

Important issues related to RCM on supply of security personnel

RCM on supply of security personnel: Notification No. 29/2018-Central Tax (Rate) introduced the RCM on supply of security personnel. The notification was issued under the power given by section 9(3) of CGST Act.



The supply of security personnel will be under the reverse charge. It means that the recipient will be liable to pay the tax on supplies procured by them. Some important issues will arise here. What will be the treatment for the services provided before 1st January 2019. The entry inserted by the abovementioned notification read as follows.

| Sl. No. | Category of Supply of Services | Supplier of service | Recipient of Service |
|---------|---|--|--|
| 14. | Security services (services provided by way of supply of security personnel) provided to a registered person: Provided that nothing contained in this entry shall apply to, - (i)(a) a Department or Establishment of the Central Government or State Government or Union territory; or (b) local authority; or (c) Governmental agencies; which has taken registration under the Central Goods and Services Tax Act, 2017 (12 of 2017) only for the purpose of deducting tax under section 51 of the said Act and not for making a taxable supply of goods or services; or (ii) a registered person paying tax under section 10 of the said Act. | Any person other than a body corporate | A registered person, located in the taxable territory.”; |

Treatment of supplied made before the applicability of this notification:

What will be the treatment of the supplies provided before the date of applicability of this RCM? The time of supply for the purpose of



services is provided in section 13 of CGST Act. **For a supply of service in forward charge the provision is as follows: (Section 13(2))**

- (a) the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under sub-section (2) of section 31 or the date of receipt of payment, whichever is earlier; or
- (b) the date of provision of service, if the invoice is not issued within the period prescribed under sub-section (2) of section 31 or the date of receipt of payment, whichever is earlier; or
- (c) the date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause (b) do not apply:

For supply of service in reverse charge the provision of section 13 is:

(3) In case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earlier of the following dates, namely:–

- (a) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or
- (b) the date immediately following sixty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier:

Now first thing we need to decide is whether we need to apply the provision of section 13(2) i.e. for FCM or section 13(3) i.e. of RCM. The time of supply decide the time when the taxability of a specific supply fall for the purpose of a taxation law.

On the other hand section 31(2) provide that invoice shall be raised after provisioning of service but within the time limit prescribed. CGST Rules provides for a time limit of 30 days for raising an invoice. Now if we have conjoint reading of both of the provisions we can say: Time of supply in forward charge is:

- Date of invoice (if it is raised within 30 days of provisioning of services) or receipt of payment (earlier of these)
- Date of provisioning of services when invoice is not raised within the 30days of provisioning of services.



If we further trim it down and remove the payment thing assuming that the payment is not received before invoicing. The provision is:

- Provisioning of service or when invoice is raised within 30 days, date of invoice.

Now the supply of security personnel, which was made in December, but no invoice was raised till Jan 1st. How we will treat those supplies. Their time of supply doesn't hit till January 1st and a new provision is made applicable.

We need to make a harmonious reading of these provisions. We can say that because the supply of services is made in December, the provisions of FCM will be relevant for these supplies.

The mere fact that invoice was not raised can't change the applicability of provision. The supplies made after January will hit from the provision of RCM. The supplies made in December will be covered in FCM irrespective of fact that its time of supply as per section 13 doesn't hit in December. The section only provides a relaxation in raising invoice and payment of tax. But the supply basically belongs to the month in which it is actually rendered.

e.g. If a supply is rendered in January, irrespective of fact that I can raise the invoice up to 2nd of March the supply will belong to the month of January only.

Availability of Input tax credit to recipient and blockage of ITC for supplier:

- **Availability:** Another important issue is whether the ITC of supplies made in the month December will be available to the supplier. The ITC of tax paid by recipient will be available to the recipient.

Section 16 provides for the availability of input tax credit for all inward supplies. This ITC is available irrespective of fact that the supply was covered in RCM.

Blockage for supplier: Section 17(2) & (3) provide for the reversal of input tax credit used in the exempted supplies. Also section 17(3) covers the supplies in RCM in exempted services.

The services provided by way of supply of security personnel will be an exempt supply for the purpose of reversal of section 17(2).

e.g. XYZ Ltd was providing the services of supply of security personnel. These supplies were covered in RCM from 1st January



2019. Their outward supplies of security personnel for the month of January 2019 are ₹10Lac and total outward supplies were ₹25 Lac. Common ITC availed by them during the month of January 2019 is ₹34800. Please calculate the amount of Input tax credit available for them and amount of reversal.

Solution: Reversal u/s 17:

Common ITC*Exempted turnover/total turnover
= $38400/25*10$
= ₹15360 will be disallowed.

We also need to check the provisions of section 18(4) of CGST Act.

Text of section 18(4) is reproduced here:

*“Where any registered person who has availed of input tax credit opts to pay tax under section 10 or, **where the goods or services or both supplied by him become wholly exempt**, he shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock and on capital goods, reduced by such percentage points as may be prescribed, on the day immediately preceding the date of exercising of such option or, as the case may be, the date of such exemption:*

Provided that after payment of such amount, the balance of input tax credit, if any, lying in his electronic credit ledger shall lapse.”

Section 18(4) covers the condition where the supply becomes exempt from taxable. Now the question is whether the supply of RCM shall be assumed to be exempted for section 17(2) only or it should be assumed as exempted for section 18(4) also. Section 17(2) specifically covers section 17(3) only. If we assume that supply of RCM is an exempted supply for section 18(4) also, it will demand a lapse of ITC in ITC ledger and also the payment of ITC on stock of inputs. But section 18(4) stands for a separate purpose. Section 17(2) covers the inputs or capital goods partly used for taxable supplies and partly for exempted supplies whereas section 18(4) covers the cases for first time entry from taxable to wholly exempted.



Conclusion:

A summarized table of entire discussion above is following;

| Sl. No. | | |
|---------|---|--|
| 1. | If supply was made in December whether RCM will be applicable? | NO |
| 2. | If the payment was received in December but supply was made in January. Whether the RCM will be applicable? | NO |
| 3. | If the invoice was raised in December but supply was made in January whether RCM will be applicable? | NO |
| 4. | When RCM will be applicable? | In cases where the time of supply will fall in January and it hasn't already fallen in December. |
| 5. | Whether the recipient will be eligible for the ITC of tax paid in RCM | Yes |
| 6. | Whether the supplier will be eligible for ITC after 1 st Jan 2019. | No, a proportionate disallowance for supplies covered in RCM will be there if other supplies are also there. |
| 7. | Whether the ITC in ITC ledger as on 31 st December 2018 will Lapse? | NO, assuming that exempted supply in sec 18(4) doesn't cover the supplies made in RCM. |

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