

CA. M. Devaraja Reddy
President



THE INSTITUTE OF CHARTERED
ACCOUNTANTS OF INDIA
(Set up by an Act of Parliament)
'ICAI Bhawan', Indraprastha Marg
New Delhi - 110 002, INDIA

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10th August, 2016

Shri Arun Jaitley,
Hon'ble Finance Minister,
Ministry of Finance,
Government of India,
North Block,
New Delhi-110 001



Respected Sir,

Sub: Suggestions on Model GST Law

We refer to the Model GST Law issued by Government inviting comments, suggestions or feedback on the same.

We consider it a privilege to submit herewith our suggestions on the Model GST Law including suggestion to give seamless credit, restriction on discretionary powers of the officers, enhancing basic exemption limit, etc. We have taken our best efforts to address the possible issues that may arise

We shall be glad to provide any further input as may be required.

With best regards

Yours faithfully,

CA. M. Devaraja Reddy

Encl.: As above.

SUGGESTIONS ON MODEL GST LAW



Indirect Taxes Committee
THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
NEW DELHI



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I. INTRODUCTION

The Institute of Chartered Accountants of India (ICAI) considers it a privilege to submit the Suggestions on the Model GST Law to the Government of India.

The Memorandum contains suggestions on issues relating to leviability, registration, credit mechanism, transitional issues etc. for the consideration of the Government while framing the final GST Law. We believe that addressing the said issues would make GST laws simple, fair and transparent and avoid litigation.

In case any further clarifications or data is considered necessary, we shall be pleased to furnish the same.

The contact details are:

Name and Designation	Contact Details	
	Ph. No.	Email Id
CA. Madhukar N. Hiregange, Chairman, Indirect Taxes Committee	9845011210	mhiregange@gmail.com , madhukar@hiregange.com
CA. Sharad Singhal, Secretary, Indirect Taxes Committee	09310542608 0120-3045954	idtc@icai.in



II. EXECUTIVE SUMMARY

S. No.	Topic(s)	Suggestion(s)
1.	Aggregate Threshold limit for Registration under GST	➤ It is suggested that the definition of aggregate turnover be suitably amended so as to exclude the value of exempt & non-taxable supplies from aggregate turnover
2.	Exclusions from definition of aggregate turnover	➤ It is suggested that the explanation to the definition of aggregate turnover be suitably amended to replace the word " levied " with " payable " as tax is payable under reverse charge
3.	Definition of Business Vertical	➤ The reference of AS 17 in Business Verticals definition be replaced with Ind AS 108
4.	Definition of "export of goods"	➤ It is suggested that - to remove any possible ambiguity, the words " of the goods " be inserted immediately after the word " taking out ".
5.	Taxation of Electricity not be included in GST	➤ It is suggested that the aspect of taxation of electricity be suitably clarified under GST regime, and certainly be kept outside the purview of GST
6.	Definition of Inputs & Input Services	➤ It is suggested that the definition be kept at par with section 2(57) & section 16 of the model law and accordingly the words "by a supplier for making an outward supply" be deleted in both the definitions i.e. section 2(54) and section 2(55).
7.	Correction of definition of "Input Tax Credit"	➤ The anomaly in the definition of "Input Tax Credit" be corrected and section 2(56) be replaced with section 2(57).



S. No.	Topic(s)	Suggestion(s)
8.	Definition of term "Manufacturer"	➤ It is suggested that definition provided in section 2(f)(i) of Central Excise Act, 1944 be reproduced under GST Law and no reference be made to the Excise Act which is intended to be repealed.
9.	Meaning of "Substantial Interest" under the definition of "Related Person"	➤ It is suggested that the percentage of direct or indirect control or holding of the outstanding voting stock or shares of both of them be increased from 5% to 20%
10.	Definition of Term "Service"	➤ It is suggested to provide a comprehensive definition of the term "services" so as to avoid interpretational issues like in case of land.
11.	Definition of "Works Contract"	➤ In order to cover manufacture, processing, maintenance contracts under the aegis of deemed supply of services and to make them taxable as per the provisions of model GST law it is suggested that the definition of term "works contract" be amended to substitute the word 'means' by the word "includes" and add the words manufacture, processing, maintenance therein.
12.	Definition of "Inter-state Taxable Supply"	➤ It is suggested to define the term "Inter-state Taxable Supply" as the same has not been defined in the Model Law or the IGST Law. This would also provide correct interpretation and the true meaning of the term

S. No.	Topic(s)	Suggestion(s)
13.	Definition of Words "Captive Plant including mines" and "Captive use"	<ul style="list-style-type: none"> ➤ <i>It is suggested that the terms "Captive plants" & "Captive use" be suitably defined to put to rest the anomalies.</i> ➤ <i>Further, if they are considered as a part of Capital Goods then suitable input tax credit provisions must be provided for</i>
14.	Definition of "Supply"	<ul style="list-style-type: none"> ➤ <i>It is suggested that the words "Except as provided otherwise, supply includes....." be used in place of the words "Supply includes" under section 3.</i> ➤ <i>Instead of having different class of supplies like supplies by agents, aggregator services under section 3, all the forms of deemed supplies be included in a single Schedule say Schedule 1</i>
15.	Authority to Central / State Government to notify a transaction as Supply	<ul style="list-style-type: none"> ➤ <i>It is suggested that Recommendation of the Council be made mandatory as Council will take into account pros & cons involved in a particular transaction to treat / or not treat it as supply.</i> ➤ <i>It is suggested that all the States be treated at par as far as recommendations of the council are concerned i.e. provisions be similar for all States and not left to the discretion of the States</i>
16.	Taxability of Importation of Services for personal use	<ul style="list-style-type: none"> ➤ <i>It is suggested that importation of services which are not in the course or furtherance of business be kept outside the purview of GST</i>



