




Issues in Reverse Charge Mechanism and TRAN-1



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REVERSE CHARGE MECHANISM



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Issue 1


- A contingent liability of Exceed Private Limited became certain in the FY 2016-17 for which they approached, Mr. Agarwal, an Advocate for advise. Mr. Agarwal wanted an opinion regarding a few aspects of the case and thus approached Mr. Srivastava, a Senior advocate, for guidance.
- Exceed Private Limited owed Rs. 1,00,000/- for the services received from Mr. Agarwal (and this included the fee of Rs. 80,000/- for consulting Mr. Srivastava).
- According to Exceed Private Limited's Chartered Accountant, only the amount due to Mr. Agarwal should be paid under Reverse Charge Mechanism and not for the amount due to Mr. Srivastava.
- Keeping the facts of the above case in mind; what would be the treatment according to law w.r.t. Reverse Charge Mechanism applicability on fees due to Mr. Agarwal and Mr. Srivastava?

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Legal Service RCM

Category of Supply of Services	Supplier of service	Recipient of Service
Services provided by an individual advocate including a senior advocate or firm of advocates by way of legal services, directly or indirectly.	An individual advocate including a senior advocate or firm of advocates.	Any business entity located in the taxable territory.

Explanation.- "legal service" means any service provided in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representational services before any court, tribunal or authority.



(c) the business entity located in the taxable territory who is litigant, applicant or petitioner, as the case may be, shall be treated as the person who receives the legal services for the purpose of this notification.

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Exemption

Services provided by:

a partnership firm of advocates or an individual as an advocate other than a senior advocate, by way of legal services to-

- an advocate or partnership firm of advocates providing legal services;
- any person other than a business entity; or
- 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;

a senior advocate by way of legal services to-

- any person other than a business entity; or
- 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.

- “legal service” means any service provided in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representational services before any court, tribunal or authority

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“business” includes

(a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;

(b) any activity or transaction in connection with or incidental or ancillary to sub-clause(a);

(c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;

(d) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;

(e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;

(f) admission, for a consideration, of persons to any premises;

(g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;

(h) services provided by a race club by way of totalisator or a licence to book maker in such club ; and

(i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities;

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Issue 2

- M/s Money Chasers Private limited (MCPL) has raised funds through external commercial borrowings (ECB) in July 2017. MCPL has remitted 1,00,000 GBP in September 2017 to M/s Perfect Solicitors in UK for drafting various documents and for providing legal consultancy on ECB matters. Out of said fees, 1000 GBP were court fees.
- The affairs of MCPL are scrutinized by GST Department. They are of the view that legal services by UK Solicitors (including court fees) are deemed to have been provided in India. The Department insists MCPL to pay GST on reverse charge mechanism on above referred remittance of 1,00,000 GBP along with interest.
- MCPL is seeking your advice in the matter.

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Who is an Advocate?

- “advocate” has the same meaning as assigned to it in clause (a) of sub-section (1) of section 2 of the Advocates Act, 1961 (25 of 1961);

Advocates Act:

- “advocate” means an advocate entered in any roll under the provisions of this Act.
- “State roll” means a roll of advocates prepared and maintained by a State Bar Council under section 17



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RCM on Import of Services

Category of Supply of Services	Supplier of service	Recipient of Service
Any service supplied by any person who is located in a non-taxable territory to any person other than non-taxable online recipient.	Any person located in a non-taxable territory	Any person located in the taxable territory other than non-taxable online recipient.

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Issue 3

Whether following services are “legal services” liable to GST under reverse charge Mechanism in the hands of recipient of Supply?

- Notary charges.
- Fees to advocate for compiling and filing Income tax/GST returns.
- Fees to Chartered Accountant who is also lawyer by qualification for advising on taxation law.
- Fees to Solicitors for documenting property deal for purchase of bungalow by H.U.F.
- Legal fees paid to advocate by Co-operative housing society.
- Legal fees paid to advocate by charitable hospital.
- A film star paying fees to advocate for:
 - Defending criminal case against him.
 - Suing film production house for his fees.
 - Technical advice and documentation for property bought / sold.



