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GOODS AND SERVICES TAX: WHAT ONE SHOULD KNOW?

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ABSTRACT

The Goods and Services Tax (GST) is indeed be an additional important perfection – the next logical step-towards a widespread indirect tax reforms in the country. Initially, it was conceptualized that there would be a national level goods and services tax, however, with the release of First Discussion Paper by the Empowered Committee of the State Finance Ministers on 10.11.2009, it has been made clear that there would be a "Dual GST" in India, taxation power- both by the Centre and the State to levy the taxes on the Goods and Services. Almost 150 countries have introduced GST in some form. GST rates of some countries are given below. Country Australia France Canada Germany Japan Singapore Sweden New Zealand Rate of GST 10% 19.6% 5% 19% 5% 7% 25% 15% World over in almost 150 countries there is GST or VAT, which means tax on goods and services. Under the GST scheme, no distinction is made between goods and services for levying of tax. This paper is an analysis of what the impact of GST (Goods and Services Tax) will be on Indian Tax Scenario.

KEYWORDS: *Goods and Services Tax (GST), Levying of Tax, Indirect Tax, Indian Tax Scenario.*

Introduction

The author of the article is an Advocate by profession and is also a Fellow Member of the Institute of Chartered Accountants of India, presently a research scholar, pursuing Ph. D on the same subject . As GST has its seeds in the soil of Indian economy w.e.f. 01.07.2017, the need to study the subject has become imperative. The author has attempted to present the subject in a birds eye view and as a quick roundup of what one should know about GST in brief.

Constitutional Amendments

GST could not have been implemented in the absence of necessary amendments to the Constitution of India which grants the authority to Centre and States and UTs to levy taxes. As a result, One Hundred and First Amendment Act, 2016 was introduced to insert three Articles i.e. 246A, 269A and 279A, omit Article 268A and amend ten articles namely 248, 249, 250, 268, 269, 270, 271, 286, 366 and 368. The Constitutional Amendment has conferred concurring taxing powers on the Union as well as the states. GST hence bears the authority of law.

Statutes

In India, the dual GST model has been adopted where under GST has two components viz. The Central GST to be levied and collected by the Centre, The state GST to be levied and collected by the respective States/UTs subsuming most of the Indirect taxes being levied. Further, for the interstate transactions; an Integrated GST (IGST) has been levied. An Act namely GST (Compensation to States) Act, 2017 has been enacted to compensate the states for the loss of revenue due to the levy of GST.

Extent of GST Law

The Central Goods and Services Tax (CGST) Act, 2017 extends o the whole of India w.e.f. 01.07.2017 and all the states including Jammu and Kashmir and Delhi and Pondicherry Unions Territories have enacted respective State/UT GST Acts and for other UTs, the Parliament has enacted UTGST Act, 2017. For the interstate supplies, IGST Act, 2017 has been enacted.

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Levy and Collection of Tax

Taxable event in case of GST is "Supply of goods and services". The charging section 9 of the CGST and SGST Acts authorizes the levy and collection of CGST/SGST on all intra state supplies of Goods and services or both, except on the supply of alcoholic liquor for human consumption. Items like petroleum crude, high speed diesel, motor spirit, natural gas and aviation turbine fuel have been kept away from this levy and IGST is levied on interstate supply and import of goods. All forms of supply like sale, transfer, exchange, rental, lease, barter etc. are covered under supply and such supply should be made for consideration. Presently the supplies have been taxed under four different rates (including CGST and Sate/UT GST) viz %, 12%, 18%, 28%, 3% and 0.25%, wherein 50% of the rates are under CGST and 50% under State/ UT GST. Tax is levied on the Interstate supply of Goods u/s 5 of the IGST Act with maximum rate of 40%. Apart from these basic levies, Compensation Cess may be imposed on the recommendation of the GST Council on certain intra state or interstate supply of goods or services or both. The terminology of Composite Supply and Mixed supply has been used in section 8 of the CGST Act whereby a composite supply of two or more supplies shall be treated as supply of the principal constituent of such supply but a mixed supply of two or more supplies is to be treated as supply of that particular supply which attracts the highest rate of tax. On certain goods and services, tax is levied on a reverse charge basis, i.e. the recipient of goods or services is liable to pay tax rather than the supplier. Goods like unpeeled and unshelled cashew nuts, Bidi wrapper leaves, silk yarn, lottery and services like Goods Transport Agent, Advocacy, Arbitral services, sponsorship, and services supplied by Government, director of company, insurance agent, recovery agent, author, music composer etc. are covered under reverse charge. Further, all intra state supplies from unregistered person are taxable under reverse charge subject to an exemption of Rs. 5000/- per day. A threshold limit of Rs. 20 Lakhs (Rs. 10 Lakhs for special category states) has been fixed for the purposes of levy. However, this SSI benefit is not available to person who is required to pay tax under reverse charge. Yet another form of payment of levy prescribed under GST law is the Composition levy which is applicable to tax payers whose yearly aggregate turnover of goods in the preceding financial year did not exceed Rs 75 Lakhs (Rs. 50 Lakhs in case of special category states). Such taxpayers can pay composition tax at fixed rates which are as meager as 1% to 5% including CGST and SGST, subject to conditions and restrictions.