S. No.	Topic(s)	Suggestion(s)
17.	Movement of goods within same business not to be treated as supply	<ul style="list-style-type: none"> ➤ <i>The supply of capital goods (whether to own depot or to the customer) be kept outside the purview of GST, and only the leasing/ renting/ transfer of right to use the asset be subject to tax. Movement of capital goods for provision of services like renting/ leasing/ transfer of right to use be excluded from the scope of supply under the proposed GST regime.</i>
18.	Levy and Collection of Central/State Goods and Services Tax	<ul style="list-style-type: none"> ➤ <i>It is suggested that GST Rates be determined by the Government with a maximum cap.</i> ➤ <i>Further to curb the impact of recession the tax rates for SEZ / EOU's etc. be kept competitive.</i>
19.	Definition of terms "Intra-state Supply" & "Inter-state Supply"	<ul style="list-style-type: none"> ➤ <i>It is therefore suggested to define the terms "intra-State Supply" & "inter-State Supply" under CGST/ SGST Acts too.</i> ➤ <i>Alternatively, reference of the definition under the IGST Laws be given in Section 7 of the Model GST Law.</i> ➤ <i>Section 7(1) could be redrafted as follows:</i> <i>"Subject to the provisions of section 12 or 13 and 14 as the case may be, there shall be levied a tax called the Central / State Goods and Services Tax (CGST / SGST) on all intra-State supplies of goods and/or services as determined under section 3A of the IGST Act at the rate specified in the Schedule to this Act and collected</i>

S. No.	Topic(s)	Suggestion(s)
		<i>in such manner as may be prescribed</i>
20.	Levy & Collection under Reverse Charge	<ul style="list-style-type: none"> ➤ <i>It is suggested that the words "such goods and/or services" be amended to "supply of such goods and/ or services", since the words "supply of goods/services "and "goods/services" have different meaning & ramification in the light of definition in Sec 3.</i> ➤ <i>Further, an explanation be added to specify that supplies other than those in course or furtherance of business are excluded from the purview of Sec 7(3)</i>
21.	Scope & Collection of Taxes under Composition Levy	<ul style="list-style-type: none"> ➤ <i>It is suggested that in section 8(1) the words "under this Act" be added after the words "in lieu of tax payable by him" to restrict the taxes to CGST/ SGST paid under this Act</i> ➤ <i>A Proviso be added in section 8(2) that "collection of tax will not vacate the order under sub-section (1) and such tax shall be payable in accordance with section 52"</i> ➤ <i>Further, it be explicitly provided in section 8(3) that once the person eligible for composition levy scheme pays the tax in accordance with the scheme there be no further tax liability on him under this Act.</i> ➤ <i>It is suggested that the entire section 8 be reworded as provided in detailed suggestions.</i>
22.	Basic Exemption Limit for Small Suppliers	<ul style="list-style-type: none"> ➤ <i>It is suggested to enhance the exemption limit to Rs.25, 00,000/-</i>



S. No.	Topic(s)	Suggestion(s)
		<p><i>as small and medium entities may find it difficult to maintain electronic records and wish to avoid unnecessary inspections / litigations from the tax department.</i></p> <p>➤ <i>Further, exclusions to be considered from aggregate turnover be clearly spelt out</i></p>
23.	Agriculturist not considered as Taxable Person	<p>➤ <i>It is suggested that a threshold limit be defined for those who have given land on crop sharing basis.</i></p> <p>➤ <i>Further, it also needs to be clarified if an agriculturist who also carries any other business will be considered as a taxable person or not.</i></p>
24.	Exclusion from scope of taxable persons	<p>➤ <i>It is suggested that in Section 9(3) to substitute the words "that are not liable to tax under this Act" the words "on which no tax is payable/leviable under the Act" be used.</i></p>
25.	Power to grant exemption from Tax	<p>➤ <i>It is suggested that a proviso be added to sub-section 3 to provide that "every such insertion / amendment / modification that has the effect of increasing the tax payable be effective from the date of such insertion".</i></p>
26.	Remission of tax for deterioration in quality due to natural causes	<p>➤ <i>It is suggested that section 11(1) be reworded as follows:</i></p> <p><i>"11(1) The Central or a State Government may as prescribed, provide for remission of tax on supplies of goods which are found to be deficient due to natural causes"</i></p>

S. No.	Topic(s)	Suggestion(s)
27.	Taxation of Advance Payments received for goods/ services	<ul style="list-style-type: none"> ➤ <i>It may be suitably clarified that for determining the time of supply of goods and / or services only the date of receipt of payment (final consideration) would be taken into account and not the date of receipt of advance payment.</i> ➤ <i>It must be clarified as to whether the input tax credit of tax paid on such advances received by the supplier, is available to the recipient</i>
28.	Deferment of levy till Time of Supply	<ul style="list-style-type: none"> ➤ <i>It is suggested to clarify that the levy under section 7 would be final but the payment of the levy would be deferred under time of supply under section 12. Alternatively, it may be clarified that the levy under section 7 is complete only at the time of supply under sections 12 & 13.</i> ➤ <i>Thus, section 12(1) & 13(1) may be reworded as "Tax levied under section 7 is payable at the time of supply as determined in terms of the provisions of this section."</i>
29.	Time of Supply of Goods not to include receipt of payment	<ul style="list-style-type: none"> ➤ <i>It is suggested that section 12(2)(d) be deleted. Section 66(1)(i) may contain a proviso that "Provided that any supplies made in contravention of this Act may be deemed to have been supplied at the time when the receipt records the supplies in his books of accounts".</i> ➤ <i>Alternatively, the section may be suitably worded to indicate that "this be taken into consideration only when the date of invoice,</i>