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Legal Service

- “legal service” means any service provided in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representational services before any court, tribunal or authority;



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Issue 4

- M/s Freight Shipment is a vessel owner based out of London. It has transported a consignment for an Exporter of London and delivered it to Indian Port. The Consignment was transported on **Freight-Prepaid basis**. M/s Shock Ltd. the Indian Importer at the time of clearance of goods from the customs, got the shock of his life when he was informed that he is also liable to pay GST on the prepaid freight.
- He approaches you for advise about the legality of GST levy on the prepaid freight and whether he is liable to pay GST on such freight under Reverse Charge Mechanism?



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Import Freight RCM

Category of Supply of Services	Supplier of service	Recipient of Service
<ul style="list-style-type: none"> Services supplied by a person located in nontaxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India. 	A person located in non-taxable territory	Importer, as defined in clause (26) of section 2 of the Customs Act, 1962 located in the taxable territory.

Section 5(3) The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both 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.

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Recipient of Services

Extract of Explanation to Notification No. 13/2017-

- the words and expressions used and not defined in this notification but defined in the Central Goods and Services Tax Act, the Integrated Goods and Services Tax Act, and the Union Territory Goods and Services Tax Act shall have the same meanings as assigned to them in those Acts.

As per Section 2(93) of CGST Act-

“recipient” of supply of goods or services or both, means—

(a) where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;

(b) where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and

(c) where no consideration is payable for the supply of a service, the person to whom the service is rendered,

and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied;

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Uttarakhand AAR 03/2018-19 dt. 04/05/2018

- Whether under Reverse Charge Mechanism, IGST should be paid by the importer on ocean freight in case of CIF basis contract, when service provider and service recipient both are outside the territory of India?
- In this regard it is observed that vide Notification No. 8/2017-Integrated Tax (Rate) dated 28.6.2017 and, Notification No. 10/2017- Integrated Tax (Rate) dated 28.6.2017 an importer is required to pay IGST on the ocean freight. Therefore as on date, **even if the importer has already paid IGST on CIF value imported goods, he is still required to pay IGST on ocean freight.** Authority also observe that the applicant has also completed a copy of Special civil Application No. 726 of 2018 filed by Mohit Minerals (P) Ltd. before Hon'ble High Court of Gujarat in this regard. Authority observes that mere filing of an application before the Hon'ble High Court does not render a notification issued by the Central Government ultra vires until or unless the same is turned down by the competent court.

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Issue 5

- Bright Limited, having a Turnover of 18,00,000/- p.a. approached Sunshine Private Limited, in order to obtain Exclusive Booking Rights for the Award Ceremony being hosted in Mumbai on the 25th of December, 2017. For this, Bright Limited has agreed to pay Rs. 1,30,000 to Sunshine Private Limited.
- Bright Limited is of the opinion that Tax applicable on this is to be paid by the Supplier of Service, i.e. Sunshine Private Limited, as obtaining Exclusive Rights for Booking is not a Sponsorship Service. However, Sunshine Limited contested that the rights are included in the scope of Sponsorship Services and thus Tax needs to be paid by Bright Limited under Reverse Charge Mechanism.

What should be the treatment for the following;

- Will the above transaction attract the provision of Reverse Charge Mechanism?
- Bright Limited is not registered under the Goods & Services Act, 2017, as its Turnover is below 20,00,000. Please advise if Bright Limited will have to compulsorily get registered in order to pay the Tax under Reverse Charge

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Sponsorship RCM

Category of Supply of Services	Supplier of service	Recipient of Service
Services provided by way of sponsorship to any body corporate or partnership firm.	Any person	Any body corporate or partnership firm located in the taxable territory.



