

Office of the
Commissioner of State Tax.
Maharashtra State, 8th Floor,
GST Bhavan, Mazgaon,
Mumbai-400 010.

TRADE CIRCULAR

No. JC (HQ)-1/GST/2018/CBIC Circular(s)/ADM-8 Mumbai dated 31st Dec. 2018

Trade Circular (GST) No. 39 T of 2018.

To,

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**Subject : Scope of Principal-agent relationship in the context
of Schedule I of the MGST Act**

Ref. CBIC Circular No. Circular No. 57/31/2018-GST dated
4th September 2018.

Sir/Gentlemen/Madam,

1. In terms of Schedule I of the Maharashtra Goods and Services Tax Act, 2017 (hereinafter referred to as the "MGST Act"), the supply of goods by an agent on behalf of the principal without consideration has been deemed to be a supply. In this connection, various representations have been received regarding the scope and ambit of the principal-agent relationship under GST. In order to clarify some of the issues and to ensure uniformity in the implementation of the provisions of the law across the field formations, the Commissioner of State Tax, Maharashtra State, in exercise of its powers conferred under section 168 (1) of the MGST Act hereby clarifies the issues in the succeeding paras.
2. As per section 182 of the Indian Contract Act, 1872, an "agent" is a person employed to do any act for another, or to represent another in dealings with third person. The person for whom such act is done, or who is so represented, is called the "principal". As delineated in the definition, an agent can be appointed for performing any act on behalf of the principal which may or may not have the potential for representation on behalf of the

principal. So, the crucial element here is the representative character of the agent which enables him to carry out activities on behalf of the principal.

3. The term “agent” has been defined under sub-section (5) of section 2 of the MGST Act as follows:

“agent” means a person, including a factor, broker, commission agent, arhatia, del credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another.

4. The following two key elements emerge from the above definition of agent:

- (a) the term „agent” is defined in terms of the various activities being carried out by the person concerned in the principal-agent relationship; and
- (b) the supply or receipt of goods or services has to be undertaken by the agent on behalf of the principal.

From this, it can be deduced that the crucial component for covering a person within the ambit of the term “agent” under the MGST Act is corresponding to the representative character identified in the definition of “agent” under the Indian Contract Act, 1872.

5. Further, the two limbs of any supply under GST are “consideration” and “in the course or furtherance of business”. Where the consideration is not extant in a transaction, such a transaction does not fall within the ambit of supply. But, in certain scenarios, as elucidated in Schedule I of the MGST Act, the key element of consideration is not required to be present for treating certain activities as supply. One such activity which has been detailed in para 3 of Schedule I (hereinafter referred to as “**the said entry**”) is reproduced hereunder:

“3. Supply of goods—

(a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or

(b) by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.”

6. Here also, it is worth noticing that all the activities between the principal and the agent and *vice versa* do not fall within the scope of the said entry.

Firstly, the supply of services between the principal and the agent and *vice versa* is outside the ambit of the said entry, and would therefore require “consideration” to consider it as supply and thus, be liable to GST. Secondly, the element identified in the definition of “agent”, i.e., “**supply or receipt of goods on behalf of the principal**” has been retained in this entry.

7. It may be noted that the crucial factor is how to determine whether the agent is wearing the representative hat and is supplying or receiving goods on behalf of the principal. Since in the commercial world, there are various factors that might influence this relationship, it would be more prudent that an objective criteria is used to determine whether a particular principal-agent relationship falls within the ambit of the said entry or not. Thus, the key ingredient for determining relationship under GST would be whether the invoice for the further supply of goods on behalf of the principal is being issued by the agent or not. Where the invoice for further supply is being issued by the agent in his name then, any provision of goods from the principal to the agent would fall within the fold of the said entry. However, it may be noted that in cases where the invoice is issued by the agent to the customer in the name of the principal, such agent shall not fall within the ambit of Schedule I of the MGST Act. Similarly, where the goods being procured by the agent on behalf of the principal are invoiced in the name of the agent then further provision of the said goods by the agent to the principal would be covered by the said entry. In other words, the crucial point is whether or not the agent has the authority to pass or receive the title of the goods on behalf of the principal.
8. Looking at the convergence point between the character of the agent under both the MGST Act and the Indian Contract Act, 1872, the following scenarios are discussed:

Scenario 1

Mr. A appoints Mr. B to procure certain goods from the market. Mr. B identifies various suppliers who can provide the goods as desired by Mr. A, and asks the supplier (Mr. C) to send the goods and issue the invoice directly to Mr. A. In this scenario, Mr. B is only acting as the procurement

agent, and has in no way involved himself in the supply or receipt of the goods. Hence, in accordance with the provisions of this Act, Mr. B is not an agent of Mr. A for supply of goods in terms of Schedule I.

