

12.03.2018

## Reimbursement under Service Tax vs GST

By CA Madhukar N Hiregange

### Practicality of Reimbursement deduction in GST

The tug of war of the revenue to include every cost incurred by the supplier in the value of goods and services and the efforts of tax payers seeking out deduction from the taxable values has been there in sales tax, central excise, service tax and now in GST. In this article we examine what exactly was the dispute in service tax (which were eventually decided in favour of the service provider) and whether the similar position can be taken in GST for various types of transaction.

### Service Tax Experience

The service tax valuation rules had under rule 5 (1) set out that the expenses or costs incurred in the course of providing a service (could be in relation to or incidental) are to be included in the gross value of service. This was objected as Section 67 was only on the amount charged for such services. Amounts charged other than for the services was disputed as not liable. This view was also taken for fuel/ explosives provided by the Customer to the service provider without which the service could not have been rendered. Also in case of builders/ contractors who were supplied steel and cement which was used in the construction of the factory/ building.

The Larger bench in Bayana builders case (confirmed by SC in 2018) had held that tax could only be on the gross amount charged and therefore the Free of Cost supplies could not be included. Subsequent to 2015 section 67 valuation section was enlarged to include reimbursements and therefore the defence of "gross amount charged" may not be relied on unless further decisions come.

Recently in March 2018 the Supreme Court has upheld the 2013 Delhi High Court decision in Intercontinental Technocrats & Consultants Vs UOI that Rule 5 (1) of the Service Tax Valuation Rules was ultra vires of Section 67 of the Finance Act. Therefore under service tax there is no liability for separately charged amounts which were not part of the service. There was also a rule 5(2) which allowed for not including the value subject to one being a pure agent (4 conditions) and complying with further conditions (8). Many of the conditions were not possible to be complied as impracticable and therefore the challenge to rule 5 (1).

### GST Value

In GST the transaction value (invoiced) would be the price payable/ paid for supply as long as it is between unrelated parties and price is the sole consideration. [sec15(1)]

Where one supplies goods or services then he needs to ensure that value includes all amounts the supplier is to pay in relation to such supply before or at the time of supply. [sec15(2)(b)] The interpretation of in relation to in the Cenvat credit rules has been that it is to be read widely and liberally.

Further any incidental expenses for anything done by the supplier in respect of the supply is to be included. [sec 15(2)(c)]

In GST there has been an attempt to overcome this by way of section 15 talking of price should be the sole consideration. Therefore the obligation of the receiver being taken by the

## Hiregange& Associates

supplier could still enjoy the exclusion. The coverage under rule 33 may ensure that one is derisked.

We examine which are the common expenses which can fall within the above inclusion and which MAY not be covered as under:

Description of Expenses in Specific Supply	Remarks	Ref.
Salaries paid to Consultants engaged by Management Consultant	Directly in relation to. Was obligation of the supplier.	Sec 2(b)
Telephone Expenses of Employees of supplier	Directly in relation to. Was obligation of the supplier	2(b)
Conveyance Reimbursement to above 2 cases.	Incidental for service	2( C)
Technical Consulting agreement with Travel and Stay to be borne by receiver- incurred by supplier	Travel not part of technical service not in relation to or incidental to advise.	Ex. Not.
Publication cost of Trade Union recovered from members separately	Neither direct or incidental + exempted	Ex Not.
Security/ Manpower/ Lift Maintenance provided by 3rd parties in Residential Welfare recovered separately	RWA not competent or expected to provide these. Neither direct or incidental + exempted.	Rule 33
Buying garment samples at exhibition by buying agent on request of manufacturer.	Not relating to buying agency business- Neither direct or incidental + exempted	33
Customs House Agent paying for port, transshipment, storage, customs duty, transportation on actual basis	On CHA liable on rest not liable as pure agent.	33
Explosive/ Fuel provided by customer for quarrying of coal/ stones	Certainly in relation to or incidental to supply. Liable to be included.	15(1)
Cement & Steel provided FOC to contractor	Could be considered as a supply from the contractor as construction service provided.	15(1)
Mould & Dies supplier by principal to suppliers of parts.	While the provision of the mould by customer is not a supply- the part which is sent back using the Free mould could be said to impact the sole consideration. Liable	15(1)

### Possible Practical Solutions

The tax optimisation without exposure or limited exposure in such transactions may be done in the following manner to optimise tax net of credits and also avoid disputes and consequent cost of resolution:

- A. The receiver who is registered under GST who is eligible for the GST credit (on activities in furtherance of business) may like to avoid any break up and go for a composite contract for supply of goods and services. This would also enable the supplier to avail

the credit of the GST paid on all the taxable supplies involved and ensure that benefit passed on to the customer.

- B. The receiver who is unable to avail the credit or unwilling to avail the credit and go for a lengthy refund procedure ( at present manual and taking time - expected to be fast in due course of time- when not known) could however follow Rule 33 where applicable. This rule has been rationalised as to the definition of pure agent ( 3 conditions) as well as further ( only 4 compared to 8 earlier)

Those who do not follow Rule 33 may face disputes which may again involve writ in the high court and subsequent resolution by Supreme Court which could take a few years.

### Conclusion

Suppliers who are looking at excluding the value of goods or services which are not in relation to the supply or not incidental to the supply may seek the clarity from the GST Council, go for advance ruling if amounts are significant. It could also be a good idea to seek the confirmation of the jurisdictional revenue officer by sending a letter enclosing the contract and reason for exclusion. This would at least provide a defence for demands for longer period. For feedback readers may write to [madhukar@hiregange.com](mailto:madhukar@hiregange.com).

---

*(The content of the article is property of Hiregange& Associates, Chartered Accountants. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form, or by any means, electronic, mechanical, photocopying, recording or otherwise, without prior permission, in writing, from the partners of the Firm)*