

GST and Employer – Employee relationship

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Introduction: –

Under GST regime, transactions between employer – employee and GST implications on the same is one of the major disputed area. The Schedule III of **CGST Act, 2017** stands for transactions or activities which are neither to be treated as supply of goods nor supply of services. Hence, any of the listed transactions or activities in Schedule III, are out of the ambit of GST taxability.

As per clause I of schedule III, ‘services by an employee to employer in the course of or in relation to his employment’ are out of the purview of GST. It is important to note that **services in the course or in relation to employment** are out of the purview of GST. The provision does not include services to the extent of consideration by way of salary. It implies that any other considerations paid to employee usually in the course of business may fall under this clause.

The word ‘consideration’ has its own meaning in Indian Contract Act, 1872. But between employer and employee, the word consideration is not limited to monetary consideration but more than that. Therefore, acts by an employee on behalf of employer is worth to count by many means of consideration such as salary, perquisites, allowances etc.

Broadly, in this regard, following two types of eventualities can be viewed in trade, commerce and industry.

1. Fix allowances and no reimbursement
2. Reimbursement of expenses incurred by employee

Let’s discuss these two eventualities in detail –

1. Fix allowances and no reimbursement

Different types of allowances are usually mentioned in HR policy or in appointment letter of employees ex. daily allowance, food allowance or travel allowance etc. These allowances are provided in specific circumstances irrespective of actual expenses incurred. All such allowances are provided when employees are performing duties in the employment. Hence, such allowances are nothing but provided in the course or in relation to employment and hence are out of the purview of GST.

Also, there are many facilities provided by employers. Some of these form part of perquisites. Ex. Accommodation to employee, Car provided to employee. There are contractual agreements between employer and employee. Such perquisites form part of salary. Further, facilities provided by employer to employees ex. Refreshments (tea / coffee), lunch etc. cannot be construed as supply as these are the common facilities extended to all employees against their service in the employment.

To conclude, all such fix allowances provided to employee where no reimbursement of expenses is made by employer shall be out of the purview of GST.

2. Reimbursement of expenses incurred by employee

It is a common practise in all organisations to reimburse expenses incurred by employee on field on submission of necessary documentary evidences. In these circumstances, question arises whether such types of reimbursements attract reverse charge? The answer depends on case to case basis. In such cases it needs to analyse all possible eventualities from GST perspective.

Position of Employer, employee and supplier of services / goods: –

Employer: – Employer reimburses expenses incurred by employees. It claims all such expenses in its Profit and Loss account and hence can be said as ultimate recipient of goods or services.

Employee: – Employee in all cases is merely facilitator of transactions. He act as a representative of organization and all the expenses, even if consumed by employee, are in the course of furtherance of business. Ex. Restaurant service, accommodation service etc.

Supplier of services or goods: – Considering above discussion, there is supply of goods or services to employer, who is an ultimate recipient, through employee. Such supplier could be registered person or unregistered person under GST. There is no question of reverse charge if such supplier is registered under GST. However, if such supplier is unregistered then liability u/s 9(4) of CGST Act, 2017 of payment of GST may attract.

Let's now discuss the applicability of reverse charge u/s 9(4) and credit availability of the same.

1. To decide applicability of reverse charge, firstly one need to identify supplies from unregistered persons and registered persons.

2. As already discussed, supplies from unregistered person will attract reverse charge u/s 9(4) of CGST Act, 2017 unless such supplies are specifically exempted. Following is the list of some of the supplies which are exempt under GST –

(i) Accommodation charges where declared tariff is below Rs. 1,000/-

(ii) Conveyance expenses – Petrol / Diesel expenses (out of the ambit of GST), auto rikshaw fare or metered cabs charges (exempted from GST)

(iii) Transport of passenger services by contact carriages (other than air conditioned carriages)

(iv) Services of transportation of passengers by railways other than first class, AC coaches, metro, monorails, public transport

Credit availability: –

(i) Input tax credit of tax paid under reverse charge is available unless ITC is restricted by virtue of section 17(5) or otherwise. Ex. if reverse charge is paid u/s 9(4) against catering service, or u/s 9(3) against rent a cab service, input tax credit of the same cannot be availed.

(ii) If supplier of services or goods is registered, there is no question of liability under reverse charge u/s 9(4). However, reverse charge shall be paid in case of inward supply of goods or services specified u/s 9(3).

(iii) Where supplier is registered, invoice shall be in the name of organization and GSTIN shall be mentioned on such invoice. Further, credit availability will depend on (a) filling of return and (b) recording of outward supply by supplier.

(iv) Place of supply provisions will play vital role in availability of input tax credit. Local CGST and SGST paid as a result of place of supply is outside the state in which organization is not registered cannot be claimed as **input tax credit**. Ex. Input tax credit of reverse charge paid u/s 9(4) against accommodation service provided outside state cannot be availed.

Other aspects: –

As per schedule I, gift upto Rs. 50,000/- in a financial year by employer to an employee shall not be treated as supply of goods or services or both. Any gift exceeding Rs. 50,000/- will be taxable under GST. It is pertinent to note that such gift shall be in the form of goods

or services. Gift in the form of cash shall not be taxable. It is because transactions in money are out of the ambit of GST as money is neither goods nor services.

Worth to add that, still, GST is a magical world and the coverage of its taxability is countless. Therefore, right now, employer-employee are treated as branches of one tree, but cant say, in future both may be treated as independent entities. **Even if reverse charge u/s 9(4) has been suspended till 31st March, 2018, as decided in 22nd GST counsel meet, we must prepare ourselves for the same.**

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