

Pure Agent Concept in GST

Introduction

The GST Act defines an Agent as 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.

So, who is a pure agent and why is a pure agent relevant under GST? Broadly, speaking a pure agent is one who while making a supply to the recipient, also receives and incurs expenditure on some other supply on behalf of the recipient and claims reimbursement (as actual, without adding it to the value of his own supply) for such supplies from the recipient of the main supply. While the relationship between them (provider of service and recipient of service) in respect of the main service is on a principal to principal basis, the relationship between them in respect of other ancillary services is that of a pure agent.

Let's understand the concept by taking an example. A is an importer and B is a Custom Broker. A approaches B for customs clearance work in respect of an import consignment. The clearance of import consignment and delivery of the

consignment to A would also require taking service of a transporter. So A, also authorises B, to incur expenditure on his behalf for procuring the services of a transporter and agrees to reimburse B for the transportation cost at actuals. In the given illustration, B is providing Customs Brokers service to A, which would be on a principal to principal basis. The ancillary service of transportation is procured by B on behalf of A as a pure agent and expenses incurred by B on transportation should not form part of value of Customs Broker service provided by B to A. This, in sum and substance is the relevance of the pure agent concept in GST.

RELEVANCE OF PURE AGENT UNDER GST

The concept is borrowed from the erstwhile Service Tax Determination of Value Rules, 2006 and carried forward under GST. Under the GST Valuation Rules 2017 pure agent is given the following meaning.

“pure agent” means a person who -

- a) enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;
- b) neither intends to hold nor holds any title to the goods or services or both, so procured or provided as pure agent of the recipient of supply;
- c) does not use for his own interest such goods or services so procured; and

- d) receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.

The important thing to note is that a pure agent does not use the goods or services so procured for his own interest and this fact has to be determined from the terms of the contract. In the illustration of importer and Customs Broker given above, assuming that the contract was for clearance of goods and delivery to the importer at the price agreed upon in the contract. In such case, the Customs Broker would be using the transport service for his own interest (as the agreement requires him to deliver the goods at the importers place) and thus would not be considered as a pure agent for the services of transport procured.

Another important fact is that, the person who provides any service as a pure agent receives only the actual amount for the services provided. Coming back to our example of Importer and Customs Broker, the agreement provides reimbursement of transport services utilised at actuals. In this case, let's say the value of transport service was Rs.10,000/-. If the Customs Broker charges any amount more than Rs.10,000/-, then he will not be considered as a pure agent for the services of transport and the value of transport service will be included in the value of his Customs Broker service.

EXCLUSION FROM VALUE

Expenditure incurred as pure agent becomes relevant, when it comes to determining the value of a supply for levy of

GST. The preceding para explains who will be considered as a pure agent. The valuation rules provide that expenditure incurred as pure agent, will be excluded from the value of supply, and thus also from aggregate turnover. However, such exclusion of expenditure incurred as pure agent is possible only and only if all the conditions required to be considered as a pure agent and further conditions stipulated in the rules are satisfied by the supplier in each case.

The supplier would have to satisfy the following conditions (in addition to the condition required to be satisfied to be considered as a pure agent) for exclusion from value as under:-

- i. the supplier acts as a pure agent of the recipient of the supply, when he makes payment to the third party on authorization by such recipient;
- ii. the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and
- iii. the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.

In case the conditions are not satisfied, such expenditure incurred shall be included in the value of supply under GST.

The following illustration will make the concept clearer.

- Corporate services firm A is engaged to handle the legal work pertaining to the incorporation of Company B.
- Other than its service fees, A also recovers from B, registration fee and approval fee for the name of the company paid to Registrar of the Companies.
- The fees charged by the Registrar of the companies, registration and approval of the name are compulsorily levied on B.
- A is merely acting as a pure agent in the payment of those fees.
- Therefore, A's recovery of such expenses is a reimbursement and not part of the value of supply made by A to B.

Some examples of pure agent are:

1. Port fees, Port charges, Custom duty, dock dues, transport charges etc. paid by Customs Broker on behalf of owner of goods.
2. Expenses incurred by C& F agent and reimbursed by principal such as freight, godown charges.

Illustration:

Suppose a Customs Broker issues an invoice for reimbursement of a few expenses and for consideration towards agency service rendered to an importer. The amounts charged by the Customs Broker are as below:

S/No.	Component charged in invoice	Amount
1	Agency Income	Rs. 10, 000/-
2	Traveling expenses ; Hotel expenses	Rs. 15,000/-
3	Customs Duty	Rs. 55,000/-
4	Docks Dues	Rs. 5000/-

In the above situation, agency income and travelling/hotel expenses shall be added for determining the value of supply by the Customs Broker whereas Docks dues and the Customs Duty shall not be added to the value provided the conditions of pure agent are satisfied.

CONCLUSION

A pure agent concept is an important one for businesses as it has direct implications on the value of taxable service. It has direct bearing on the amount of GST charged on a particular supply. It also has bearing on the aggregate turnover of the supplier and therefore on calculating the threshold limit for registration. Whenever the intention is to act as a pure agent, care should be taken to ensure that the conditions specified for such pure agents and further conditions given in the valuation rules are also met so that only the real value of the service provided is subjected to GST.