S. No.	Topic(s)	Suggestion(s)
		<i>payment and supply is not available”</i>
30.	Reverse Charge on Goods	➤ <i>It be suitably clarified as to whether “reverse charge is intended to cover supply of goods also and if yes, circumstances in which such reverse charge is otherwise applicable, be spelt out”.</i>
31.	Time of Supply of goods sent or taken on approval or sale or return or similar terms	➤ <i>It is suggested that the words “the words “Notwithstanding anything contained in section 3, goods supplied on sale or return shall not be deemed to be a supply till.....” Be added at the beginning of the sub-section.</i>
32.	Cessation of services before completion of contract	➤ <i>In order to make the provision more explicit and clear the words “to the extent supplied before such cessation” be added at the end of the provision.</i>
33.	Change in Rate of tax w.r.t Supply of Services	<p>➤ <i>In order to avoid possible litigation, it must be suitably clarified regarding time of supply in case of change in rate of tax w.r.t deemed services like works contract, leases etc.</i></p> <p>➤ <i>The time of supply in cases where service has been provided before change in rate of tax the time of supply is determined on the basis on date of payment or invoice. This contradicts with charging section 7 where levy is on supply. This is diametrically opposite to the law laid down by the Hon’ble Supreme Court in the case of Vazir Sultan Tobacco.</i></p>

S. No.	Topic(s)	Suggestion(s)
		<p>➤ Clarification regarding Time of supply being earlier of date of payment or invoice in case service is provided after change in rate of tax, may also be provided</p>
34.	Value of Taxable Supply	<p>➤ It is suggested that the words “for the purpose of this Act and notwithstanding anything contrary to any other law for the time being in force” be added before the words “value of supply.....” so as to enable section 15 application to CGST, SGST & IGST.</p> <p>➤ A proviso be added to state that the transaction value shall be determined in accordance with the GST Valuation Rules.</p> <p>➤ The words “Notwithstanding anything in sub-section (1),” be added at the beginning of sub-section (4) as certain cases covered by section 15(1) may also need to be examined by the Rules. Hence, this sub-section needs to override sub-section (1) but be made applicable in the cases specified</p>
35.	Method of determination of Value	<p>➤ It is suggested that Rule 3(1) be redrafted as “For the purposes of section 15, value of goods and / or services shall, subject to rule 7, be the transaction value”</p>
36.	Authority of proper officer to reject declared value	<p>➤ It is suggested that an exhaustive list of the reasons to doubt the truth or accuracy of the value of the supply declared by the supplier be provided to the proper officer in place of an</p>



S. No.	Topic(s)	Suggestion(s)
		<i>inclusive list to negate the possible ambiguities</i>
37.	Eligibility for Availing Input Tax Credit	➤ <i>It is suggested that condition of being registered not be made mandatory for availing the credit.</i>
38.	Availment of pre-registration Credit	➤ <i>It is suggested that pre-registration credit be allowed in full for all the cases on a first time tax payment subject to eligibility of such credit.</i>
39.	Non-availability of Input Tax Credit w.r.t to certain supplies	<ul style="list-style-type: none">➤ <i>It is suggested that disallowance of input tax credit for these 6 cases be reconsidered and allowed so as to reduce the impact of cascading of taxes.</i>➤ <i>Supplies for personal or private consumption also qualify as taxable supply as per Schedule I and thus Input Tax Credit be allowed on such usage.</i>➤ <i>It may be suitably clarified that list of services specified for personal use or consumption of any employee are illustrative in nature and not exhaustive. The words “or similar supplies” be added after the words “home travel concession” to imply that any other supplies which are for personal consumption of the employee would be restricted for the purposes of ITC.</i>➤ <i>The restriction of ITC in respect of all works contracts resulting in immovable property at large be removed since in large number of contracts which qualify as works</i>

S. No.	Topic(s)	Suggestion(s)
		<i>contracts, the end result would be immovable property’.</i>
40.	Condition for payment and filing of return for availing input tax credit	➤ <i>It is suggested that the pre-conditions relating to payment of tax to the credit of Government and mandatory filing of return be deleted / removed.</i>
41.	Tax to be paid to the credit of Government for utilizing input tax credit	<ul style="list-style-type: none"> ➤ <i>It is suggested that the condition of tax being deposited by supplier to the credit of appropriate Government in order to enable the purchaser to avail the input tax credit on such supply be reconsidered and liberalized to enable the traders to avail input tax credit of tax paid by them.</i> ➤ <i>Alternatively, if the Government believes that certain some taxable persons in the unorganized sector may not deposit the collected tax to Government the concept of reverse charge be made applicable to them</i>
42.	Setting up Procedure for availing Input Tax Credit	<ul style="list-style-type: none"> ➤ <i>It is suggested that a clear cut framework and process for claiming input tax credit be defined and the pre-condition of tax on inputs beings paid to the credit of government(s) by the supplier be re-considered.</i> ➤ <i>It is further suggested that a National Invoicing Platform (NIP) be created on the lines of the TDS platform under the Income Tax Act, 1961. The NIP can be integrated with accounting softwares of the suppliers and any invoice on which supplier wants to avail credit will be routed through NIP. This routing of all the</i>



