

Applicability of E-Invoicing



Hotel & Restaurant Association (Western India)

Exclusively for members of HRAWI

(Private Circulation to HRAWI members only)

LEGAL OPINION

Querist: Hotel & Restaurant Association (Western India)

... Ex-Parte

Brief Facts

- 1.1 Hotel & Restaurant Association (Western India) (hereinafter referred to as the 'querist') is an Association of hotels and restaurants in Western India. Its members include smaller Hotels up to 5-Star Deluxe categories. The querist assists in promotions & operations of any hotel and restaurant and/or members, in providing information on various aspects such as applicability of laws, tax matters, labour, liaison with the tourist department, foreign exchange & import licensing, among other legal and policy matters.
- 1.2 The querist has shown us a copy of Notice dated 09.01.2024 sent by the GST Authority to one of the querist's members vide which the member has been alleged to have generated less number of e-invoices or not generated e-invoices and is hence, defying the intent of implementation of invoices through e-invoicing under Rule 48(4) of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as 'the CGST Rules, 2017'). We are informed that such notices have been received by several member. Accordingly, querist has approached us seeking our opinion on the validity of such notices and other issues relating to e-invoicing.
- 1.3 We have perused the email note and the notice shown to us. For all practical purposes, the same shall be treated as part and parcel of the present opinion. The present opinion is for internal circulation purposes only.

Discussion

- 2.1 Central Goods and Services Tax Act, 2017 (hereinafter referred to as 'the CGST Act') has come into effect from 01.07.2017. Chapter III of the said Act provides for levy and collection of GST. Section 7 of the CGST Act provides for the scope of supply. It is, inter alia, provided that "supply" includes: (a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;
- (b) import of services for a consideration whether or not in the course or furtherance of business; (c) the activities specified in Schedule I, made or agreed to be made without a consideration; and

(d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II. Clause (d) has, now, with effect from 01.02.2019, rechristened as new sub-section (1A).

- 2.2 Section 9 is the charging section. It provides for levy of tax called the CGST on all intra-state supplies of goods or services or both and at such rates, as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.
- 2.3 Section 15 provides for the value of supply. It provides that value of supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for said supply of goods and services or both.
- 2.4 Section 31 provides for issuance of tax invoice or a bill of supply for every supply of goods or services or both. It is necessary for a person supplying goods or services or both to issue invoice. The type of invoice to be issued depends upon the category of registered person making the supply.
- 2.5 Chapter VI of the CGST Rules, 2017 provides for Tax Invoice, Credit and Debit Notes. Rule 46 of the CGST Rules, 2017 provides for the particulars that are to be mentioned in an invoice. Relevant portion of Rule 46 reads as thus:

“Rule 46. Tax invoice.-

Subject to rule 54, a tax invoice referred to in section 31 shall be issued by the registered person containing the following particulars, namely,-

(a) name, address and Goods and Services Tax Identification Number of the supplier;

(b) a consecutive serial number not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters- hyphen or dash and slash symbolised as "-" and "/" respectively, and any combination thereof, unique for a financial year;

(c) date of its issue;

(d) name, address and Goods and Services Tax Identification Number or Unique Identity Number, if registered, of the recipient;

(e) name and address of the recipient and the address of delivery, along with the name of the State and its code, if such recipient is un-registered and where the value of the taxable supply is fifty thousand rupees or more;

(f) name and address of the recipient and the address of delivery, along with the name of the State and its code, if such recipient is un-registered and where the value of the taxable supply is less than fifty thousand rupees and the recipient requests that such details be recorded in the tax invoice

(g) Harmonised System of Nomenclature code for goods or services;

(h) description of goods or services;

(i) quantity in case of goods and unit or Unique Quantity Code thereof;

(j) total value of supply of goods or services or both;

(k) taxable value of the supply of goods or services or both taking into account discount or abatement, if any;

(l) rate of tax (central tax, State tax, integrated tax, Union territory tax or cess);

(m) amount of tax charged in respect of taxable goods or services (central tax, State tax, integrated tax, Union territory tax or cess);

(n) place of supply along with the name of the State, in the case of a supply in the course of inter-State trade or commerce;

(o) address of delivery where the same is different from the place of supply;

(p) whether the tax is payable on reverse charge basis; and

(q) signature or digital signature of the supplier or his authorised representative; and

(r) Quick Response code, having embedded Invoice Reference Number (IRN) in it, in case invoice has been issued in the manner prescribed under sub-rule (4) of rule 48].

(s) a declaration as below, that invoice is not required to be issued in the manner specified under sub-rule (4) of rule 48, in all cases where an invoice is issued, other than in the manner so specified under the said sub-rule (4) of rule 48, by the taxpayer having aggregate turnover in any preceding financial year from 2017-18 onwards more than the aggregate turnover as notified under the said sub-rule (4) of rule 48-

"I/We hereby declare that though our aggregate turnover in any preceding financial year from 2017-18 onwards is more than the aggregate turnover notified under sub-rule (4) of rule 48, we are not required to prepare an invoice in terms of the provisions of the said sub-rule."

2.6 From the above it can be seen that Rule 46 of the CGST Rules, 2017 provides for the particulars that are to be mentioned in a tax invoice. It is worthwhile to note that under the GST law, there is no format prescribed for an invoice. Therefore, the assessee is free to choose the form of the invoice subject to the particulars mentioned under Rule 46 of the CGST Rules, 2017.

2.7 Rule 47 of the CGST Rules, 2017 provides for the time limit for issuing tax invoice. Rule 48 of the CGST Rules, 2017 provides the manner of issuing tax invoice. Thus, it can be seen that Rule 48 is a procedural provision. Rule 48(4) provides for an exception which states that an invoice shall be prepared by the Government, on the recommendations of the Council, by including such particulars contained in FORM GST INV-01 after obtaining an Invoice Reference Number by uploading information contained therein on the GST Portal in such manner and subject to such conditions and restrictions as may be specified in the notification.

