Applicability of Reverse Charge Mechanism under sec 9(3) and 9(4) of CGST Act 2017 to a SEZ Unit or Developer

Objective of this write up is to share our thought process on whether RCM u/s 9(3) & 9(4) applies to SEZ unit or Developer. Most of the popular forums and websites taken a skewed view based on the following notifications and Section 51 of SEZ Act has an overriding effect on inconsistencies caused by any other laws in force.

- Notification no: 18/2017 IGST rate exempts services imported by a SEZ unit or developer from the whole of IGST payable on that transaction.
- Similarly, around the same time notification no: 64/2017 Customs Exempts goods imported by a SEZ unit or Developer from the whole of IGST Payable on that transaction.

Even though these notifications appear to be straight forward in driving the message, the catch is what is defined as Import under various relevant Law in this context to be looked in to.

Definition of Import under IGST Act 2017:

2(10)- ‘‘import of goods” with its grammatical variations and cognate expressions, means bringing goods into India **from a place outside India**

2(11)- ‘‘import of services” means the supply of any service, where

(i) **the supplier of service is located outside India;**

(ii) the recipient of service is located in India; and

(iii) the place of supply of service is in India

Definition of import under SEZ Act 2005:

2(o)- “import” means-

(i) bringing goods or receiving services, in a Special Economic Zone, by a Unit or Developer **from a place outside India** by land, sea or air or by any other mode, whether physical or otherwise; or

(ii) receiving goods, or services by, Unit or Developer from another Unit or Developer of the same Special Economic Zone or a different Special Economic Zone

Thus, its clear that import here necessarily means either goods or services must come from a place outside India i.e. supplier should be outside India. Supply from DTA (Lawyer, GTA etc) to SEZ unit or developer is not an import. Under sec 7(5) of IGST Act, Supply to or from SEZ Unit or developer is defined as “Inter-State Supply” not as “Import”. So, we can take view that these notifications doesn’t applies to supply of goods or services from DTA by SEZ.

Some of the forums and website even took a view that Supply to SEZ is a Zero-rated supply under sec 16 of IGST Act, thus no tax is payable on it. If we review sec 16 of IGST Act, its clear that Zero-rated supply is also taxable in nature with refund mechanism like with or with LUT/bond to facilitate the refund of either IGST paid or unutilised ITC on such supply. Thus, its essentially mean Zero-rated supplies are not exempted from Tax.

Lastly, Sec 51 of SEZ Act overriding impact on IGST Law is only the perspective is to be addressed. Unfortunately soon after GST implementation, SEZ law was not aligned with GST until 19th Sep 2018.

Notification No. G.S.R. 909(E) Dated: 19-9-2018 – SEZ, addressed that gap by duly inserting key philosophies of GST through SEZ(Amendment) Rules, 2018. Especially rule 30(1) by inserting Zero-rated supply as defined u/s 16 of IGST Act and rule 30(2) to include the services for the first time.

Thus, both the laws are now aligned, sec 51 of SEZ Act should not be referred to in this context.

To conclude, Reverse Charge Mechanism u/s 9(3) and 9(4) applies to SEZ unit or developer, They should recognise this as a liability and discharge the same by cash payment. Tax Burden suffered can be availed as ITC and should be refund under rule 89(2)(a)&9(b).

Hope you find this useful, you can reach out to us further for any queries

Best regards

L Durai Raj

durai@ldraj.in