credit of additional taxes paid?

Ans. If the customer is entitled to claim the credit of tax mentioned in the original invoice, the input tax credit of additional taxes can be availed which is subject to conditions specified in this regard.

Examples-

1. Sodexo meal coupons redeemable against various food items from various stores. TOS will be date of redemption.
2. Supply is deemed to have been made to the extent of part payment (advance) received.

Doubt- Rate changed from 12 to 18 on 15Aug. For a service supply of 10 lakh, 5 lakh advance is taken on 10 Aug. Since supply is deemed to have been made to the extent of part payment (advance), that means both Supply and payment (to the extent of 50%) is complete before change, and only invoice is issued after change. Going by the majority rule, on this 5 lakh part payment Rate of 12%, and on the rest 5 lakh 18% rate should apply. Is it correct?

THANK YOU