2.8 Accordingly, Notification No. 70/2019-CT dated 13.12.2019 effective from 01.04.2020 was issued. The Government on the recommendations of the Council has notified that a registered person, whose aggregate turnover in a financial year exceeds Rs. 100 crore, as a class of registered person who shall prepare invoice in terms of Rule 48(4) in respect of supply of goods or services or both to a registered person. The said Notification has been superseded by Notification No. 13/2020-Central Tax dated 21.03.2020. Notification No. 13/2020-CT dated 21.03.2020 has been amended vide various amending Notifications and vide recent Notification No. 10/2023-CT dated 10.05.2023, the hitherto turnover threshold has been reduced to Rs. 5 crore for applicability of e-invoicing with effect from 01.08.2023.

Our Opinion

3.1 In view of the above, the querist has raised the following queries for our opinion. Our opinion is as under:

- (a) Whether the transaction between hotel owners or restaurant owners and their customer would constitute a B2B transaction?

Ans: On perusal of the Notification dated 21.03.2020, it is seen that the said Notification will apply only in respect of supply of goods or services or both to a registered person. Thus, it is evident that if the goods or services or both are supplied to an unregistered person, the conditions mentioned in the Notification dated 21.03.2020 will not apply. For this purpose, we may refer to Notification No. 14/2020-CT dated 21.03.2020 as amended by Notification No. 71/2020-CT dated 30.09.2020. This Notification provides that an invoice will be issued by a registered person whose aggregate turnover for any preceding financial year from 2017-18 onwards exceeds Rs. 500 crore to an unregistered person (hereinafter referred to as 'B2C invoice') shall have a Dynamic Quick Response (QR) code.

Thus, it is evident that the Government itself has recognized B2B supply and B2C supply on a different footing. Thus, Notification dated 21.03.2020 amended vide Notification No. 10/2023-CT dated

10.05.2023 will apply only in the case of B2B transaction i.e., where the supplies are made by one registered person to another registered person. In other words, where the customer provides its GST registered address and GST registration number, irrespective of the fact whether credit is available or not, such supply would be considered as B2B transaction.

Thus, if in case the transaction is between the hotel/restaurant and a registered person/entity then such transaction will be B2B supply. However, if in case the transaction is between the hotel/restaurant and an unregistered person/entity then such transaction will be B2C supply.

We may refer to Clarification on E-invoices under GST issued by Director General of Taxpayer Services (CBIC) updated as on November 2023.

- (b) Whether the Notification cited in the attached notice is now applicable to hotels and restaurants with turnover above 5 crores?

Ans: The threshold limit for E-invoicing has been reduced to annual aggregate turnover of Rs 5 crore with effect from 01.08.2023 as per Notification No. 10/2023-CT dated 10.05.2023. As per Section 2(6) of the CGST Act, "aggregate turnover" means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and inter-State supplies of persons having the same Permanent Account Number, to be computed on all India basis but excludes central tax, state tax, Union territory tax, integrated tax and cess. Therefore, on basis of the said notification, if the annual aggregate turnover of a hotel or a restaurant is Rs 5 crore then the respective hotel or restaurant will have to generate e-invoices in case of B2B supply.

- (c) The usual practice is that corporate customers end up taking invoices from the hotels and the other customers who are individuals do not take any invoice. Therefore, would it be correct to say that the requirement for E-invoice would trigger only when an invoice is passed on to a corporate customer?

Ans: As discussed in response to Query (a), Notification dated 21.03.2020 relating to generation of e-invoices is applicable to registered person who supplies goods or services or both to another registered person. If the goods or services or both are supplied to an unregistered person, the conditions mentioned in the Notification dated 21.03.2020 will not apply. Therefore, the requirement

of e-invoice will only be triggered when an invoice is passed on to a corporate customer, i.e., a registered person under GST.

(d) In that case what is the procedure to be adopted?

Ans: The hotels/restaurants having annual aggregate turnover of Rs 5 crore who are required to generate e-invoice in case of B2B supply, is to do so by uploading all the B2B invoices to the Invoice Registration Portal (IRP). The IRP generates and returns a unique Invoice Reference Number (IRN), digitally signed e-invoice and QR code to the user. Then, invoice can be issued to the receiver along with QR code.

(e) Assuming that members have not yet started issuing the invoices, what kind of reply can be given to the department.

Ans: A reply can be filed to the Department based on the answer to the above queries.

(f) Whether in case a Restaurant charged GST @ 5 % and the turnover in the preceding year has been over Rs 5 Cr, is there a requirement to issue E Invoice to a registered person, if so demanded?

Ans: As per Notification dated 21.03.2020 amended vide Notification No. 10/2023-CT dated 10.05.2023, it is mandatory for registered persons that have an annual aggregate turnover of over Rs. 5 crore in any previous financial year to implement e-invoicing. Therefore, if in case a restaurant charged GST @ 5 % and the turnover in the preceding year has been over Rs 5 Cr, it is required to issue e-invoice to a registered person to whom it has supplied goods or services or both.

The above notification, as explained above, refers to aggregate turnover in a financial year. It does not provide that aggregate turnover should be relating to previous financial year. The Notification will be applicable if aggregate turnover exceeds prescribed threshold in any financial year. Thus, if the at exceeds Rs 5 crore

in any of the financial year preceding 01.08.2023, such hotel/member would be required to follow the process of e-invoicing.

Advised Accordingly

Bharat Raichandani
Advocate

Partner
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Advocates

Place: Mumbai / Date: 31.01.2024

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