Employee Expenses/Reimbursements- GST Related Views

Applicable Relevant Legal Provisions

2(*105*) ***"supplier"*** in relation to any goods or services or both, shall mean the person **supplying the said goods or services or both** and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied;

Supply

7. (*1*) for the purposes of this Act, the expression "supply" includes:

(*a*) *All forms of supply of goods or services or both such as sale, transfer, barter, Exchange, licence, rental, lease or disposal made or agreed to be made for a consideration* ***by a person in the course or furtherance of business;***

Furtherance of Business would mean – Furtherance of his (suppliers) business.

Input Tax Credit

16. *(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both* ***to him*** *which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person*

Institute's Background Material (Page 110)

In the case of inter-branch supply of services, valuation of these supplies will involve additional tax due to costs such as salary, amortization, etc which do not involve any input tax credit. For example, *if a Head Office incurs certain entity-level expenses that are common to all registered taxable persons in other States,* ***it is not permissible for the HO to retain the whole of these common credits due to the limitation in the language of section 16(1) – used by him in his business*** – although a portion of this credit may still be available. Currently, such HOs are registered as ISD under service tax but this may not be the case in GST. Please refer to discussion in section 19 for some analysis of these issues. Now, surely the

HO is not 'merely an office receiving invoice for services' but is actually the 'seat of management and control' performing very significant services that are supplied to all branches. HOs ought not to continue as ISD but recognize the nature of the supply of services to all branches. And on this basis, apply these Rules for quantifying tax to be discharged. *The proviso in this rule does not authorize payment of tax on cost because the value to be determined under this rule is OMV or else like-kind-and-quality or else rule 4 / 5 value. Hence, HO may be required to invoice for its services appropriately and not distribute credit as ISD*.

The Focus is on two GSTINs, *distinct persons, Rendering of the Services and Preferably Expected Billing for the same from HO to all branches, in lieu of Plain ISD. Importance placed is on 'Business, furtherance of business, supply of services and his business and used by him, meaning Registered Person enabled to utilize the ITC.*

Provision in GST with Regards to Reverse Charge- 9(4)

9 (*4*) 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.*

FAQ – CBEC – on GST

Q 23. Are there any activities which are treated as neither a supply of goods nor a supply of services?

Ans. Yes. Schedule-III of the model GST law lists certain activities such as ***(i) services by an employee to the employer in the course of or in relation to his employment.***

Wording of Schedule III

Services by an employee to the employer in the course of ***or in relation to his employment.***

Consideration 1

In the Course of Employment and in relation to his employment – *In the course of employment is very wide and can cover all the operational expenses incurred by the employee and reimbursed by the employer or can also include travel per-diem allowance for business, for performing business operations, that is done in the course of his employment.*

For this very reason, the Allowance paid to the employee by a business is not considered to be part of Salary and is exempted U/s 10.

Consideration 2

Can the Employee (for payment of reimbursement of per diem for travel etc. being paid to him) be treated as "Supplier" – Supplying services for furtherance of his business, while being in employment and rendering services to the employer during the course of his employment with the Employer ?

Reading the above material from the Legal Provisions – ***Employee can in no terms be treated as a Supplier, requiring registration and remaining Unregistered to be called as 'Unregistered Supplier".***

Read the Affirmation by Finance Minister Given below, when Adhia was of the opinion that the Jeweller should pay GST on the purchase from the Individual who is submitting Old jewellery to the Jeweller. (This is in public domain)

Finance Minister Arun Jaitley on Thursday clarified that sale of old jewellery by an individual to a jeweller will not attract the provisions of Section 9(4) of the CGST Act, 2017.

Therefore, the jeweller will not be liable to pay any tax under reverse charge mechanism (RCM) on such purchases, Jaitley tweeted.

Sale of old jewellery by an individual to a jeweller will not attract the provisions of Section 9(4) of the CGST Act, 2017.

However, ***if an unregistered supplier*** of gold ornaments sells it to registered supplier, the tax under RCM will apply, Jaitley said.

Finance Minister's clarification comes a day after Revenue Secretary Hasmukh Adhia said that selling of old jewellery or bullion will attract a 3 per cent GST on the value realised.

"Supposing I am a jeweller. Somebody comes to me with old jewellery, it is as good as buying gold. You can later claim input tax credit," Adhia said at the GST Master Class.

Explaining further Adhia had said a jeweller buying old jewellery from someone will charge 3 per cent GST under reverse charge. So, if old jewellery worth Rs 1 lakh is sold, a GST of Rs 3,000 will be deducted.