Taxes Subsumed

Through the levy of GST, the following taxes have been sought to be subsumed and will no longer be applicable w.e.f. 01.07.2017. Taxes levied and collected by the Centre:

- Central Excise duty (with some exceptions)
- Duties of Excise (Medicinal and Toilet Preparations)
- Additional duties of Excise (Goods of Special Importance)
- Additional duties of Excise (Textile and Textile Products)
- Additional duties of Customs (commonly known as CVD)
- Special Additional Duty of Customs (SAD)
- Service Tax
- Central Surcharges and Cesses so far as they relate to supply of goods and services

Taxes levied and collected by the states:

- State VAT
- Central Sales Tax
- Luxury Tax
- Entry Tax (all forms)
- Entertainment and Amusement Tax (except when levied by the local bodies)
- Taxes on advertisements
- Purchase Tax
- Taxes on lotteries, betting and gambling
- State Surcharges and cessses so far as they relate to supply of goods and services

Supply of Goods and Services

Supply as per Section 7 of the CGST Act, 2017 includes all forms of supply of Goods and 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 of furtherance of business. It includes import of services for a consideration whether or not in the course of furtherance of business. Certain activities specified in Schedule I of the Act, even made or agreed to be made without a consideration are treated as supply. Such deemed supplies include permanent transfer or disposal of business assets where input tax credit has been availed, supplies between related or distinct persons or between principal and agent, import of services by taxable person from related person outside India. However, certain activities as mentioned in Schedule III have been treated as neither supply of goods nor services and hence are non taxable. Such negative list of supplies includes services by employees, by any court or tribunal, funeral/burial services including transportation of the deceased sale of land and building, actionable claims other than lottery, betting, gambling etc. No tax is thus levied on such supplies.

Time of Supply

- **Normal Supply of Goods:** The time of supply of goods, when liability to pay tax arises shall be the date of issue of invoice by the supplier or the last date on which he is required to issue invoice or the date on which the supplier received payment of supply, whichever is earlier.
- **Normal Supply of Services:** The time of supply of services shall be the date of issue of invoice by the supplier or the date of receipt of payment, whichever is earlier, or the date of provision of service or the date of receipt of payment, whichever is earlier, or the date on which the recipient shows the receipt of services in his books of accounts.
- **Reverse Charge Supplies of Goods:** In case of supplies where recipient is liable to pay tax, the time of supply of goods is the date of receipt of goods or date of payment as entered in the account books of the recipient or the date immediately following thirty days from the date of issue of invoice whichever is earlier.
- **Reverse Charge Supplies of Services:** In case of supplies where recipient is liable to pay tax, time of supply of services is the date of payment as entered in the books of accounts of the recipient or the date immediately following sixty days from the date of issue of invoice.
- **Voucher Supply:** In this case, the time of supply is (a) the date of issue of voucher, if the supply is identifiable at that point, or (b)the date of redemption of voucher, in all other cases.
- **Other Supplies**: In residuary cases, where the time of supply is not determinable by these provisions, the time of supply is (a) in a case where periodical return has to be filed, the date on which such return is to be filed; or (b) in any other case, the date on which the tax is paid.

Value of Taxable Supply

Value of supply of goods or services shall be the transaction value, the price actually paid or payable where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply. The value of supply thus includes all taxes, duties, cesses, fees and charges levied under any law for the time being in force, other than the Acts under GST regime, if charged separately by the supplier, but does not include any pre determined discounts. Any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient and not included in the price actually paid or payable shall be included in the value of supply.