S. No.	Topic(s)	Suggestion(s)
		<i>invoices through a common platform will eliminate frauds or inaccuracies as against the present system wherein the genuine transactions are to be manually verified</i>
43.	Input Tax Credit of inputs sent for job work	<ul style="list-style-type: none"> ➤ <i>It is suggested that no interest be levied in cases where inputs/ capital goods sent for job work are not received within stipulated time. Such cases may call for reversal of credit which would also be in lines with Rule 4(5) CENVAT Credit Rules, 2004.</i>
44.	Time Limit for availing CENVAT Credit	<ul style="list-style-type: none"> ➤ <i>It is suggested that provisions of sections 16(3A) & 16(15) be reconsidered and redrafted to avoid litigation as well as interpretational issues.</i> ➤ <i>Further, it is suggested that filing of return not be linked to entitlement to credit</i>
45.	Recovery of excess input credit distributed by Input Service Distributor	<ul style="list-style-type: none"> ➤ <i>As the sub-sections are overlapping in nature it is suggested to clarify which of the sub-section prevails in case of overlap.</i> ➤ <i>Further, in section 18(2) the words 'will be recovered from such supplier(s)' should be replaced with 'will be recovered from such input service distributor'.</i>
46.	Time limit to fix effective date of Registration	<ul style="list-style-type: none"> ➤ <i>It is suggested that a time limit to fix the effective date be provided in the Model GST law itself to provide better transparency and binding.</i>

S. No.	Topic(s)	Suggestion(s)
47.	Explicit contents of a Tax Invoice	➤ <i>It is suggested that details to be covered by an invoice be made more elaborate and exhaustive.</i>
48.	Amount of tax to be indicated in tax invoice and other documents	➤ <i>It is suggested that the disclosure of amount of tax be limited to invoice only. Assessment documents would anyway cover this fact for other reasons.</i>
49.	Clarification regarding furnishing details of outward supplies	➤ <i>It be suitably clarified that the details required to be communicated to the recipient of the supplies will be done through GSTN and there need not be any requirement for any communication by the supplier as it creates unnecessary compliance requirement on the part of the supplier to communicate details of each supply to each recipient.</i>
50.	Rectification of Returns by Input Service Distributors (ISD)	➤ <i>It is suggested that provisions of section 27(7) be made applicable to Input Service Distributors and they be allowed to rectify their returns owing to omission or incorrect particulars subject to payment of interest as specified.</i>
51.	Interest on delayed payment of tax	➤ <i>It is suggested that section 36(3) be suitably amended as sub-section 10 of section 29 as well as 29A as both have a reference of section 36(3) therein.</i>
52.	Payment of refundable amount to applicant	➤ <i>It is suggested that all the input tax credits be seamlessly covered under the provisions of Section 38(6). Further, it is suggested to include advance deposit of tax made by Casual taxable person or non-</i>



S. No.	Topic(s)	Suggestion(s)
		<i>resident taxable person as per provisions of section 19A as well as TDS deducted and its Refund & TCS refund.</i>
53.	Definition of Books of Accounts for the purpose of GST	➤ <i>It is suggested to suitable define the term "Books of Accounts" for the purpose of GST. The reference for the books of accounts has also been made in Time of Supply provisions. A clear meaning would thus support correct interpretation.</i>
54.	Removal of goods for job work	➤ <i>It is suggested that at the end of sub Section (1), the words 'and may, after completion of job work' be omitted.</i>
55.	Definition of "Brand Name" referring only to a service	➤ <i>It is suggested that words "between a service and some other person" be replaced with "between a supply and some other person".</i>
56.	Collection of Tax at Source by e-Commerce operators	➤ <i>It is suggested that the concept of Tax collection at source be done away with as it proves to be detrimental to small suppliers and leads to blockage of funds in TCS.</i>
57.	Return of goods received in pursuance of an inward supply	➤ <i>It is suggested that the return of goods by the recipient be allowed to be made to the supplier or his order. Just as recipient can be an agent of the customer who pays, returns too should be permitted to supplier or his order.</i>
58.	Scrutiny of Returns	➤ <i>It is suggested that scrutiny be restricted to the return filed only. Further, it is suggested that a basis for accepting an explanation be</i>

S. No.	Topic(s)	Suggestion(s)
		<i>provided or the requirement of offering an explanation be done away with.</i>
59.	Filing of return to revoke best judgement assessment	<ul style="list-style-type: none"> ➤ <i>It is suggested that the words “valid return” be replaced with “bonafide return” and a proviso be inserted to provide that the taxable person will not be entitled to file such a return more than once for the period covered by the order under sub-section (1).</i> ➤ <i>Further, it is suggested that in the explanation the words “liability for” be inserted before the words “payment of interest.....”</i>
60.	Audit by Tax authorities of business transactions	<ul style="list-style-type: none"> ➤ <i>It is suggested that the word “business” be deleted from the said provision.</i>
61.	Time Limit for issuing Notice to be prescribed.	<ul style="list-style-type: none"> ➤ <i>It is suggested that time limit for issuance of notice be prescribed as without time limit, there is no finality to issues. It would also help to mitigate the sword of uncertainty looming over a taxable person’s head.</i>
62.	Double tax payment for tax wrongfully collected and deposited	<ul style="list-style-type: none"> ➤ <i>It is suggested that the requirement of double payment of taxes be eliminated. Further, the refund / adjustment procedure for such cases be made fast-tracked, simple and quick.</i>
63.	Reasons to believe Suppression to undertake a search	<ul style="list-style-type: none"> ➤ <i>It is suggested that a copy of order of JC at the time of search be mandatorily made available to the taxable person (in the interest of equity, justice and transparency) as reasons for JCs belief about suppression will be in check.</i>



S. No.	Topic(s)	Suggestion(s)
64.	Summoning taxable persons to give evidence and produce documents	➤ It is suggested that a proviso be added to the said section to provide that summons are restricted only to the information contemporaneously available and no new information or format of information would be called for
65.	Access to business premises to inspect books of accounts, documents etc.	➤ It is suggested that the power to search and access premises be restricted to section 60 only.
66.	All offences put in one class and penalty imposed thereupon	➤ It is suggested to prescribe separate means of identification, degree of proof required, defence permissible and consequences separately for each of these two classes of offense to bring in transparency and clarity. Similarly, the offences listed in section 73 may also be categorized on above grounds
67.	Imprisonment for 5 years for repeated offences	➤ It is suggested that imprisonment provisions be liberalized and list of offences liable to imprisonment be reconsidered and well thought out.
68.	Cognizable and Non-bailable Offences	➤ It is suggested that the limit for cognizable and non-bailable offences be increased to Rs. 10 crores.
69.	Criteria for determining range of compounding amount	➤ It is suggested that suitable criteria for determining the compounding amount by the competent authority be provided for.
70.	Appeals to First Appellate Authority & Appellate Tribunal	➤ It is suggested that the First Appellate Authority be permitted to condone the delay and put the appellant 'to terms' for admission of belated appeals under section 79(4).

