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“Reverse Charge Mechanism: The Game Changer”

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Right vs Responsibility

India is the biggest democracy in the world. In the democracy, people are the ultimate source of power and they exercise this power through voting. They are directly responsible for the governance of the country. As the Country gave the right to its citizen to choose a government, similarly Country's different laws also made them responsible for certain obligation and payment of taxes for the welfare of the people is one of them.

But over the years, citizens of the country became more aware and concerned about their voting rights as the voting percentage increased and governments are now elected with the clear mandate but somewhere their responsibilities of paying taxes were not executed honestly.

Tax to GDP ratio is 11.3% (central taxes) and 17.7 % (total taxes) for India much lower than the than the world average of around 24%. Total indirect tax collection for the Central Govt is approximately 5 % of GDP (pre-GST) and if state tax collection is added then it will be around 10 %of GDP.

How to increase the taxpayers base and tax collections in GST:

As per existing law following persons are required to be registered person for taxation person

- a trader is having more than 5/10 lakh annual sales turnover: VAT/CST (Approximately Rs.1400 a day)
- a manufacturer having more than 90 lakh annual turnover: (notification no 08/2003 excise Tact 1944)
- a service provider having a turnover of more than 9 lakh: (Rule 4 of the Finance Rule 1994)

The said limit has been set as 20 lakh for everyone (10 lakh in NE states) either manufacturer or service provider or dealer under GST.

However, there is a fear as well that many of the suppliers who are having more than 20 lakh turnover but not registered might escape from the tax liability for the time being. As there no specific provision to collect information in respect of those retailers who are having more than 20 lakh turnover but are not registered.

In the GSTR-1 return from(which is to be filed every month in GST law, in the table no 5 there is a requirement of submitting information of buyer (name and address) if the invoice value is more than 2.5 lakh in case of inter-state supplies. If the buyer purchases goods below 2.5 lakh in each invoice from so many suppliers then no information is collected and the retailer/service provider may escape untaxed even if total purchases, as well as supplies, are more than 20 lakh. Moreover, there is no provision of the collection of even name and address in case of intrastate supplies to the unregistered buyer.

Approximately there are more than 50 million small and medium businesses in this country but only 6.5 million were registered under different tax laws before GST (as on 30.06.2017) after implementation of GST it has increased by almost 50% i.e. 3.4, million new taxpayers have been added as on date. Due to the reverse charge mechanism, the number is likely to increase to 2 cr.

What is Reverse Charge Mechanism

Apart from many other new initiatives taken in this new GST law like invoice wise return uploading, cross-matching of invoices for curbing the tax evasion etc. One such important measure is the Reverse Charge Mechanism. Normally GST is payable by the supplier of service/goods but under Reverse charge mechanism, the tax liability is on the recipient of the services or goods.

There is two specific provision in the new law regarding reverse charge Sec 9(3) and Sec 9(4) of the CGST act.

As per Sec 9(3) of CGST act The Government has specified by notification categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both 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. E.g. Advocate services, sponsorship services, GTA service etc. if the supplier of the goods are registered then they will do the invoicing and service receiver will be liable to pay tax.

Further as per sec 9(4) of the CGST Act, 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.

As per this section, any registered person buying any goods or services from the unregistered dealer even for petty expenses like tea, coffee, snacks etc then registered person has to do self-invoicing, issue payment voucher and pay taxes. However Govt has given some relaxation for petty unregistered suppliers i.e. exemption from payment of tax, where the aggregate value of such supplies of goods or service or both received by a registered person from any or all the suppliers, who are not registered, do not exceed Rs. 5,000 in a day.

Implication of section 9(4)

- A registered person will be forced to buy goods or services from registered dealers, to the extent possible, to save from the compliance of reverse charge. This will force the unregistered buyer to register themselves if they want to do trade with registered suppliers. For example, stationery suppliers, house renters, cab renters etc who deals with registered dealers will be forced to get themselves registered.
- It is an open secret that small business firms books false expenditures like telephone expenses, stationary expenses, expenses on meetings, payment to contract workers etc to inflate their expenditure and reduce their income. Now sec 9(4) will mandate them to raise an invoice and pay taxes if such expenses are more than Rs. 5000 a day.
- As per records, India imports more than 855 tonnes of gold every year but official sales records show very less. This is definitely a grey area in the current situation. Now Jewellers buying goods from customers will raise an invoice and pay taxes as the customers are the unregistered entity. However as per Govt press release dated 13th July 2017, whoever buys goods from individual customers then sec self-invoicing need not to be done and not payment of tax to be made and goods sold in exchange of old goods will be liable to be taxed on the margin amount (i.e. sale value- purchase price). This relaxation, however, mandates a person to keep the record of the purchase price and disclose in the invoice. This will ensure disclosure of both inward and outward supply of Jewellery.

- Similar is the case with second-hand vehicle dealers or any other second-hand goods dealers

Is the Reverse Charge Mechanism Full proof?

In spite of all these provisions, many small and medium dealers who are dealing with consumers directly may escape like grocery shop owners, sweet vendors, medicine retailers and similar retailers even when their sales are more than 20 lakh in a year but they are not registered. These numbers are in millions. To search for them would be a difficult task for the govt as well. Even the RCM is not full proof.

Some measures are suggested here for further improvement.

Details of buyers (e.g. name, address etc.), if goods/service supplied in excess of Rs 1.5 lakh in a month in every case of intrastate and interstate supplies to be made mandatory.

If the total supplies in a month exceed 3 lakh to a buyer then registration no of the buyer to be made mandatory. (if a retailer is buying goods more than 3 lakh in a month from one supplier then the probability of total turnover going beyond 20 lakh is very high which is a benchmark for registration).

Conclusion:

In the Arthashashtra, it has been mentioned that taxes should be collected like collecting ripe fruits from the trees i.e. tree should not be affected and the fruits are collected. With the implementation of GST Govt is trying to increase the number of taxpayers. If the numbers of the taxpayer will increase then GST & Income tax both will increase. Under Reverse Charge Mechanism, if the supplier evades registration then the taxes will be collected from organised buyers thereby reducing chances of tax evasion. However, there may be cases of loss of business for small unregistered suppliers as only registered suppliers will be preferred to save from compliances of RCM.

That's why Govt has postponed the implementation of reverse charge till 30.06.2018. The government is coming up with a lot of simpler RCM for better compliance. Govt has to ensure that compliance should be easy and be protective to the small suppliers. Then this mechanism (RCM) will start giving the results in true sense and govt will generate desired revenue for the larger benefits.

References:

1. <https://www.indiabudget.gov.in/ub2018-19/frbm/frbm1.pdf> (page 4)
2. https://en.wikipedia.org/wiki/List_of_countries_by_tax_revenue_to_GDP_rati
3. [Indiabudget.nic.in](http://indiabudget.nic.in)
4. *Sec 9 of the CGST Act 2017.*
5. *Economic survey 2017-18*
6. *Defined in sec 2(98) of the CGST Act.*
7. *Notification no 4/2017 of CGST, Act dated 28.06.2017*
8. *NotificationNo.8/2017-CT (Rate) dated 28-06-2017*
9. <https://in.reuters.com/article/india-gold-imports/india-gold-imports-surge-67-percent-in-2017-on-restocking-retail-demand-gfms-idINKBN1ER0PJ>
10. *Notification no 10/2018 dated 23.03.2018*
11. <http://www.cbec.gov.in>