Input Tax Credit

The Input Tax Credit (ITC) is the backbone of the GST regime. Every registered person is entitled to take credit of the tax paid on input goods/supplies used or intended to be used in the course of furtherance of his business, by taking credit in Electronic Register prescribed for this purpose subject to fulfillment of certain conditions and restrictions. A person who has applied for registration is entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi finished or finished goods held in stock. In cases where the goods or services are used partly for business and partly for other purposes, then the amount of credit is restricted to input tax attributable to the tax on goods or services or both used for business purposes only. The input tax credit is however available only until one year from the date of issue of tax invoice relating to such supply with respect to which ITC is claimed. . The ITC is available on inputs or capital goods or both, even if such goods are sent to a job worker for job work, subject to certain conditions. Utilization of ITC- The ITC on account of CGST shall first be utilized towards payment of output CGST and then towards payment of output IGST and that of SGST shall be first utilized towards payment of output SGST and then towards payment of IGST. The ITC on account of CGST cannot be utilized towards payment of output CGST and vice versa. ITC on account of IGST can however be utilized towards payment of IGST, CGST and SGST in that order.

Input Service Distributor

The input Service Distributor (ISD) means an office of the supplier of goods or services or both which receives tax invoices towards the receipt of input services and issues a prescribed document for the purposes of distributing credit of Central tax, state tax, integrated tax or UT tax paid on said services to a supplier of taxable goods or services or both having the same PAN as that of the said office. Such distribution of Input tax credit can be done by the ISD by way of issue of a document containing prescribed details, subject to certain conditions and restrictions.

Registration

Every supplier who exceeds the exemption threshold limit is liable to be registered in the State or UT from where he makes a taxable supply of goods or services. However, persons engaged exclusively in the business of supplying non taxable or wholly exempt goods or services are not liable for registration. Certain persons like those making interstate taxable supplies, casual taxable persons, persons liable to pay tax under reverse charge, Non Resident taxable persons, persons required to deduct tax at source u/s 51, persons rendering taxable supplies on behalf of other taxable persons, ISDs, E-commerce operators etc. are liable to seek registration compulsorily.

Accounts and Records

A registered person is required to maintain, at his principal place of business, accounts of production or manufacture of goods; inward and outward supply of goods or service or both, stock of goods, input tax credit availed; output tax payable and paid; and other prescribed particulars. The records are required to me kept for a period of six years from the due date of furnishing of annual return.

Returns

Every registered person is required to furnish, electronically, in prescribed form, the details of outward supplies of goods and services during a month/quarter by the tenth day of the following month. . Similarly he is also required to furnish the details of inward supplies of goods and services on which tax is payable on reverse charge basis. Tax is payable in respect of the unmatched details of inward supplies on the electronic platform. Every registered person paying tax required deducting tax and ISDs are required to furnish returns on monthly basis and are entitled to take credit of input tax which can be utilized for the payment of self assessed output tax. Annual return for every financial year is to be submitted annually y the end of December after the close of Financial Year. There are a plethora of Forms including mainly 11 returns in Forms GSTR-1 to GSTR-11 and their off shoots and more forms and returns for matching of ITC which have to be submitted electronically.

Payment of Tax, Interest, Penalty and Other Amount

Payments made by registered personas shall be credited to the electronic cash ledger and can be used for making payment towards tax, interest, penalty, fees etc. . The ITC as per the return furnished is credited to the electronic credit register and can be used for making payment towards output tax under CGST Act or IGST Act. The utilization of credit available can be done subject to restrictions mentioned earlier. In respect of the delay in payment of tax, or an undue or excess claim of input tax credit, interest is liable to be paid @ 18%. There are seven kinds of forms/registers/ledgers including three main registers viz Electronic Cash register, Electronic Credit Register and Electronic liability register which are prescribed for the purpose of payment.

Conclusion

To summarize, it may be said that the last day of June, 2017 marked the beginning of a new era in Indian economy as GST got rolled out. It is not only one of India's biggest economic reforms but a social reform too, that is all set to transform the country by increasing tax compliance and dramatically reducing the burden on the poor. Finally the dream of "One Nation, one tax" has become a reality. It is mark of Cooperative federalism which has seen the Centre and State join hands for a noble cause-for the biggest tax reform in the history of Indian economy. But this bundle of joy comes with its own share of sorrows-the tax is a welcome feature and statutory provisions seem to be taking full care of the anticipated hardships, the technology based tax is in, but the administration of tax and its implications are a big challenge. Questions like was it the right time?, was it imperative? Is it going to benefit the economy at large? Is the business community technologically ready and educated? Is it really One tax for the nation and likewise have cropped up ever since GST got implemented w.e.f. 01.07.2017. So is the time to pause and think, and reflect on the challenges ahead, soon after the launch of GST.

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