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Erstwhile Sec 65(99a) of FA, 1994

"sponsorship" includes

- naming an event after the sponsor,
- displaying the sponsor's company logo or trading name,
- **giving the sponsor exclusive or priority booking rights,**
- sponsoring prizes or trophies for competition;
- but does not include any financial or other support in the form of donations or gifts, given by the donors subject to the condition that the service provider is under no obligation to provide anything in return to such donors;

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Mandatory Registration

24. Notwithstanding anything contained in sub-section (1) of section 22, the following categories of persons shall be required to be registered under this Act,—

- (i) persons making any inter-State taxable supply;
- (ii) casual taxable persons making taxable supply;
- (iii) **persons who are required to pay tax under reverse charge;**
- (iv) person who are required to pay tax under sub-section (5) of section 9;
- (v) non-resident taxable persons making taxable supply;
- (vi) persons who are required to deduct tax under section 51, whether or not separately registered under this Act;
- (vii) persons who make taxable supply of goods or services or both on behalf of other taxable persons whether as an agent or otherwise;
- (viii) Input Service Distributor, whether or not separately registered under this Act;
- (ix) persons who supply goods or services or both, other than supplies specified under sub-section (5) of section 9, through such electronic commerce operator who is required to collect tax at source under section 52;
- (x) every electronic commerce operator;
- (xi) every person supplying online information and database access or retrieval services from a place outside India to a person in India, other than a registered person; and
- (xii) such other person or class of persons as may be notified by the Government on the recommendations of the Council.

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Issue 6

- Gujarat Cement Limited (GCL) is having cement manufacturing unit in Bhuj. Mr Jadeja, a truck owner, transports the cement bags from GCL factory to its dealers in Jamnagar district. Mr. Jadeja charges the freight on the basis of tonnage hauled. Mr. Jadeja does not issue the consignment note.
- Whether GCL is liable to discharge GST liability under Reverse charge mechanism on freight paid to Mr. Jadeja?

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Definitions (Notification No. 12/2017)

For the purposes of this notification, unless the context otherwise requires

- “goods transport agency” means any person who provides service in relation to transport of goods by road and **issues consignment note**, by whatever name called;



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Transport of goods

Sl. No.	Chapter, Section, Heading, Group (Tariff)	Description of Services	Rate (%)	Condition
19	Heading 9965	Services by way of transportation of goods- (a) by road except the services of- (i) a goods transportation agency; (ii) a courier agency; (b) by inland waterways.	Nil	Nil

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BHARATHI SOAP WORKS Versus COMMISSIONER OF CUS. & C. EX., GUNTUR [2008 (9) S.T.R. 80 (Tri. - Bang.)]

- I have carefully considered the submissions and I find that in these appeals there is no question of any computation of the Service tax or any dispute pertaining to amounts to be quantified or required to be paid. The appellants only sought clarification from the Assistant Commissioner pertaining to the non-issue of consignment note by the transporters. The Assistant Commissioner clearly clarified that it is mandatory under Rule 4(B) of Service Tax Rules for issue of documents. The appellants are not contesting the fact that they are the persons who are required to discharge the Service tax. They are finding difficulty in getting the consignment note or bills or Challans as defined under Rule 4(B) of Service Tax Rules.

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BHARATHI SOAP WORKS Versus COMMISSIONER OF CUS. & C. EX., GUNTUR [2008 (9) S.T.R. 80 (Tri. - Bang.)]

- On a careful consideration, I find that these appeals do not have any merit at all. All the statutory provisions which are mandatory are required to be strictly followed by tax payees. The administrative difficulties, illiteracy or any such inconvenience cannot be a ground for non-following of the statutory provisions. The transporters are bound to issue the consignment note or Bills or Challans as defined in Rule 4(B) of Service Tax Rules or any other serially numbered bills. Failure to do so would be a violation of law. The appellants, if they are finding difficulty in getting the consignment bill, then they should engage only those transporters who follow the law. I do not find any merit in these appeals and the same are rejected.

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**C.C.E. & C., GUNTUR Versus
KANAKA DURGA AGRO OIL PRODUCTS PVT. LTD [2009
(15) S.T.R. 399 (Tri. - Bang.)]**

6.6 It was further urged that the word 'agency' in GTA should be construed given the definition of agent in Section 182 of the Indian Contract Act, 1872, as per which an 'agent' is a "person employed to do any act for another or to represent another in dealings with the third persons". It was submitted that the above aspect of agency being absent when a truck owner or operator gives a truck without an agent being go-between, there can be no tax. This is buttressed by the budget speech of the Finance Minister.

8. We have gone through the records of the case very carefully. The main contention of the appellant is that they had paid the service Tax wrongly because the services have been rendered by individual truck owners and not by goods transport agency. This point has been noticed by the Commissioner (A) also. Therefore, the Commissioner (A) has set aside the orders of the Original Authority demanding differential Service Tax. He has also noted the contention of the respondents that they are not liable to pay Service Tax.

