

WHETHER THRESHOLD EXEMPTION IS REALLY AN EXEMPTION?

If we look at the present Central Excise Laws and Service Tax Laws, we find that there is small scale exemption wherein certain assesseees are being exempted from payment of tax if their turnover in the preceding financial year is less than the threshold limit. In case of Central Excise Laws, the levy of central excise duty is exempted upto Rs. 1.5 Crores if the turnover of the preceding financial year is less than Rs. 4 Crores. Similarly, there is no levy of service tax if the taxable value of services in the preceding financial year does not exceed Rs. 10 Lakhs. However, the government had announced that the exemptions presently available will be minimised so that a reasonable revenue neutral tax rate is achieved. But, the provisions of the final GST Law indicate that there will be no threshold exemption in the GST regime.

We submit that section 2(107) of the CGST Act defines "taxable person" as a person who is registered or liable to be registered under section 22 or section 24 thereby meaning that payment of tax is dependent on the fact who is the taxable person. Furthermore, the provisions of section 22(1) of the CGST Act, 2017 states that every supplier shall be liable to be registered under this Act in the State or Union territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds twenty lakh rupees. The above provision clearly states that a supplier is liable to be registered only if his aggregate turnover in a financial year exceeds twenty lakh rupees.

However, section 24 also states the categories of persons that are mandatorily required to get registered. The categories include persons making any inter-State taxable supply; casual taxable persons making taxable supply; persons who are required to pay tax under reverse charge etc. thereby meaning that the specified categories of persons will be required to get registration irrespective of the aggregate turnover. Say for example, a person making single supply of inter state will be liable to get registered as he will be considered as taxable person. Now, the question arises is that what is the benefit of relaxing requirement to get registered if the aggregate turnover is below twenty lakh rupees.

It is pertinent to mention here that a new provision has been introduced in the Final CGST Act, 2017 wherein as per section 9(4) if goods are supplied by unregistered person to registered person, the tax will be payable by the registered person under reverse charge mechanism. It is also worth noting that there is no monetary limit for invocation of this provision leading to conclusion that practically there is no threshold exemption in the GST regime. This is for the reason that even if the goods are procured from unregistered person, the tax will be payable by the registered person under reverse charge mechanism indicating that there is no threshold limit as such. Under the GST regime, tax will be payable by the registered person on purchase of goods from unregistered person thereby implying that the government does not intend to provide any kind of small scale exemption. However, no tax will be payable by unregistered person on supply of goods to another unregistered person if the aggregate turnover does not exceed Rs. 20 Lakhs but this will be a very rare phenomenon. It is most likely that the transportation of goods service by road will be under reverse charge mechanism which is commonly

availed by every assessee and even if tax is paid under reverse charge mechanism, the assessee will be required to get registered and will be considered as taxable person. Hence, it appears that the threshold limit of Rs. 20 Lakhs provided in section 22 (1) is illusory and rather GST will significantly enlarge the tax base of the government.

Now the next question is whether an assessee who is required to register himself due to above reason, can continue to avail the exemption upto Rs. 20 Lakh? Say for example, if he has made an inter-state supply of Rs. 100/- and now he has to pay IGST. For this reason, he will register himself with the department. But his total intra state supply is Rs. 5 Lakh only. Can he avail the exemption on next intra state supply of Rs. 15 Lakh or he has to pay tax on next intra state supply since he is registered with the department. The provisions of CGST Act underlines that since he is registered with the department then he has to pay the tax on next supply. This means that as soon as he gets register for any reason then he has to forgoe his threshold exemption and start paying the tax.