Scenario 2

M/s XYZ, a banking company, appoints Mr. B (auctioneer) to auction certain goods. The auctioneer arranges for the auction and identifies the potential bidders. The highest bid is accepted and the goods are sold to the highest bidder by M/s XYZ. The invoice for the supply of the goods is issued by M/s XYZ to the successful bidder. In this scenario, the auctioneer is merely providing the auctioneering services with no role played in the supply of the goods. Even in this scenario, Mr. B is not an agent of M/s XYZ for the supply of goods in terms of Schedule I.

Scenario 3

Mr. A, an artist, appoints M/s B (auctioneer) to auction his painting. M/s B arranges for the auction and identifies the potential bidders. The highest bid is accepted and the painting is sold to the highest bidder. The invoice for the supply of the painting is issued by M/s B on the behalf of Mr. A but in his own name and the painting is delivered to the successful bidder. In this scenario, M/s B is not merely providing auctioneering services, but is also supplying the painting on behalf of Mr. A to the bidder, and has the authority to transfer the title of the painting on behalf of Mr. A. This scenario is covered under Schedule I.

A similar situation can exist in case of supply of goods as well where the C&F agent or commission agent takes possession of the goods from the principal and issues the invoice in his own name. In such cases, the C&F/commission agent is an agent of the principal for the supply of goods in terms of Schedule I. The disclosure or non-disclosure of the name of the principal is immaterial in such situations.

Scenario 4

Mr A sells agricultural produce by utilizing the services of Mr B who is a commission agent as per the Agricultural Produce Marketing Committee

Act (APMC Act) of the State. Mr B identifies the buyers and sells the agricultural produce on behalf of Mr. A for which he charges a commission from Mr. A. As per the APMC Act, the commission agent is a person who buys or sells the agricultural produce on behalf of his principal, or facilitates buying and selling of agricultural produce on behalf of his principal and receives, by way of remuneration, a commission or percentage upon the amount involved in such transaction. In cases where the invoice is issued by Mr. B to the buyer, the former is an agent covered under Schedule I. However, in cases where the invoice is issued directly by Mr. A to the buyer, the commission agent (Mr. B) doesn't fall under the category of agent covered under Schedule I.

9. In scenario 1 and scenario 2, Mr. B shall not be liable to obtain registration in terms of clause (vii) of section 24 of the MGST Act. He, however, would be liable for registration if his aggregate turnover of supply of taxable services exceeds the threshold specified in sub-section (1) of section 22 of the MGST Act. In scenario 3, M/s B shall be liable for compulsory registration in terms of the clause (vii) of section 24 of the MGST Act. In respect of commission agents in Scenario 4, notification No. 12/2017 State Tax (Rate) dated 29.06.2017 has exempted "services by any APMC or board or services provided by the commission agents for sale or purchase of agricultural produce" from GST. Thus, the "services" provided by the commission agent for sale or purchase of agricultural produce is exempted. Such commission agents (even when they qualify as agent under Schedule I) are not liable to be registered according to sub-clause (a) of sub-section (1) of section 23 of the MGST Act, if the supply of the agricultural produce, and /or other goods or services supplied by them are not liable to tax or wholly exempt under GST. Further, according to clause (vii) of section 24 of the MGST Act, a person is liable for mandatory registration if he makes taxable supply of goods or services or both on behalf of other taxable persons. Accordingly, the requirement of compulsory registration for commission agent, under the said clause shall arise when both the following conditions are satisfied, namely: -

- (a) the principal should be a taxable person; and

(b) the supplies made by the commission agent should be taxable.

Generally, a commission agent under APMC Act makes supplies on behalf of an agriculturist. Further, as per provisions of clause (b) of sub-section (1) of section 23 of the MGST Act an agriculturist who supplies produce out of cultivation of land is not liable for registration and therefore does not fall within the ambit of the term "taxable person". Thus a commission agent who is making supplies on behalf of such an agriculturist, who is not a taxable person, is not liable for compulsory registration under clause (vii) of section 24 of the MGST Act. However, where a commission agent is liable to pay tax under reverse charge, such an agent will be required to get registered compulsorily under section 24 (iii) of the MGST Act."

10. Difficulty, if any, in implementation of this Circular may be brought to the notice of the office of the Commissioner of State Tax, Maharashtra State.

Yours Faithfully,

(Rajiv Jalota)

Commissioner of State Tax,
(GST) Maharashtra State, Mumbai.

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Copy forwarded to the Joint Commissioner of State Tax (Mahavikas) with a request to upload this Trade Circular on the Departments Web-site.

Copy submitted with compliments to,-

- (a) The Deputy Secretary, Finance Department, Mantralaya, Mumbai-21 for information.
- (b) Accounts Officer, Sales Tax Revenue Audit, Mumbai and Nagpur.

(R. D. Bhagat)

Joint Commissioner of State Tax
(GST), (HQ)-1, Maharashtra State.