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**C.C.E. & C., GUNTUR Versus
KANAKA DURGA AGRO OIL PRODUCTS PVT. LTD [2009
(15) S.T.R. 399 (Tri. - Bang.)]**

- He has also stated that the transportation has been undertaken by individuals owning and operating the trucks and therefore, they are not registered with the department and the question of availing credit and other facilities do not arise and consequently, they need not follow the procedures prescribed by the Board. The learned departmental representative stated that the respondents themselves paid the Service Tax and the department only demanded the differential duty as they would not be entitled for the benefit of the Notification No. 32/2004-S.T. dt. 3-12-2004 by which the respondents paid only 25% of the amount. **From the definition of the GTA and also the clarification given by the Finance Minister in the budget speech, we are of the view that the tax has been paid wrongly and the respondents are not liable to pay any Service Tax.** In these circumstances, we uphold the impugned orders and reject revenue's appeals.

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Issue 7

- Mr. Manish, the owner of Manish Iron Works Limited (Located in Maharashtra) engaged in the business of manufacturing Iron, acquires services of transportation of Iron from Maharashtra to Delhi from Cargo Enterprises situated in Delhi. Cargo Enterprises is a Goods Transport Agent and thus the provisions of Reverse Charge Mechanism apply.
- Kindly advice whether tax would be paid under RCM as CGST & SGST since the recipient is located in Maharashtra or would we be liable to pay IGST since the supplier of service is located in another State, i.e. Delhi.

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Section 7(3)

Subject to the provisions of section 12, supply of services, where the location of the supplier and the place of supply are in:

- (a) two different States;
- (b) two different Union territories; or
- (c) a State and a Union territory,

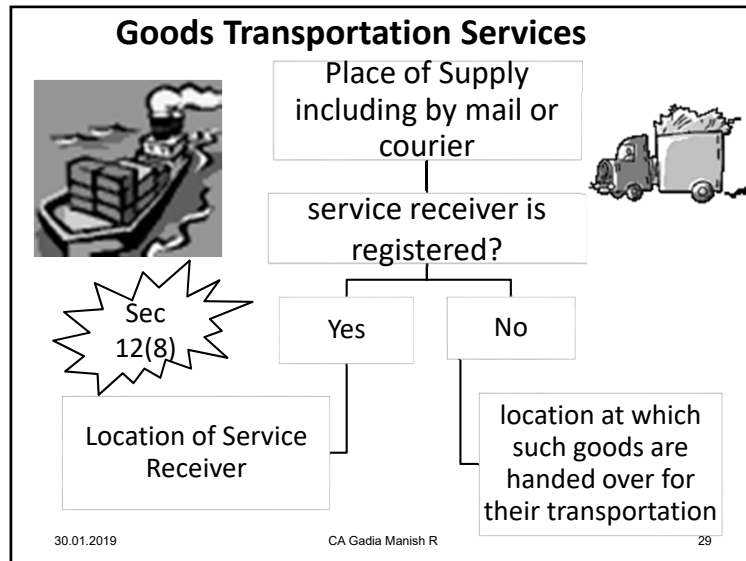
shall be treated as a supply of services in the course of inter-State trade or commerce.



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Mandatory RCM

- Section 9(3) The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both 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.
- Section 5(3) The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both 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.

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Issue 8

- Mr. Xaviers was informed by his Chartered Accountant that for Inward Supplies liable to Reverse Charge Mechanism, the Registered Recipient has to issue Self Invoices for such transactions. Mr. Xaviers received services from his Goods Transport Agency (GTA) wherein he is liable to pay Tax under Reverse Charge Mechanism. He wants to know whether he is supposed to issue Self Invoices w.r.t. services from his GTA. If yes, whether consolidated Self Invoice or Individual Self Invoice?

