



Lawgics

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Section 86 of CGST Act, 2017



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86. Liability of agent and principal.

Where an agent supplies or receives any taxable goods on behalf of his principal, such agent and his principal shall, jointly and severally, be liable to pay the tax payable on such goods under this Act.

Our Interpretation

Section 86

This section directly casts the liability on a principal, in addition to the liability of the agent who effects the supply of taxable goods on behalf of principal or procures taxable goods on behalf of his principal.

In cases where –

- Taxable Goods are supplied by agent on behalf of principal; or
- Taxable Goods are procured by agent on behalf of principal;

the agent is primarily liable for tax. However, by virtue of this provision, both agent and principal are jointly and severally made liable to pay for tax payable on such supplies.

This section is meant to provide recourse to the Government against either of them or not necessarily only upon default by the principal obligor. The Government is free to recover dues from either of them or both (up to the total dues only) without having to exhaust its remedies against the one who was principally liable (principal obligor) and then only proceed against the other. There is no compulsion that the Government should have exhausted its remedies against the Principal to proceed against the Agent, that is the effect of joint-and-several.

Liability of the principal who effects supplies through an agent or a principal who receives supplies through an agent, does not end as soon as he (principal) pays tax on the supply made by him to agent for further supply; instead the liability in the hands of the principal continues till the time a further supply is made by agent – say to the final customer (B2B or B2C) and tax is duly discharged by agent on the said supply. This means that the principal needs to keep a track of compliance by an agent apart from the compliance requirements to be followed by him under the GST law, which is an added burden in the hands of principal.

Circular No. 57/31/2018 dated 04.09.2018 rectified with a corrigendum to the circular issued on **05.11.2018** states that an agent shall be liable to compulsorily register if he fulfils two conditions:

- (a) The principal should be a taxable person; and
- (b) The supply made by the commission agent should be taxable.

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