All about Service Tax Reverse Charge Mechanism

**INTRODUCTION**

To explain the said topic, first I am going to give brief explanation of Normal Charge Mechanism. Generally service tax is payable by the provider of Service. For eg:- When

service is provided by a Chartered Accountant to its client then in this case service provider i.e Chartered Accountant is liable to pay Service tax and comply with other general

provisions of return filing etc. However in Reverse Charge Mechanism Service Receiver is made liable to pay service tax and comply with other provisions of Finance Act, 1994.

Further the scope of Reverse Charge Mechanism was extended vide Notification no.-07/2015 and now persons other than service receiver and service providers are also made liable to comply with Finance Act, 1994 provisions.

Initially Reverse charge mechanism was introduced w.e.f 01-01-2005 vide Notification No.- 36/2004, with effect from 01-07-2012 a new mechanism of reverse charge (RCM) and partial reverse charge or we can call it joint charge (PRCM/JCM) was introduced vide Notification No.- 30/2012 which was further amended by Notification No.- 45/2012, 10/2014 and recently by 7/2015.

WHY REVERSE CHARGE

To collect Service tax under RCM or PRCM power was drawn from Section 68(2) of Finance Act, 1994. Motive of this charge is mainly more tax compliance and increased tax revenues. Government was unable to collect service tax from various unorganised sectors but through Reverse charge mechanism compliance has gone up.

DETAILS OF SERVICES COVERED

There are total 15 Services on which Reverse charge mechanism is made applicable out of which on 2 services concept of Partial Reverse charge mechanism applies. Under Partial Reverse charge mechanism both service provider and service receiver are jointly made liable to pay service tax. The details of Reverse charge in respect of 15 services provided or to be provided are as under:

**Services on which 100% Reverse charge**:

* Services by an insurance agent to any person carrying on insurance business
* Services by a recovery agent to a banking company or a financial institution or a non-banking financial company
* Services by a mutual fund agent or distributor, to a mutual fund or asset management company
* Services by a selling or marketing agent of lottery tickets to a lottery distributor or selling agent
* Services by a goods transport agency in respect of transportation of goods by road
* Services by way of sponsorship
* Services by an arbitral tribunal
* Services by individual advocate or a firm of advocates by way of legal services
* Services by a director of a company or a body corporate to the said company or the body corporate
* Services by Government or local authority by way of support services excluding,- (1) renting of immovable property, and (2) services specified in sub-clauses (i), (ii) and (iii) of clause (a) of section 66D of the Finance Act,1994
* Services by way of supply of manpower for any purpose or security services
* *Import of services*e Services by any person who is located in a non-taxable territory and received by any xperson located in the taxable territory
* Services by a person involving an aggregator in any manner

**Services on which Partial Reverse Charge:**

* Rent-a-cab service if Service provider is not availing abatement then Service provider is liable to pay Service tax on 50% and on rest Service receiver is liable to pay on rest under Reverse charge mechanism. However if Service provider is availing abatement then Service receiver is liable to pay 100% of service tax payable on abated value.
* On service portion in execution of works contract service provider is liable to pay service tax on 50% portion and on rest, service receiver is liable to pay under reverse charge mechanism.

**REVERSE CHARGE PROVISIONS APPLICABLE ON FULFILMENT OF CERTAIN CONDITION**

* If Service Receiver- Business Entity registered as Body Corporate and Service Provider – Individual, HUF, proprietary or partnership firm, AOP then only Reverse charge mechanism applies in following services:
* Rent-a-cab
* Works Contract
* Supply of manpower for any purpose or security services
* If Service Receiver is Business Entity:
* Services of Arbitral tribunal
* Legal Services of Advocate or Advocate Firms
* Support Services by government

The term Body Corporate as defined in rule 2(1)(cd) of Service Tax Rules refer to the definition in Companies Act. Now a question arises whether LLP is a body corporate? My interpretation based on definitions given in Service tax Rules, Companies Act and LLP Act is that “LLP is Body corporate only for LLP Act”. Hence LLP is not Body Corporate in my opinion. Hence if a proprietor is providing works contract service to LLP then Proprietor is liable to pay service tax under normal charge mechanism.

**REGISTRATION**

Under General Charge Mechanism a service provider is required to get himself registered after the limit of Rs.9 Lakh taxable service is crossed. However under Reverse Charge Mechanism a person liable to pay service tax is required to get himself registered within 30 days of the date on which liability to pay service tax arises.

**SMALL SERVICE PROVIDER EXEMPTION NOT AVAILABLE**

When person receiving service is liable to pay service tax under reverse charge, he is not entitled to exemption which is available to a small service provider. Thus, the service receiver is liable to pay service tax even if value of service of service provider is less than Rs. 10 Lakhs. Further in case of partial reverse charge even if service provider does not charge service tax in his invoice, the service receiver is still liable to pay his part of service tax.

**PAYMENT OF SERVICE TAX**

Timing of payment is same as that of Normal Charge Mechanism i.e on monthly basis for companies and on quarterly basis for others. However there is a twist in manner of payment under reverse charge mechanism the liability of service tax has to be met in cash i.e no Cenvat credit can be adjusted against it as credit facility is available for output services

only while it will be input service for service receiver. Rule 2(p) of Cenvat Credit Rules, 2004 (as amended by NN 28/2012-CE (NT) dt. 20-06-2012, the term output service means any service provided by SP located in taxable territory but shall not include a service;

* Specified in section 66D of the Finance Act, 1994, or
* Where whole of ST liability is of SR i.e recipient of service.

**POINT OF TAXATION**

Point of taxation in case of Reverse Charge Mechanism is governed by Rule 7 of Point of Taxation Rules, 2011, Rule 7 states as under:

“Notwithstanding anything [contained in rules 3, 4, or 8], the point of taxation in respect of the persons required to pay tax as recipients of service under the rules made in this regard in respect of services notified under sub-section (2) of section 68 of the Act, shall be the date on which payment is made.

Provided that where the payment is not made within a period of three months of the date of invoice, the point of taxation shall be the date immediately following the said period of three months.”

**AVAILABILITY OF CENVAT CREDIT TO SERVICE PROVIDER PROVIDING SPECIFIED SERVICES**

Services on which Partial Reverse charge is applicable, Service provider can avail Cenvat credit of Service tax paid on Input services obtained. Further since in case of these service providers 100percent Input credit is available while service tax liability is on less than 100percent hence central government has introduced Rule 5B which allows service

provider to claim refund.

Services on which full reverse charge is applicable are not covered by the term “Output Services” as per Rule 2(p) of CCR Rules, 2004. Hence no cenvat credit of Service tax paid on Input services is available.

**CENVAT CREDIT OF TAX PAID UNDER REVERSE CHARGE**

For service receiver who has paid service tax under reverse charge it is the service tax paid on the Input service.

Hence Cenvat Credit is available but he will be eligible to avail credit, on the basis of GAR-7 challan i.e on the date when service tax is paid.

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