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Self Invoicing

- Section 31(3)(f) a registered person who is liable to pay tax under sub-section (3) or sub-section (4) of section 9 shall issue an invoice in respect of goods or services or both received by him from the supplier who is **not registered** on the date of receipt of goods or services or both;
- Rule 46: Provided further that where an invoice is required to be issued under clause (f) of sub-section (3) of section 31, a registered person may issue a consolidated invoice at the end of a month for supplies covered under sub-section (4) of section 9, the aggregate value of such supplies exceeds rupees five thousand in a day from any or all the suppliers:

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Issue 9

- Textiles Limited, engaged in the Business of Garments & Textiles, has made a payment of Rs. 1,00,000 to an unregistered person and discharged GST under Reverse Charge Mechanism on 25th August, 2017 for the month of July, 2017. Their Chartered Accountant, Mr. Confused informs Textiles Limited that the Credit for the same can be availed only in the Subsequent Month, i.e. in the month of August, 2017. However, while filing the Return, Textiles Limited finds that the GST Portal allows the Taxpayers to take the Input Tax Credit of RCM in the same month itself, i.e. July, 2017.
- In view of the above facts, when should Textiles Ltd avail the Input Tax Credit for the tax paid under Reverse Charge Mechanism, same month or subsequent month?

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Documents for Claiming ITC

36. Documentary requirements and conditions for claiming input tax credit.-
The input tax credit shall be availed by a registered person, including the Input Service Distributor, on the basis of any of the following documents, namely,-
- (a) an invoice issued by the supplier of goods or services or both in accordance with the provisions of section 31;
 - (b) an invoice issued in accordance with the provisions of clause (f) of sub-section (3) of section 31, subject to the payment of tax;**
 - (c) a debit note issued by a supplier in accordance with the provisions of section 34;
 - (d) a bill of entry or any similar document prescribed under the Customs Act, 1962 or rules made thereunder for the assessment of integrated tax on imports;
 - (e) an Input Service Distributor invoice or Input Service Distributor credit note or any document issued by an Input Service Distributor in accordance with the provisions of sub-rule (1) of rule 54.

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Conditions for claiming credit

Section 16(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,—

- (a) 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;
- (b) he has received the goods or services or both.

Explanation.—For the purposes of this clause, it shall be deemed that the registered person has received the goods where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

- (c) subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government,** either in cash or through utilisation of input tax credit admissible in respect of the said supply.

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Claim of input tax credit and provisional acceptance thereof.

41. (1) Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to take the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited on a provisional basis to his electronic credit ledger.

(2) The credit referred to in sub-section (1) shall be utilised only for payment of self assessed output tax as per the return referred to in the said sub-section.

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Issue 10

- Mr. Sahil, engaged in the business of publishing Novels, has paid advance on 3rd October, 2017 to unregistered printer i.e. Mayur Printing. RCM on Unregistered Dealers was revoked (Notification 38/2017; Central Tax Rate issued on 13/10/2017). You being his auditor came across this transaction so what would you advise regarding applicability of RCM on the said transaction.

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Time of Supply of Services under RCM at the earliest date of

Payment made

Immediately following 60 days from the date of Invoice

Other case - Debit in Books of A/c

Associated Enterprises where supplier is outside India- Entry in A/c or payment

Date of Payment made

- Earliest of
 - Entry in the A/C
 - Credit in Bank A/c

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Issue 11

- Mr. Charan, a registered manufacturer hired security personnel from Bombay Security (Partnership Firm) for the month of December 2018 and January 2019. Invoice of the same was raised on 9th February 2019. Whether Mr. Charan would be liable to pay Tax under Reverse Charge on payment made for Security Services?

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Security Services

Category of Supply of Services	Supplier of service	Recipient of Service
Security Services (services provided by way of supply of security personnel) provided to a registered person.	Any person other than a body corporate	A Registered person, located in the taxable territory

With effect from 1st January 2019



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Time of Supply of Services under RCM at the earliest date of

Payment made	Immediately following 60 days from the date of Invoice	Other case - Debit in Books of A/c	Associated Enterprises where supplier is outside India- Entry in A/c or payment
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Date of Payment made

- Earliest of
- Entry in the A/C
- Credit in Bank A/c

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Time of supply of Services

Issue of Invoice by the supplier

Earliest of

Last date on which require to issue invoice with respect of supply


Earliest of

Receipt of payment by supplier in respect of supply

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Issue 12

- XYZ & Co was the recipient of Security Services. Invoice of the same was issued on 31st December 2018 but payment was done in January 2018. Whether XYZ & Co. needs to pay GST on Forward charge basis or Reverse charge basis or both?