If the proceeds from the old jewellery is used for buying new jewellery, the tax paid on sale will be adjusted against GST on the purchase, he said.

However, if an old jewellery is given to the jeweller for some modification, then it would be considered as job works and 5 per cent GST would be levied.

"But, if I am saying that take my old jewellery melt it and give me a new one, then it means that trader is a registered person and it is as good as buying gold in form of old jewellery," he said.

Under the GST regime rolled out from July 1, tax is levied at 3 per cent on gold, while any form of job work attract 5 per cent levy.

The situation in fact will be

- Employee is receiving the services first from the Unregistered or Registered Suppliers
- From the Registered Suppliers if the GSTIN of the employer is furnished he becomes an agent receiving the services and when the bill is in the name of the employer, the employer will get the ITC credit (full eligibility assumed)
- From the Registered Supplier if the GSTIN of the employer is not furnished, he becomes the consumer and can't pass on the ITC to the employer e*ither directly from such Registered Person or by registering himself.*

- From Unregistered Supplier – as a consumer who is not registered and *due to which employee is not obligated to pay GST under RCM – Unregistered to Unregistered.*
- When the employee pays on behalf of the employer the payment is called 'disbursement', and when the employee collects this money from the employer it is called 'reimbursement'. ***Reimbursement will fall and be part of the total value of the Service rendered for the Charge of GST and when the value of charge i.e. Salary itself is out of the scope, how will the reimbursement be considered for taxing GST.***

Now with the above one also needs to understand the scope of the words

In the course of employment or in relation to his employment

Business Dictionary

Course of employment

Regular activities through which an employee carries out (or is supposed to carry out) the orders of his or her employer. A wrong is considered committed during the course of employment only if what the employee was doing (at the time the wrong happened) falls within the scope of those activities.

<u>Case References</u>

- **Gururaj Mahuli vs. ITO – (2010) 187 Taxman 34 (Bangalore) (Mag)**

  Section 17(2) of the Income-tax Act, 1961 - Salary - Perquisites - Assessment year 2005-06 -Whether an amount received by an employee from his employer for his medical treatment due to an accident in place of work during course of employment will not amount to a perquisite - Held, yes

- **Bhagubai Versus Central Railway, Bombay - 1954 (1) TMI 10 - BOMBAY HIGH COURT**

  It is clear that there must be a causal connection between the accident and the *employment in order that the Court can say that the accident arose out of the employment of the deceased. It is equally clear that the cause contemplated is the proximate cause and not any remote cause. The authorities have clearly laid down that if the employee in the course of his employment has to be in a particular place and by reason of his being in that particular place he has to face a peril and the accident is caused by reason of that peril which he has to face, :then a causal connection is established between the accident and the employment. It is now well settled that the fact that the employee shares that peril with other members of the public is an Irrelevant consideration. It is true that the peril which he faces must not be something personal to him; the peril must be incidental to his employment. It is also clear that he must not by his own act add to the peril or extend the peril. But if the peril which he faces has nothing to do with his own action or his own conduct, but it is a peril which would have! been faced by any other employee or any other member of the public, then if the accident arises out of such peril, a causal connection is established between the employment and the accident.*

In this particular case what is established is that the employee while in the course of his employment found himself in a spot where he was assaulted and stabbed to death. He was in the place where he was murdered by reason of his employment. He would have been safely in his bed but for the fact that he had to Join duty, and he had to pass this spot in order to Join his duty, Therefore, the connection between the employment and the accident is established. There is no evidence in this case that the employee in any way added to the peril. There is no evidence that he was stabbed because the assailant wanted to stab him and not anybody else.

- **The Regional Director, ESI. Versus Francis De Costa & Anr - 1996 (9) TMI 562 - SUPREME COURT**

It was held by the Supreme Court that a workman might be regarded as in the course of his employment even though he had not reached or had left his employers premises in some special cases. The facts and circumstances of each case would have to be examined whether the accident arose out of and in the course of employment of a workman, keeping in view at all times this

> *theory of notional extension. A workman is not in the course of his employment from moment he leaves his home and is on his way to his work. He certainly is in the course of his employment if he reaches the place of work or a point or an area which comes within the theory of notional extension.*

The activities of travel and some other expenses being incurred by the employee while on travel or duty/work for the employer will be covered within the meaning of 'in the course of employment' and thus be covered in Schedule III and out of GST.