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RATE OF TAX FOR DEBIT NOTES

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With effect from 18.07.2022 the GST rates for various goods and services have been hiked. In this connection, one of the questions being raised is as to the rate of tax applicable, if Debit Notes are issued on or after 18.07.2022 for any upward price revision in respect of such supplies made prior to 18.07.2022, i.e. whether GST should be charged at the enhanced rate or the old rate on such Debit Notes. Let us examine the legal provisions in this regard.

Section 34 of the CGST Act deals with issue of Debit Notes and Credit Notes and the relevant portion of the said section is reproduced below.

(3) Where one or more tax invoices have] been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to be less than the taxable value or tax payable in respect of such supply, the registered person, who has supplied such goods or services or both, shall issue to the recipient [one or more debit notes for supplies made in a financial year containing such particulars as may be prescribed.

(4) Any registered person who issues a debit note in relation to a supply of goods or services or both shall declare the details of such debit note in the return for the month during which such debit note has been issued and the tax liability shall be adjusted in such manner as may be prescribed.

Explanation. – *For the purposes of this Act, the expression “debit note” shall include a supplementary invoice.*

It may be observed that the supply in this case has already been made and the same has already been assessed to tax. But because of a subsequent event, i.e. increase in the value of supply, additional tax becomes payable. Such additional tax has to be paid by raising a Debit Note or Supplementary Invoice. It may also be noted that section 34 is a complete code in itself.

Section 14 of the CGST Act deals with change in rate of taxes and the same is reproduced below.

SECTION 14. Change in rate of tax in respect of supply of goods or services. – *Notwithstanding anything contained in section 12 or section 13, the time of supply, where there is a change in the rate of tax in respect of goods or services or both, shall be determined in the following manner, namely :–*

(a) in case the goods or services or both have been supplied before the change in rate of tax, –

(i) where the invoice for the same has been issued and the payment is also received after the change in rate of tax, the time of supply shall be the date of receipt of payment or the date of issue of invoice, whichever is earlier; or

(ii) where the invoice has been issued prior to the change in rate of tax but payment is received after the change in rate of tax, the time of supply shall be the date of issue of invoice; or

(iii) where the payment has been received before the change in rate of tax, but the invoice for the same is issued after the change in rate of tax, the time of supply shall be the date of receipt of payment

(b) in case the goods or services or both have been supplied after the change in rate of tax,

(i) where the payment is received after the change in rate of tax but the invoice has been issued prior to the change in rate of tax, the time of supply shall be the date of receipt of payment; or

(ii) where the invoice has been issued and payment is received before the change in rate of tax, the time of supply shall be the date of receipt of payment or date of issue of invoice, whichever is earlier; or

(iii) where the invoice has been issued after the change in rate of tax but the payment is received before the change in rate of tax, the time of supply shall be the date of issue of invoice :

Provided that the date of receipt of payment shall be the date of credit in the bank account if such credit in the bank account is after four working days from the date of change in the rate of tax.

Explanation. – For the purposes of this section, “the date of receipt of payment” shall be the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier.

It may appear at the first blush that as per sub-clause (i) of clause (a) of Section 14 if the Debit Note for price revision is issued on or after 18.07.2022 and the additional value is also received on or after 18.07.2022, the rate of tax as applicable on or after 18.07.2022 (i.e. the higher rate) shall be applied on the Debit Note. Let us examine the issue closely.

It may be noted that the above section deals with determination of place of supply in certain special cases, i.e. when there is a change in rate of tax. While section 12 and 13 of the Act deals with determination of time of supply of goods and services respectively, section 14 is a non obstante provision for determination of time of supply when there is a change in rate of tax. It may be noted that the date of issue of invoice or the date of receipt of payment, whichever is earlier is normally considered as the time of supply, under section 12 and 13 of the Act.

It may be noted that when additional price becomes recoverable for the supply already made, what is required is mere payment of tax as per Section 34 of the Act and there is no necessity to determine the time of supply once again.

Section 31 of the Act deals with issue of tax invoice and the relevant portion of the said section is reproduced below.

SECTION 31. Tax invoice. – (1) A registered person supplying taxable goods shall, before or at the time of, –

(a) removal of goods for supply to the recipient, where the supply involves movement of goods; or

(b) delivery of goods or making available thereof to the recipient, in any other case,

issue a tax invoice showing the description, quantity and value of goods, the tax charged thereon and such other particulars as may be prescribed.

Provided that the Government may, on the recommendations of the Council, by notification, specify the categories of goods or supplies in respect of which a tax invoice shall be issued, within such time and in such manner as may be prescribed.

(2) A registered person supplying taxable services shall, before or after the provision of service but within a prescribed period, issue a tax invoice, showing the description, value, tax charged thereon and such other particulars as may be prescribed :

Rule 47 of the CGST Rules, is reproduced below.

RULE 47. Time limit for issuing tax invoice. --*The invoice referred to in rule 46, in the case of the taxable supply of services, shall be issued within a period of thirty days from the date of the supply of service :*

Provided *that where the supplier of services is an insurer or a banking company or a financial institution, including a non-banking financial company, the period within which the invoice or any document in lieu thereof is to be issued shall be forty five days from the date of the supply of service :*

Provided *further that an insurer or a banking company or a financial institution, including a non-banking financial company, or a telecom operator, or any other class of supplier of services as may be notified by the Government on the recommendations of the Council, making taxable supplies of services between distinct persons as specified in section 25, may issue the invoice before or at the time such supplier records the same in his books of account or before the expiry of the quarter during which the supply was made.*

It may be observed from the above provisions that there may be situations where there is a time gap between the actual supply and the date of invoice. If there is a change in rate of tax during such intervening period, the provisions of Section 14 would be applicable. The word "invoice" used in Section 14 has to be understood with reference to Section 31 of the Act which deals with invoice. A Debit Note, issued under Section 34 of the Act is not an invoice issued under Section 31 of the Act. Though the terms Debit Note and Supplementary invoice are used interchangeably, Debit Note is not synonymous to an Invoice.

Further, in many places, both the words invoice and debit note are used simultaneously, which would go to prove that both these terms are not synonymous. Reference in this regard could be made to the following provisions.

Section 16 (2) (a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

Section 16 (2) (aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37.

Section 16 (4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the thirtieth day of November following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier

Rule 53 (3) Any invoice or debit note issued in pursuance of any tax payable in accordance with the provisions of section 74 or section 129 or section 130 shall prominently contain the words "INPUT TAX CREDIT NOT ADMISSIBLE.

Further, reference is also invited to sub-section (6) of section 12 and 13, which reads as below.

(6) The time of supply to the extent it relates to an addition in the value of supply by way of interest, late fee or penalty for delayed payment of any consideration shall be the date on which the supplier receives such addition in value.

This would go to prove that for any additional value received, normally the time of supply shall be the original time of supply and only in case of additional values received in the form of interest, late fee or penalty for delayed payment of consideration, a departure is made and the date of receipt of such additional value in the form of interest, late fee or penalty for delayed payment of consideration is considered as the time of supply.

It can thus be concluded that for the Debit Notes raised on or after 18.07.2022, for the supplies made prior to 18.07.2022 (for those supplies for which there is an upward price revision) tax is payable only at the old rate applicable prior to 18.07.2022.

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