M/S GAZI & ASSOCIATES, CHARTERED ACCOUNTANTS

REVERSE MECHANISM IN GST REGIME

Relevant Laws:

The CGST Act, 2017 and The IGST Act, 2017

CA Aleaxandar Gazi, FCA

2017

23A, PALM AVENUE, 1ST FLOOR, KOLKATA - 700019

Preamble

It should a duty of every Government to frame commercial laws in such a manner that small and marginal members of business and professional communities can grow with minimum hindrance. On the other hand there should be a minimum blockage on flow of collection of Government Revenue. When we analyze various provisions of “Reverse Mechanism” in the GST Acts we understand that the Government has tried very honestly to co-relate those two issues.

1. **What is reverse Charge?**

Normally, tax on supply of goods or service or both should be paid by the supplier of such goods or service. But in a case, where a registered person receiving supply of goods or service or both from an unregistered person, tax liability on such receipt of goods or service or both should be borne by the registered receiver. This system of bearing tax liability by the recipient of goods or service or both is called “REVERSE CHARGE”. Further, Government may notify certain category of goods or services, where tax liability on supply of such notified goods or services shall be borne by the certain specified category of registered recipients, even though suppliers are registered under the Goods and Service Tax Acts. Here is also the recipient of goods or service or both is bearing tax liability on supply i.e. “REVERSE CHARGE”.

Therefore, in the following two cases Reverse Charge system of imposition of tax shall be applicable under the Goods and Service Tax Acts.

(i) A registered person is receiving supply of goods or service or both from an unregistered person.

(ii) A registered person out of certain specified categories is receiving certain notified goods or service or both from a registered supplier.

Section 2(98) of the CGST Act, 2017
“Reverse charge” means the liability to pay tax by the recipient of supply of goods or services or both instead of the supplier of such goods or services or both under sub-section (3) or sub-section (4) of section 9, or under sub-section (3) or subsection (4) of section 5 of the Integrated Goods and Services Tax Act.

Section 9(3) of the CGST Act, 2017 read with Section 5(3) of the IGST Act, 2017
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 9(4) of the CGST Act, 2017 read with Section 5(4) of the IGST Act, 2017
The central tax in respect of the supply of taxable goods or services or both by a supplier, who is not registered, to a registered person shall be paid by such person on reverse charge basis as the recipient 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.

2. **Notified Goods and Service**

(i) Notified goods

So far Government has not notified any goods tax on supply of which shall be paid under "Reverse Charge" basis.

(ii) Notified Services

The Government has notified (vide notification number 13/2017 – Central Tax, dated 28-06-2017) following nine categories of services tax on supply of which shall be paid on "Reverse Charge" basis.

Sl No.	Supplier of Service	Recipient of Service
1	Goods Transport Agency (GTA) : In respect of transportation of goods by road	(a) Any factory registered or governed under the Factories Act, 1948 (b) Any society registered under the Societies Registration Act, 1860 or under any other law for the time being in force in any part of India. (c) Any co-operative society established by or under any law. (d) Any person registered under the CGST Act or the IGST Act or the SGST Act or the UTGST Act. (e) Any body corporate established by or under any law.

		(f) Any partnership firm including association of persons. (g) Any casual taxable person.
2	An individual advocate including a senior advocate or firm of advocates	Any business entity.
3	An arbitral tribunal	Any business entity.
4	Service provided by any person by way of sponsorship.	Any body corporate or partnership firm
5	Service supplied by the Central Government, State Government, Union territory or Local authority except following services: (a) Renting of immovable property (b) Services by the department of posts by way of speed posts, express post, life insurance, and agency services provided to a person other than Central Government, State Government or Union Territory or Local Authority. (c) Services in relation to an aircraft or a vessel inside or outside the precincts of port or an airport. (d) Transport of goods or passengers	Any business entity
6	A Director of a company	The company or body corporate
7	An Insurance agent	Any person carrying on insurance business
8	A recovery agent	A banking company or a financial institution or a non- banking financial company.
9	Author, music composer, photographer, artist or the like.	Publisher, music company, producer or the like

Notes:

(1) All the category of recipients of service mentioned in the table above shall be located in the taxable territory.

(2) Against serial number 1 in the above Table, recipient of service is the person who is liable to pay freight for the transportation of goods by road in goods carriage.

(3) Body corporate has the same meaning as defined in clause (11) of section 2 of the Companies Act, 2013. A Private limited company, a Public limited company and a Limited Liability Partnership Firm (LLP) are a few examples of Body Corporate.

3. Whether Input Tax Credit (ITC) can be availed?

Yes, a registered person paying tax under reverse mechanism can avail ITC on such payment. But a registered person under composition levy can't avail ITC on making payment of tax under reverse charge.

Section 10(4) of the CGST Act, 2017 *A taxable person to whom the provisions of Section10 (1) apply shall not collect any tax from the recipient on supplies made by him nor shall he be entitled to any credit of input tax.* **Provisions of Section 10(1) shall apply to a registered person who has opted for composition levy.*

4. Duties of registered person paying tax under Reverse Charge.

All the provisions of the Goods and Service Tax Acts shall apply to a registered recipient, paying tax under reverse mechanism in respect of receipts of supplies, as if he is the person liable for paying the tax in relation to such supplies.

Therefore, it is very normal that the recipient paying tax under reverse mechanism has to issue a tax invoice, on receiving supply of goods or service or both, to his supplier. Such tax invoice shall, apart from other specified particulars, prominently bear the words "TAX IS PAYABLE ON REVERSE CHARGE BASIS".

5. Time of supply of goods or service or both in case where Reverse Charge is applicable.

The liability to pay tax arises at the time of supply of goods or service. Therefore it is pertinent to understand the time of supply of goods or service in a case where tax is paid on reverse charge basis.

(a) Time of supply in case of goods:

Earliest of the following three dates shall be considered as time of supply of goods:

(i) The date of receipt of the goods

(ii) The date of payment as entered in the books of account of the recipient or the date on which payment is debited in his bank account, whichever is earlier.

(iii) The date immediately following thirty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier.

Where it is not possible to determine the time of supply under any of the above three dates, the date on which recipient makes entry of receipt of supply in books of accounts.

Example:

(1) **Q. -** M/S ARM Industries, a registered person under GST, purchased 10 kilogram ZINC Chloride from M/S ABC, an unregistered person. On 06-07-2017 M/S ABC removed 10 Kilogram Zinc Chloride for delivery to M/S ARM Industries from its place of business. M/S ABC sent an invoice along with goods. On 07-07-2017 M/S ARM Industries received the goods. Date of payment against such supply is 10-07-2017. What will be the time of supply?

A. 07-07-2017 shall be considered as date of supply.

(2) Q. - In the above example if date of payment was 04-07-2017 instead of 10-07-2017 i.e. advance payment, what will be the time of supply?

A. Date of supply shall be 04-07-2017.

(b) Time of supply in case of service:

Earlier of the following two dates shall be considered as time of supply of service:

(i) The date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier.

(ii) The date immediately following sixty days from the date of issue of invoice or any other document, whatever name called, in lieu thereof by the supplier.

Where it is not possible to determine the time of supply under any of the above two dates, the date on which recipient makes entry of receipt of supply in books of accounts.

Provided that in case of supply by associated enterprises, where the supplier of service is located outside India, the time of supply shall be the date of entry in the **b**ooks of account of the recipient of supply or the date of payment, whichever is earlier.