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TRAN-1



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Issue 1

- Mr. Kamal attempted to upload TRAN-1 within stipulated time but failed to do so due to technical issues faced on the GST Portal. How can Mr. Kamal now take such transitional credit?



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Naga Distributors vs Union of India (Kerala High Court)

- Not only the petitioner but also many other people faced this technical glitch and approached this Court. Both the learned counsel submit that this Court on earlier occasions permitted the petitioners to apply to the sixth respondent for the issue resolution.
- So, in this case also, the petitioner may apply to the sixth respondent, the Nodal Officer. The petitioner applying, the Nodal Officer will look into the issue and facilitate the petitioner's uploading FORM GST TRAN-1, without reference to the time-frame.
- To set a time frame, I may also observe that if the petitioner applies within two weeks after receiving this judgment, the Nodal Officer will consider and take steps within a week thereafter. If the uploading of FORM GST TRAN-1 is not possible for reasons not attributable to the petitioner, the authority will also enable him to take credit of the input tax available at the time of migration

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Issue 2

- Whether Excise duty , CVD and SAD paid on Capital Goods purchased prior to 1st July 2017 on which CENVAT credit has not been claimed earlier, can be claimed u/s 140(2) of the CGST Act, 2017 in the absence of registration under Central Excise Act?
- Whether VAT paid on Capital Goods purchased prior to July 1st 2017 on which Input Tax Credit has not been claimed earlier, can be claimed u/s 140(2) of the GST Act, 2017?

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Section 140(2)

- A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, credit of the unavailed CENVAT credit in respect of capital goods, not carried forward in a return, furnished under the existing law by him, for the period ending with the day immediately preceding the appointed day in such manner as may be prescribed
- Provided that the registered person shall not be allowed to take credit unless the said credit was admissible as CENVAT credit under the existing law and is also admissible as input tax credit under this Act.
- Explanation: For the purposes of this sub-section, the expression "unavailed CENVAT credit" means the amount that remains after subtracting the amount of CENVAT credit already availed in respect of capital goods by the taxable person under the existing law from the aggregate amount of CENVAT credit to which the said person was entitled in respect of the said capital goods under the existing law.

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NSL Mining Resources India Private Limited (GST AAR Andhra Pradesh)

- The subject application filed by the applicant firm i.e. M/s NSL Mining Resources India Private Limited, **is beyond the jurisdiction of this authority**, as it is beyond the domain of Sub-section 2 of Section 97 of CGST Act,2017 and APGST Act,2017.
- Therefore, the application is **“not admitted”** under sub-section 2 of section 98 of CGST Act,2017and APGST Act,2017

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Issue 3

- Mr. Sumit received input services and availed the CENVAT credit of the same on 15th June 2017 and TRAN-1 was filed on 1st September 2017. Payment of aforementioned transaction was not done within 90 days of the invoice. So whether reversal of credit taken through TRAN-1 is required. And if such reversal is done then how will Mr. Sumit re-avail the credit if payment is done within 3 months from 1st July 2017?

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Section 140(9)

- Where any CENVAT credit availed for the input services provided under the existing law has been reversed due to non-payment of the consideration within a period of three months, such credit can be reclaimed subject to the condition that the registered person has made the payment of the consideration for that supply of services within a period of three months from the appointed day.

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Issue 4

- Filco Ltd. a first stage dealers have is aggrieved by the provisions contained in Clause(iv) of sub-section(3) of section 140 of the CGST Act which provides that credit can be taken on such invoices or other prescribed documents which were issued not earlier than twelve months immediately preceding the appointed day. This condition would limit the eligibility of Filco Ltd. to claim credit of the eligible duties in respect of goods which were purchased from the manufacturers prior to twelve months of the appointed day. So whether Filco Ltd. can take such credit in TRAN-1 arguing that such restriction is unconstitutional or Ultra Vires.

