

Non payment of GST by supplier-havoc for Buyer

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Introduction

1. The revolutionary indirect tax reform is on the verge of implementation with a pool of complexities. Although the proclaimed commitment of the government is to roll out a simplified and easier indirect tax reform, yet the draft provisions reveal a totally different picture. The draft material on GST released till date only reflects increased compliance by the assesseees whether it is filing of 37 returns in a year or whether it is dual reporting to the government. The present article focuses on the acute consequences of non-payment of GST by supplier of goods and its repercussions.

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2. Relevant Provisions:-

2.1 Section 2(106) defines 'valid return' and states that valid return shall have meaning assigned to it under section 27(3) of the Model GST Act, 2016.

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SECTION 27(3) reads as under:-

"A return furnished under sub-section (1) by a registered taxable person without payment of full tax due as per such return shall not be treated as a valid return for allowing input tax credit in respect of supplies made by such person."

This single clause engulfs in it some major issues which may prove to be a havoc for the assesseees if implied in the same manner as it is worded currently. From the language it very clear that until and unless an assessee pays all its dues as reflected in the return filed by him, the return shall not be treated as a valid return under this section. From the return procedures, it is made clear that the GST-2 of an assessee shall be auto-populated by the GST-1 filed by his supplier. That means availing of the Cenvat will become dependent on the compliance effected by the supplier on his end. Any fault committed by the supplier will have its effect on the assessee as well.

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3. How the burden will be borne by the receiver

Transfer of liability

3.1 The very basic theme of this provision is to transfer the liability of seller to the buyer for the default of the seller. Why the

buyer should bear the burden when he has paid the tax in the requisite manner? The government should provide for the mechanism to recover the dues itself from the defaulter. The assessee paying the tax in the right manner should not be troubled. Normally the person recovers his own dues but in current situation, the Government is recovering the dues from buyer when the seller has not paid his dues. The poor buyer has already paid his complete amount along with GST to the seller. Then why should he be penalised to pay the dues of seller to the Government once again?

Cenvat not allowed on valid return

3.2 The very first thing which is clear from section 27(3) itself is that Cenvat will not be eligible to the assessee if the supplier has filed an invalid return. This means that straightaway the Cenvat of the goods and services procured and paid by him and on which entire tax also has been disbursed by him will not be allowed to be utilised. This is a very harsh condition put forth and clearly is unjust enrichment of the defaulter. The present laws are very clear on the fact that tax once paid by the receiver of the goods and services shall be allowed to him as Cenvat, irrespective of the fact that the supplier has credited the same to the government or not.

One defaulter and burden to all receivers

3.3 Let's suppose of a situation where a supplier has supplied goods to say 500 buyers and has not paid GST, then his return will not be treated as valid return. The result would be denial of Cenvat to all the 500 buyers which is not logical and just at all. Not only the tax will have to be paid in cash but the Cenvat chain also would break. Burden on the working capital is another ill effect of this provision.

Absolute denial of cenvat even on part default

3.4 Continuing the above condition let's suppose the supplier had a tax liability of Rs. 100,000/- out of which 80,000/- was adjusted by the Cenvat available to him and rest 20,000 was left unpaid. Now according to the provisions, the return will be treated as invalid return and the Cenvat of complete 100,000 will be disallowed to the buyers. This will create havoc in the trade and industry and only beneficiary will be the Government. In a more logical world, at least Cenvat of 80,000 would have been allowed to the receiver and it would have sounded better. If the default is of Rs. 20,000/- only then why deny Rs. 80,000? This could have been dealt with by adding the proportionate liability of Rs. 20,000 to all the recipients.

Recovery from Seller

3.5 Even the recovery provision contained in section 51 states that

any amount which is short paid by the assessee shall be recovered from him by serving him notice as prescribed in the law. If this be the position and recovery is to be made from seller then why the buyer is also called for bearing the liability? This would mean that the Government would recover the amount twice-firstly from buyer and afterwards from the seller. Moreover, no mechanism is provided for allowing the Cenvat in cases where the department has recovered the amount in default from the seller also. Similarly, no provision has been made where an invalid return has been made valid by payment of due taxes and the recipient could avail of the Cenvat thereof.

There are other provisions also which is adding fuel to the fire. If one return of seller is invalid then he cannot file subsequent returns unless and until the dues of first return are discharged. But if the seller has defaulted for continuous six months then his registration will be cancelled. Furthermore, there is provision that the credit cannot be taken on an invoice after one year from the date of issue of invoice. Therefore, if the supplier has paid the amount at his own after one year then the credit will not be allowed to the buyer. These all provisions are very harsh provisions and amendments are required in these provisions for smooth implementation of GST.

Mistakes of large scale assesseees

3.6 What happens when a large scale assessee makes a clerical mistake of say Rs. 5,000 and his return is rendered invalid? If we go by the provisions of the Act then the department will declare him as a defaulter for such a small mistake, although the credit available in his account is much more than the amount defaulted. Suppose he had to pass a Cenvat of say 10 crores to ten recipients (one crore each) and in case of an invalid return, the 10 crore amount will now be added to the liability of all the recipients. Is there any remedy? Now all the recipients cannot remit such a large amount then their return will also be treated as invalid and the amount will be added in liability of their buyers. This will spread the disease like epidemic.

Suppose recipients pay it in next month and large scale assessee also pays the same, then credit will be auto-populated in his return. But recovering such a huge amount of extra one crore will be difficult task for poor recipient. If he is not able to utilise this credit through his liability then his capital will be blocked.

Recipient pays the tax in cash

3.7 During a seminar on GST an option was suggested by industry that they will pay the liability of seller in cash by themselves in his registration number. This will solve the problem and there will not be any liability on buyer. But this will not solve the problem. The seller must have made supplies to number of buyers. A

particular buyer can pay only his share of liability but the seller does not pay the GST in respect of other sellers then also his return will still be invalid. Even if everybody pays his share, how will they recover this amount? Apart from this the seller may not agree to this scheme as he will be having Cenvat lying with him which he may intend to utilize. In this scheme he will not be able to utilize this Cenvat balance. Another suggestion that came up from industry was to withhold the amount of supplier till the time he pays the amount and his return is valid return. This suggestion can work. But the problem is that the wrong provision, in law, is creating hurdles for the trade and industry.

Interest cost

3.8 The thing that acts as salt on the wound is that interest will also have to be paid by the buyer on such liability added. The provision stated above will act as it is in cases of Cenvat mismatch, outward tax liability also.

Thus, it is quite clear that such provisions will only bring chaos and defaults and will hit the smooth implementation of GST. Even the Cenvat chain will be hindered and the ultimate motive of GST may be diluted. Such a draconian provision should be avoided in simplified GST regime.

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