S. No.	Topic(s)	Suggestion(s)
		➤ As regards pre-deposits, it is suggested that the minimum limit be same as provided and in case an assessee wishes to pay a higher amount the same be allowed to him with consequential interest to be granted to him when payment in excess of prescribed limits are made
71.	Calling of records for admitting application for Advance Ruling	➤ It is suggested that decision to admit application is to be taken before calling for records from officers
72.	Definition of “Manufacturer”	➤ It is suggested that an elaborate definition of the term “Manufacturer” be provided to avoid litigation and interpretational issues
73.	Amount of CENVAT credit carried forward in a return to be allowed as input tax credit	➤ It is suggested that Input Tax Credit be provided to the assesseees in seamless manner i.e. Credit once validly taken should not be denied by change of law. There be made transitional provisions to allow duty or taxes contained in invoices made under the earlier law as input tax credit under the GST law in the period in which it is received.
74.	Transitional Provisions for Taxability on Return of goods from Job workers	➤ It is therefore suggested that the tax be payable only once – either by the manufacturer or the job worker. Hence, both sections 150 and 151 need to be amended to this extent
75.	Downward revision of price of goods after implementation of GST	➤ It is suggested that provisions relating to downward revision be reconsidered and dropped. This is because credit of input tax, if any, may be already availed by the recipient.



S. No.	Topic(s)	Suggestion(s)
76.	Refund claim filed after the date of applicability of GST	<p>➤ It is suggested that there be inserted a provision for filing of refund claims in respect of past periods after the applicability of GST, to avoid unnecessary litigations / disputes.</p>
77.	Taxability of Supply without Consideration	<p>➤ It is suggested that the meaning of both the terms 'Permanent transfer or disposal' and 'Business assets' be unambiguously stated in the law to avoid confusion. Matters like whether stock transfer from one branch to another will be covered under permanent transfer or not also be made clear.</p> <p>➤ It is suggested that Point 2 "Temporary application of business assets to a private or non-business use" be reconsidered as it is a huge litigation prone area. Further, the word "application" be replaced with "transfer" as this would provide the correct purpose or intent of the clause</p> <p>➤ In the context of the word "asset" used in schedule I it is suggested that term "asset" be suitably defined. The same is also covered under section 21(7).</p> <p>➤ Further, it is suggested that the valuation mechanism be provided for valuing the transactions covered under Schedule I.</p> <p>➤ It is suggested to suitably clarify that 'if the supply of demo goods, warranty replacements, free samples, scrap' etc. would be covered under</p>

S. No.	Topic(s)	Suggestion(s)
		<p><i>Schedule I and if they are covered, how will they be valued.</i></p> <ul style="list-style-type: none"> ➤ <i>In point 5 the term “supply” be replaced with term “Movement” as supply causes confusion and there is no necessity to state any purpose behind the movement.</i> ➤ <i>To avoid disputes and convey the intent of the legislature, the aspect of supply of goods and services within the same business entity by way of stock transfer/ branch transfer be specified clearly and unambiguously.</i>
78.	Reversal of Credit for Inputs used for Personal use	<ul style="list-style-type: none"> ➤ <i>It is suggested that a provision be inserted ‘for reversal of input tax credit used for goods and/ or services used for personal or private consumption’ instead of making them liable to GST and not allowing input tax credit on the same.</i>
79.	Nexus of the term “Taxable Threshold”	<ul style="list-style-type: none"> ➤ <i>It is suggested that in explanation 1 to clause 1 of Schedule III, the word “Taxable threshold” be replaced with the word “aggregate turnover”.</i> ➤ <i>Alternatively, the term “taxable threshold” be suitably defined for correct interpretation.</i>
80.	Compulsory Registration for person making Inter-state taxable supply	<ul style="list-style-type: none"> ➤ <i>It is therefore suggested that inter-state supplies also be included while computing the specified threshold of Rs. 9 lakhs/ 4 lakhs for registration.</i>
81.	Provision of Centralized Registration	<ul style="list-style-type: none"> ➤ <i>The concept of Centralized Registration be provided for.</i> ➤ <i>Further, the assessee be mandated to provide in his return details of all the locations from which supply of goods/ services is made by him.</i>



S. No.	Topic(s)	Suggestion(s)
82.	Mandatory registration for Casual Taxable Person & Non-resident Taxable person	➤ It be suitably clarified that though the registration is mandatory for casual taxable persons and non-resident taxable persons the tax liability would arise if the aggregate turnover crosses threshold of Rs. 10 lakhs. (Rs. 5 lakhs for NE States).
83.	Tax Treatment of Stock in Transit under GST	➤ It is suggested that transitional provisions be provided to entail a clear procedure for mechanism to avail transitional credit on goods in transit or pending for approval.
84.	Sharing of expenses borne by Shared Service Centres	➤ It is suggested that suitable clarification be provided regarding taxability of services provided by shared service centres.



III. SUGGESTIONS ON MODEL GST LAW

1. Aggregate Threshold limit for Registration under GST

Section 2(6) of Model GST Law defines “Aggregate Turnover” as the aggregate value of all taxable and non-taxable supplies, exempt supplies and exports of goods and/or services of a person having the same PAN, to be computed on all India basis and excludes taxes charged under the CGST Act, SGST Act and the IGST Act.