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Section 140(2)

A registered person, who was not liable to be registered under the existing law, or who was engaged in the manufacture of exempted goods or provision of exempted services, or who was providing works contract service and was availing of the benefit of notification No. 26/2012—Service Tax, dated the 20th June, 2012 or a first stage dealer or a second stage dealer or a registered importer or a depot of a manufacturer, shall be entitled to take, in his electronic credit ledger, credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day subject to the following conditions, namely:

- (i) such inputs or goods are used or intended to be used for making taxable supplies under this Act;
- (ii) the said registered person is eligible for input tax credit on such inputs under this Act;
- (iii) the said registered person is in possession of invoice or other prescribed documents evidencing payment of duty under the existing law in respect of such inputs;
- (iv) **such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day;** and
- (v) the supplier of services is not eligible for any abatement under this Act:

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FILCO TRADE CENTRE PVT. LTD. VERSUS UNION OF INDIA (GUJARAT HC)

- The benefit of credit of eligible duties on the purchases made by the first stage dealer as per the then existing CENVAT credit rules was a vested right. By virtue of clause (iv) of sub-section (3) of section 140A such right has been taken away with retrospective effect in relation to goods which were purchased prior to one year from the appointed day. This retrospectivity given to the provision has no rational or reasonable basis for imposition of the condition. The reasons cited in limiting the exercise of rights have no co-relation with the advent of GST regime. Same factors, parameters and considerations of “in order to co-relate the goods or administrative convenience” prevailed even under the Central Excise Act and the CENVAT Credit Rules when no such restriction was imposed on enjoyment of CENVAT credit in relation to goods purchased prior to one year.

Though the impugned provision does not make hostile discrimination between similarly situated persons, the same does impose a burden with retrospective effect without any justification - **clause (iv) of subsection (3) of section 140 is unconstitutional, and the same is struck down.**

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JCB INDIA LIMITED VERSUS UNION OF INDIA (BOMBAY HC)

- The scheme of the new law that the object and purpose sought to be achieved after its introduction of the new law is of not permitting the existing law arrangement to continue endlessly. Some day or some time has been stipulated as appointed day for the new regime to come into force. For it to come into force and function effectively, the transitional arrangements have been made. They have clear nexus, therefore, with the object sought to be achieved. They cannot be struck down as having no such relation or nexus.

We cannot also by any comparative analysis of the Central and State Law hold that this condition, as imposed, is unreasonable.

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Issue 5

- B Ltd. was undertaking construction of a immovable property. B Ltd. was not liable to be registered under previous regime. As on 1st July 2017, B Ltd. had stock of Raw Wood, doors which are not fitted yet along with completed doors which has been fitted to the building.
- Whether Excise duty paid on above items will be available to B Ltd. as a transitional credit?

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Section 140(2)

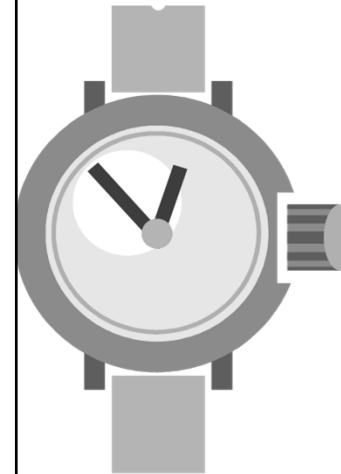
A registered person, who was not liable to be registered under the existing law, or who was engaged in the manufacture of exempted goods or provision of exempted services, or who was providing works contract service and was availing of the benefit of notification No. 26/2012—Service Tax, dated the 20th June, 2012 or a first stage dealer or a second stage dealer or a registered importer or a depot of a manufacturer, shall be entitled to take, in his electronic credit ledger, credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods **held in stock on the appointed day** subject to the following conditions, namely:

- (i) such inputs or goods are used or intended to be used for making taxable supplies under this Act;
- (ii) the said registered person is eligible for input tax credit on such inputs under this Act;
- (iii) the said registered person is in possession of invoice or other prescribed documents evidencing payment of duty under the existing law in respect of such inputs;
- (iv) such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day; and
- (v) the supplier of services is not eligible for any abatement under this Act:

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**Opinions or views
are like wrist
watches.**

**Every watch
shows different
time from others.**

**But every one
believes that their
time is right!**

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Thanks

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