

Treading the GST Path -53

GST on TCS

(G. Natarajan, Advocate, Swamy Associates)

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5. What is the correct valuation methodology for ascertainment of GST on Tax collected at source (TCS) under the provisions of the Income Tax Act, 1961?

Section 15(2) of CGST Act specifies that the value of supply shall include "any taxes, duties cesses, fees and charges levied under any law for the time being in force other than this Act, the SGST Act, the UTGST Act and the GST (Compensation to States) Act, if charged separately by the supplier." It is clarified that as per the above provisions, taxable value for the purposes of GST shall include the TCS amount collected under the provisions of the Income Tax Act since the value to be paid to the supplier by the buyer is inclusive of the said TCS.

It is earnestly felt that the above clarification is not in tune with the legal provisions, as explained below.

Before addressing the issue, let us try to understand about the concept of TDS and TCS. Both these concepts are intended to track all transactions in the source itself, so that it is ensured that the income in the transaction is duly declared for Income Tax purposes.

TDS (Tax Deducted Source) is a buyer end activity where, the buyer, while making payment to the seller deducts some percentage of the consideration payable by him to the seller, towards the Income Tax Liability of the Seller and pays it to the Income Tax Department, against the account of the Seller. The seller, while filing his Income Tax return, determines his tax liability and while paying the same, can adjust the TDS already deducted and remitted under his account and pay the balance tax.

Example : Mr. X provides services to Mr. Y and raises an Invoice for Rs.1 lakhs. Mr. Y, while making payment to Mr.X, would deduct, say 10 %, i.e. Rs.10,000 towards TDS and pay the same to the Income Tax Department directly and pay only the balance amount of Rs.90,000 to Mr. X. Let us assume that Mr. X files his Income Tax return, declaring an Income Tax liability of Rs.25,000. Since Rs.10,000 has already been paid by way of TDS by Mr. Y, under the account of Mr. X, after adjusting the same, Mr. X would pay only an amount of Rs.15,000 as his Income Tax liability.

It may be noted that the income of Mr. X from Mr. Y remains as Rs.1 lakh only and Mr. X is liable to pay GST on such income, though he actually receives only Rs.90,000 after Rs.10,000 deducted towards TDS.

TCS (Tax Collection at Source) is a seller end activity, whereby certain specified sellers are required to collect certain amount towards the Income Tax liability of the Buyer and remit it to the Income Tax department, under the account of the buyer. This will help the Income Tax department, to verify whether the buyer is declaring commensurate income to justify the purchase.

Example: Mr. A buys a car from M/s B, for Rs.15,00,000. At the time of sale M/s B would collect TCS, say 1 % of the sale price of the car, i.e. Rs.15,000 from Mr. A and remits the same to the Income Tax department under Mr. A's account. Mr. A, while filing his income tax return and paying his income tax liability, can seek adjustment of TCS, similar to adjustment of TDS.

It may be noted that the price of the car in this case remain only at Rs.15,00,000 and the TCS amount collected by M/s B from Mr. A does not increase the price of the car.

It may be noted that neither TDS nor TCS is a "levy" of income tax. It is only an advance "collection" of income tax from the source of the transaction. When appropriate income tax is "levied" on the seller in case of TDS and buyer in case of TCS, they can seek adjustment of the TDS and TCS respectively.

Let us now look at the relevant portion of Section 15 of the CGST Act, 2017.

Section 15 (2) The value of supply shall include —

(a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;

It may be observed that only those taxes, duties, cesses, fees and charges "levied" under any law other than GST law is liable to be included in the value. For example if Sugar Cess is levied on supply of sugar, GST is payable on the price of the sugar including the Sugar Cess. If automobile cess is "levied" on sale of automobile and charged separately by the supplier, then GST is payable on such automobile cess also.

But TCS is not at all a tax "levied" either on the seller or on the buyer or on the goods being sold. It is only an advance collection of Income Tax payable by the Buyer. If the buyer has Income Tax liability, TCS will be adjusted against it and if the buyer is not having income tax liability, the TCS collected shall be refunded to him by the Income Tax department.

Thus, it is felt that the above clarification to the effect that GST is payable on TCS component also, is not in line with the legal provisions.

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