Schedule III of Model GST Law provides that every supplier shall be liable to be registered under GST Act in the State from where he makes a taxable supply of goods and/or services his aggregate turnover in a financial year exceeds Rs. 9 lakhs/ 4 lakhs as the case may be.

Issue

The aggregate turnover includes exempt supplies on all India basis. Since the threshold for GST registration is Rs. 9 lacs excluding NE states, clubbing of exempt supply will oblige most of the assesseees to get registered which may prove as a challenge from the administrative control point of view.

Also, the Income Tax Act clearly states that any income would be included in total income only if it is taxable as per the provisions of the Act. Moreover, exempt income shall not form part of the total income.

Suggestion

*It is suggested that the definition of aggregate turnover be suitably amended so as to **exclude** the value of exempt & non-taxable supplies from aggregate turnover.*

2. Exclusions from definition of aggregate turnover

Section 2(6) defines aggregate turnover and provides an explanation that Aggregate turnover does not include the value of supplies on which tax is levied on reverse charge basis and the value of inward supplies.



Suggestions

It is suggested that the explanation to the definition of aggregate turnover be suitably amended to replace the word “levied” with “payable” as tax is payable under reverse charge.

3. Definition of Business Vertical

Business Vertical has been defined under section 2(17) of model GST law as follows: “**business vertical**” shall have the meaning assigned to a ‘business segment’ in Accounting Standard 17 issued by the Institute of Chartered Accountants of India;

Issue

The reference of AS 17 needs to be changed as India is moving towards Ind AS and Ind AS 108 “Operating Segments” would replace AS 17.

Suggestion

The reference of AS 17 in Business Verticals definition be replaced with Ind AS 108

4. Definition of “export of goods”

Clause 2 (43) of Model GST Law provides that “export of goods” with its grammatical variations and cognate expressions, means taking out of India to a place outside India.

Suggestion

It is suggested that - to remove any possible ambiguity, the words “of the goods” be inserted immediately after the word “taking out”.

5. Taxation of Electricity not be included in GST

Section 2(48) of the Model GST Law defines goods to mean every kind of moveable property with a few exceptions and understood as not including any immovable property.

Issue

Taking into consideration definition of ‘goods’ as per section 2(48) “electricity” which is a good will be covered under GST laws because

new article 246A overrides articles 246 and 254. Considering taxation of electricity is mentioned under entry-53, List-II (State list) of the seventh schedule of Constitution, The Central and State Government may keep 'electricity' outside the purview of GST.

Article 246A provides that notwithstanding anything contained in articles 246 and 254,

The Parliament has powers to make laws with respect to goods and services tax imposed by the Union or by such State.

Suggestions

It is suggested that the aspect of taxation of electricity be suitably clarified under GST regime, and certainly be kept outside the purview of GST.

6. Definition of Inputs & Input Services

Section 2(54) of the Model GST Law defines "Inputs" as any goods other than capital goods, subject to exceptions as may be provided under this Act or the rules made thereunder, used or intended to be used by a supplier for making an outward supply in the course or furtherance of business;

Section 2(55) of the Model GST Law defines "Input Services" as any service, subject to exceptions as may be provided under this Act or the rules made thereunder, used or intended to be used by a supplier for making an outward supply in the course or furtherance of business;

Issue

The words "For making an outward supply" is a new test or condition in this definition that is in addition to "furtherance of business" as provided in section 2(57) and section 16. Prescribing a test or condition totally different from that specified under section 2(57) and section 16 will make it prone to litigation.

Suggestion

It is suggested that the definition be kept at par with section 2(57) & section 16 of the model law and accordingly the words "by a supplier for making an outward supply" be deleted in both the definitions i.e. section 2(54) and section 2(55).



7. Correction of definition of “Input Tax Credit”

Section 2(58) of the Model GST Law defines “Input Tax Credit” as credit of ‘input tax’ as defined in section 2(56). However, input is defined in section 2(57) and not section 2(56) which relates to the definition of Input Service Distributor.

Suggestion

The anomaly in the definition of “Input Tax Credit” be corrected and section 2(56) be replaced with section 2(57).

8. Definition of term “Manufacturer”

Section 2(66) of the Model GST Law provides that “manufacturer” shall have the meaning assigned to it by the Central Excise Act, 1944 (1 of 1944);

Further, Section 140 of the Model GST Law further provides that from the date of commencement of the Act, the (State) General Sales Tax/Value Added Tax Act, the Central Excise Act 1944, and the Central Excise Tariff Act 1985 shall apply only in respect of goods included in the entry 84 and entry 54 of the Union List and the State List respectively, of the Schedule VII to the Constitution of India.

Issue

There, thus, exists a contradiction between the two sections, as section 140 talks about repealing the Central Excise Act 1944 and section 2(66) refers to the definition given in the Central Excise Act 1944.

Suggestion

It is suggested that definition provided in section 2(f)(i) of Central Excise Act, 1944 be reproduced under GST Law and no reference be made to the Excise Act which is intended to be repealed.

9. Meaning of “Substantial Interest” under the definition of “Related Person”

Section 2(82)(d) of the Model GST Law provides that persons shall be deemed to be “related persons” if only any person directly or indirectly owns, controls or holds five per cent or more of the outstanding voting stock or shares of both of them.

Issue

In the Income Tax Act, 1961 “Substantial interest” is quantified by a 20% interest, control or management. In the Companies Act, 2013 20% interest is essential to become an Associate Enterprise. In alignment with other laws a similar limit of 20% should meet with the purpose and intent of the statute.

Suggestion

It is suggested that the percentage of direct or indirect control or holding of the outstanding voting stock or shares of both of them be increased from 5% to 20%.

