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Understanding Model GST Law – Def. -Continuous Supply

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Introduction

Under model GST law, tax is levied on the supply of goods and/or services. Tax, namely CGST/SGST is payable at the time of supply of goods and/or services.

In respect of certain categories of supplies which are provided on recurring or repetitive basis under contract, time of supply is determined based on provisions set out in this regard in GST law. In this context paper writer has examined what is continuous supply of goods and services under model GST law.

What is continuous supply of goods and services?

Section 2(30)-CGST Act- “Continuous supply of goods” means

- a supply of goods which is provided, or agreed to be provided,
- continuously or on recurrent basis,
 - under a contract,
 - whether or not by means of a wire, cable, pipeline or other conduit,
 - and for which the supplier invoices the recipient on a regular or periodic basis

In addition, the Central or a State Government may, on the recommendation of the GST Council, specify, by notification, the supply of goods that shall be treated as continuous supply of goods;

Example for continuous supply of goods: Contract for supply of bricks at construction site from September 2017 to January 2018.

Time of supply for continuous supply of goods

In the revised GST law, there is no specific mention of time of supply for continuous supply of goods. Although a provision has been inserted u/s **28(4) of CGST Act**, providing that the invoice is to be issued:

- Before or at the time of statement of accounts is issued; or
- Before each such payment is received

Examples:

Where successive statements of accounts are involved/payments successive: Statement of accounts are drawn up for supply of bricks on quarterly basis. For quarterly period of July to Sept 2017 statement is made on Oct 15th 2017. Tax invoice must be issued before or on 15th October 2017.

Continuous supply of service?

Section 2(31)-CGST Act- “continuous supply of service” means

- supply of services which is provided, or to be provided,
- continuously or on a recurrent basis,
- under a contract,
- for a period exceeding 3 months, with periodic payment obligations
- and includes supply of such service as the Central or a State Government may by notification, specify;

Example: Internal audit for period of 12 months from April 2017 to March 2018 is continuous supply of service.

Time of supply for continuous supply of services

In the revised GST law, there is no specific mention of time of supply for continuous supply of services. Although a provision has been inserted u/s **28(5) of CGST Act**, providing that the invoice is to be issued:

- Where the due date of payment is ascertainable from the contract:** Before or after the date on which the payment is liable to be made by the service receiver, within a prescribed period (yet to be prescribed by Government), irrespective of payment received or not by the service provider.
- Where the due date of payment is not ascertainable from the contract:** Before or at the time when the service recipient receives the payment, or issues an invoice, within a prescribed period (yet to be prescribed by Government).
- Where the payment is linked to the completion of an event:** Before or at the time of completion of that event, within a prescribed period (yet to be prescribed by Government).

Comments:

1. The event of **supply** is central to levy of GST. When supply of goods or services is not done, mere raising of invoice/payment being received being treated as time of supply may not be in keeping with intention to tax supply of goods and/or services.
2. The multiple events, namely raising invoice/making payment in case of supply of goods/services or say completion of event-in case of supply of service triggering the tax levy, confirms that the Govt wants to ensure tax is collected at the earliest point of time
3. For long term contracts for supply of goods and/or services, esp under contracts with PSU's/Govt depts.[runs into crores of rupees], the assessee is forced to pay taxes based on mere raising invoice, even when the payments get delayed by customer.
4. When taxes are not paid on such long term contracts by the vendor due to non-receipt of payment from customer, credit availed on such vendor invoice gets denied to the customer in turn, leading to hardships for the customer. Customer may discontinue giving business to such vendors.
5. To avoid such issues, vendor to collect the taxes first separately and promptly pay to Govt treasury and then collect the balance payments. This would ensure no denial of credit to customer due to non –payment of GST by vendor.

Comparison with existing laws:

1. There is no concept of continuous supply of goods under present Central excise or VAT/CST laws.

2. Under service tax, continuous supply of service is defined to mean any service which is provided or agreed to be provided continuously or on recurrent basis, under a contract, for a period exceeding three months with the obligation for payment periodically or from time to time or where the Central Government, by a notification in the Official Gazette, prescribes provision of a particular service to be a continuous supply of service, whether or not subject to any condition.
3. Govt notified telecom services, works contract service to be continuous supply of service.
4. In Rule 3 of Point of Taxation Rules, service tax liability arises on continuous supply of service at earliest of the following: date of invoice or date of completion of service or date of receipt of payment.
5. In case of continuous supply of service, where the provision of whole or part of the service is determined periodically on completion of event as per contract entered, which requires receiver of service to make payment to service provider, the completion of such event is a point of taxation.

Important decisions under present laws:

1. In *Vistar Construction Pvt. Ltd. v. UOI (2013 (31) S.T.R. 129 (Del.)* in context of works contract service, [which is defined to be continuous supply service under present service tax law] services rendered prior to 1-3-2008 when rate of Service Tax was 2% but payment received after 1-3-2008 when rate of Service Tax was 4%. Taxable event being the rendition of service, and such rendition having been completed prior to 1-3-2008, the applicable rate of tax would be 2%, i.e., the rate prevalent prior to 1-3-2008. Contention of Revenue that payment for services rendered having been received after 1-3-2008, the applicable rate would be 4%, rejected.

2. In *Nagarjuna Construction Company Limited, Bangalore v. State of Karnataka in 2010(69) Kar.L.J. 97 (HC)*, the Division Bench of the Karnataka High Court has struck down Section 7 of the KVAT Act and has held that, "this Section, which creates a legal fiction that a transaction of sale is completed for the purposes of the Act when payment is received as advance is akin to bringing to tax, an agreement to sell goods, even before the property in the goods passes to the buyer". Hon'ble Karnataka High Court had also gone into the validity of the Explanation to Section 3 of the Karnataka VAT Act, 2003, which requires the works contract to include any amount received as advance, as part of the consideration for transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract, in the month, in which in which execution of such works contract commences and has held this Explanation to be unconstitutional.

Conclusion :

In this article the paper writer has examined concept of continuous supply of goods or services under GST Model Law released on 25th November 2016.

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