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Treading the GST Path – XX Cross utilisation of SGST credit



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Mr. Vijaykumar has his small business at Hyderabad and registered himself in Hyderabad under GST. He makes only intra state supplies and hence liable to pay only CGST and SGST (Telangana). Mr. Vijaykumar travels to Delhi on business purpose and stays in a Hotel, which charges CGST and SGST (Delhi) and issues an invoice on him. As per Section 12 (3) of the IGST Act, the place of supply of services by way of lodging would be the place where the lodge is situated and hence it would be an intra State Supply, attracting CGST and SGST (Delhi). On coming back to Hyderabad, can Mr. Vijaykumar avail Input Tax Credit of the SGST (Delhi) and utilise it for payment of his SGST (Telangana) liability?

The question may appear to be silly and one may tend to say an immediate No.

Let us address the issue with reference to the Telangana SGST Act (TSGST Act for short). The following provisions may be noted.

Section 2 (62) "input tax" in relation to a registered person, means the central tax, State tax, integrated tax or Union territory tax charged on any supply of goods or services or both and includes –

- (a) the integrated goods and services tax charged on import of goods;*
- (b) the tax payable under the provisions of sub-sections (3) and (4) of section 9; (c) the tax payable under the provisions of sub-section (3) and (4) of section 5 of the Integrated Goods and Services Tax Act; or*
- (d) the tax payable under the provisions of the Central Goods and Services Tax Act, but does not include the tax paid under the composition levy.*

Section 2 (63) : "input tax credit" means the credit of input tax.

Section 2 (104) : "State tax" means the tax levied under this Act;

Section 16 (1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

Section 49 (5) : The amount of input tax credit available in the electronic credit ledger of the registered person on account of --

(a)

(b)

(c) the State tax shall first be utilised towards payment of State tax and the amount remaining, if any, may be utilised towards the payment of integrated tax;

(d).....

(e); and

(f) the State tax or Union territory tax shall not be utilised towards payment of central tax.

A reading of the above provisions would reveal that under TSGST Act, Mr. Vijaykumar can avail only credit of TSGST and utilise it only for payment of TSGST and Delhi SGST cannot be utilised by him at all. This is because, the term "State Tax" wherever used under TSGST Act, would refer only to TSGST.

But a reading of various provisions under the CGST Act gives a different view altogether.

The following provisions may be noted.

Section 2(62) : "input tax" in relation to a registered person, means the central tax, State tax, integrated tax or Union territory tax charged on any supply of goods or services or both made to him and includes—

(a) the integrated goods and services tax charged on import of goods;

(b) the tax payable under the provisions of sub-sections (3) and (4) of section 9;

(c) the tax payable under the provisions of sub-section (3) and (4) of section 5 of the Integrated Goods and Services Tax Act;

(d) the tax payable under the provisions of sub-section (3) and sub-section (4) of section 9 of the respective State Goods and Services Tax Act; or

(e) the tax payable under the provisions of sub-section (3) and sub-section (4) of section 7 of the Union Territory Goods and Services Tax Act,

but does not include the tax paid under the composition levy;

Section 2 (63) : "input tax credit" means the credit of input tax;

Section (104) : "State tax" means the tax levied under any State Goods and Services Tax Act;

Section 16. (1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

Section 49 (5) : The amount of input tax credit available in the electronic credit ledger of the registered person on account of--

(a) integrated tax shall first be utilised towards payment of integrated tax and the amount remaining, if any, may be utilised towards the payment of central tax and State tax, or as the case may be, Union territory tax, in that order;

(b) the central tax shall first be utilised towards payment of central tax and the amount remaining, if any, may be utilised towards the payment of integrated tax;

(c) the State tax shall first be utilised towards payment of State tax and the amount remaining, if any, may be utilised towards payment of integrated tax;

(d) the Union territory tax shall first be utilised towards payment of Union territory tax and the amount remaining, if any, may be utilised towards payment of integrated tax;

(e) the central tax shall not be utilised towards payment of State tax or Union territory tax; and

(f) the State tax or Union territory tax shall not be utilised towards payment of central tax.

A careful reading of the above provisions would reveal that as per CGST Act, the term "State Tax" means any State SGST and the definition of "input tax" covers "State Tax", i.e. any State SGST and credit of such "input tax" is entitled to be taken and further credit of such "State Tax" can be utilised for payment of "State Tax", which means any State Tax. Hence, the above provisions give an impression that Mr. Vijaykumar can avail credit of Delhi SGST and utilise it for payment of Telangana SGST, as per the provisions of CGST Act, though the same is not possible under TSGST Act.

In fact, there is no need to include "State Tax", in the definition of "input tax" under the CGST Act, as the same would have been taken care of by the SGST Acts. While credit of any State Tax can be availed and utilised for payment of any State Tax under CGST Act, credit of only respective SGST can be availed and

utilised for respective SGST, under the SGST Acts. Both the acts operate on Mr. Vijaykumar. A seeming contradiction?

There is another way to approach this issue.

Let us assume that Mr. Vijaykumar's business has grown big and he established units at Karnataka, and Maharashtra, too. As his visits to Delhi for marketing has also increased, he has set up a Regional Office at Delhi, which receives various input services. When he now goes to Delhi, he would get the Hotel Bill in the name and address of his Delhi Regional Office, which is also registered as an Input Service Distributor (ISD). Now, as per section 20 of the SGST Act*, the ISD at Delhi, could distribute the credit of Delhi SGST to the three units of Mr. Vijaykumar at Telangana, Karnataka and Maharashtra, as IGST credit and these units could utilise it for payment of their respective SGST liabilities. So, what is permitted under ISD mode, can be denied under non ISD mode? Is it equity?

* Section 20 (1) of the TGST Act is reproduced below. Similar provisions would be available under Delhi SGST Act also.

Section 20 (1) : The Input Service Distributor shall distribute the credit of State tax as State tax or integrated tax and integrated tax as integrated tax or State tax, by way of issue of document containing the amount of input tax credit being distributed in such manner as may be prescribed.