10. Definition of Term “Service”

Section 2(88) of Model GST law defines “Services” to mean anything other than goods; and include intangible property and actionable claim but does not include money.

Issue

The definition of “services” might give rise to interpretational issues. For example: in case of Land which is not considered as a ‘good’ as it is not movable but is it a service? Although States’ levy stamp duty on sale of land it does not restrict both Centre and State to levy GST on Land. It may also be argued that article 246A overrides 246 and accordingly they are not barred by Law to levy GST on exchange/sale of Land.

Suggestion

It is suggested to provide a comprehensive definition of the term “services” so as to avoid interpretational issues like in case of land.

11. Definition of “Works Contract”

Section 2(107) of Model GST Law provides that “works contract” means an agreement for carrying out for cash, deferred payment or other valuable consideration, building, construction, fabrication, erection, installation, fitting out, improvement, modification, repair, renovation or commissioning of any moveable or immovable property;

Further clause 5(f) of Schedule II of Section 3 deems ‘works contract



including transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract; as supply of service’.

Issue

The definition ‘works contract’ in terms of section 2(107) commences with the words **means**. Thus, the meaning could be restrictive. It would be better if the word **means** is replaced with includes to give the definition a clear meaning without any ambiguity. Further the words manufacture / processing is missing from the definition of works contract. In this scenario what happens to contracts like photography, electroplating, supply and fixing / laying of tiles etc. There is, therefore, no clarity.

With reference to the definition of works contract and transactions to be treated as supply of services under Schedule II, the taxability of maintenance contracts and certain contracts discussed supra might be an issue.

The model GST law provides that Works Contract Activity would be considered as Supply of Service. However, the terms **processing, manufacture, maintenance** are missing in the definition of Works Contract. Further, the Article 366(29A) of constitution provides that works contract services will include deemed sales which also requires due attention.

Suggestion

In order to cover manufacture, processing, maintenance contracts under the aegis of deemed supply of services and to make them taxable as per the provisions of model GST law it is suggested that the definition of term “works contract” be amended to substitute the word ‘means’ by the word “includes” and add the words manufacture, processing, maintenance therein.

12. Definition of “Inter-state Taxable Supply”

It is suggested to define the term “Inter-state Taxable Supply” as the same has not been defined in the Model Law or the IGST Law. This would also provide correct interpretation and the true meaning of the term.

13. Definition of Words "Captive Plant including mines" and "Captive use"

Under earlier law CENVAT Credit of capital goods or inputs used in mines or power plant located outside the manufacturing premises though at some distance, was disallowed by department on some or the other pretext that these are not captive plants even though power generation or produce of mines was used entirely in manufacturing process.

Under GST laws the term "Captive use" has been used in relation to capital goods defined in section 2(20)(a)(viii)(2) used for generation of electricity outside a place of business but related provisions for claiming Input Tax Credit have not been provided for.

Suggestions

- *It is suggested that the terms "Captive plants" & "Captive use" be suitably defined to put to rest the anomalies.*
- *Further, if they are considered as a part of Capital Goods then suitable input tax credit provisions must be provided for.*

14. Definition of "Supply"

Section 3(1) of the Model GST Law provides that "Supply includes all forms of supply....."

One can notice that other sections of the Model GST Law such as section 12(6), Explanation to section 44, section 21(7), etc., override the definition of the word 'supply'. Hence, it is important to suspend the operation of supply in all such cases which conflict with the definition of supply.

Suggestion

- *It is suggested that the words "Except as provided otherwise, supply includes....." be used in place of the words "Supply includes" under section 3.*
- *Instead of having different class of supplies like supplies by agents, aggregator services under section 3, all the forms of deemed supplies be included in a single Schedule say Schedule 1.*

15. Authority to Central/ State Government to notify a transaction as



Supply

Section 3(3) of the Model GST Law provides that the Central or a State Government may, upon recommendation of the Council, specify, by notification, the transactions that are to be treated as—

- (i) a supply of goods and not as a supply of services; or
- (ii) a supply of services and not as a supply of goods; or
- (iii) neither a supply of goods nor a supply of services.

Suggestions

- *It is suggested that Recommendation of the Council be made mandatory as Council will take into account pros & cons involved in a particular transaction to treat/ or not treat it as supply.*
- *It is suggested that all the States be treated at par as far as recommendations of the council are concerned i.e. provisions be similar for all States and not left to the discretion of the States.*

16. Taxability of Importation of Services for personal use

Section 3 of Model GST Law defines Supply which includes importation of service, whether or not for a consideration and whether or not in the course or furtherance of business.

Issue

The inference of this definition provides that if a service is imported for personal use the same would be considered as supply and hence, would be liable to tax under GST regime. Compliance with GST provisions is a costly and time consuming process and as such, making it applicable on household personals will not be fair to individual assesses.

Suggestions

It is suggested that importation of services which are not in the course or furtherance of business be kept outside the purview of GST.

17. Movement of goods within same business not to be treated as

supply

As per section 3 of the Model GST Law supply includes all forms of supply of goods and/or services 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.

As per Rule 3(5) of the GST Valuation (Determination of the Value of Supply of Goods and Services) Rules, 2016 where goods are transferred from one place of business to another place of the same business whether or not situated in the same State, the value of such supply shall be the transaction value.

Issue

Taxability of movement of capital goods within the same business including branch transfers will cause lot of financial hardship. Capital goods like machines, cranes etc. require huge capital deployment and levy of tax when they are moved for business purposes will prove to be a huge financial burden for entities owning these and moving them from one place of business to another.

Suggestion

- *The supply of capital goods (whether to own depot or to the customer) be kept outside the purview of GST, and only the leasing/ renting/ transfer of right to use the asset be subject to tax. Movement of capital goods for provision of services like renting/ leasing/ transfer of right to use be excluded from the scope of supply under the proposed GST regime.*

18. Levy and Collection of Central/State Goods and Services Tax

Section 7 of the Model GST Law is the charging section which provides that CGST/ SGST shall be levied on all intra-State supplies of goods/ services at the specified rates.

Issue

- The taxes which would be subsumed, if continued in another form will only add to the burden of tax payers.
- No clarity has been provided for clearance of goods from SEZ to DTAs. SEZs are not doing well due to global recession and we need to make them competitive.



Suggestions

It is suggested that GST Rates be determined by the Government with a maximum cap ~~to ensure tax planning by the assesseees.~~

Further to curb the impact of recession the tax rates for SEZ / EOU's etc. be kept competitive.

19. Definition of terms "Intra-state Supply" & "Inter-state Supply"

Section 7 of the Model GST Law states that that "there shall be levied a tax called the Central/State Goods and Services Tax on all intra-State supplies of goods and / or services at the rate specified in the Schedule....."

Issue

The terms "intra-State Supply" & "inter-State Supply" have not been defined in the draft CGST/SGST Act whereas in the IGST Act in chapter II and section 3 and 3A, these terms are clarified / defined.

Further, the tax levied under section 7 'arises' only at the time specified in section 12 (goods) or 13 (services). Hence, section 7 invite the operation to those sections.

Suggestion

- *It is therefore suggested to define the terms "intra-State Supply" & "inter-State Supply" under CGST/ SGST Acts too.*
- *Alternatively, reference of the definition under the IGST Laws be given in Section 7 of the Model GST Law.*
- *Section 7(1) could be redrafted as follows:*

"Subject to the provisions of section 12 or 13 and 14 as the case may be, there shall be levied a tax called the Central / State Goods and Services Tax (CGST / SGST) on all intra-State supplies of goods and/or services as determined under section 3A of the IGST Act at the rate specified in the Schedule to this Act and collected in such manner as may be prescribed."

20. Levy & Collection under Reverse Charge

Section 7(3) of the Model GST Law provides that notwithstanding anything contained in sub-section (2), the Central or a State Government may, on the recommendation of the Council, by notification, specify categories of supply of goods and/or services the tax on which is payable on reverse charge basis and the tax thereon shall be paid by the person receiving such goods and/or services and all the provisions of this Act shall apply to such person as if he is the person liable for paying the tax in relation to such goods and/or services.

Suggestion

- *It is suggested that the words "such goods and/or services" be amended to "supply of such goods and/ or services", since the words "supply of goods/services" and "goods/services" have different meaning & ramification in the light of definition in Sec 3.*
- *Further, an explanation be added to specify that supplies other than those in course or furtherance of business are excluded from the purview of Sec 7(3)*

21. Scope & Collection of Taxes under Composition Levy

Section 8(1) of Model GST law provides that notwithstanding anything to the contrary contained in the Act but subject to sub-section (3) of section 7, on the recommendation of the Council, the proper officer of the Central or a State Government may, subject to such conditions and restrictions as may be prescribed, permit a registered taxable person, whose aggregate turnover in a financial year does not exceed [fifty lakh of rupees], to pay, in lieu of the tax payable by him, an amount calculated at such rate as may be prescribed, but not less than one percent of the turnover during the year.

Section 8 of Model GST law provides the provisions relating to Composition Levy Scheme under GST. The person availing such scheme shall not collect any tax from the recipient on supplies made by him nor shall be entitled to any credit of input tax. Further if proper officer has reasons to believe that a taxable person was not eligible for composition scheme the person in addition to tax would also be liable to pay a penalty equivalent to tax amount payable.

Issue



Disallowing composition benefit to the persons who effect any inter-state supply of goods and/or services shall work against the interest of small assesseees as there might be a possibility that in aggregate turnover of Rs. 50 lakhs only a small amount constitute inter-state supply of goods or services which will deny him of the benefit of composition scheme.

Further, composition scheme be made available if aggregate turnover does not exceed Rs.2 crore for previous year.

Suggestions

- *It is suggested that in section 8(1) the words “under this Act” be added after the words “in lieu of tax payable by him” to restrict the taxes to CGST/ SGST paid under this Act.*
- *A Proviso be added in section 8(2) that “collection of tax will not vacate the order under sub-section (1) and such tax shall be payable in accordance with section 52” i.e. if a person collects tax despite availing composition levy he shall be liable to pay such tax in accordance with section 52 and such collection will not negate the availment of composition levy as proper officer may then take this violation into consideration while issuing such an order by following procedure for the next year. In fact, a suitable provision be added to protect the small dealer from the painful process of forfeiture of tax collected whereas the same collection can be appropriated to the taxes payable at the time of cancellation of the composition scheme. A person who is purged out of the composition scheme for the mere act of collection of taxes ought to be permitted to stay in the scheme until he is so intimated in writing. This is because – say a dealer has unknowingly collected taxes in the year 2017-18 and he continues to do so thereafter, and if it comes to the knowledge of the Proper Officer say during May 2019 – in this scenario cancellation of composition registration from 2017-18 would throw the entire business of the small dealer out of gear. Alternatively, in such cases his composition registration could be cancelled from June 2019 and he could be barred to enter the scheme for a period of one year thereafter.*
- *Further, it be explicitly provided in section 8(3) that once the person eligible for composition levy scheme pays the tax in accordance with the scheme there be no further tax liability on him under this Act. Words “Where any taxable person was granted permission under sub-section (1)” be added at the beginning of provision of section 8(3).*

- It is suggested that the entire section 8 be reworded as follows:

“8(1) Notwithstanding anything to the contrary contained in this Act but subject to sub-section (3) of section 7, any registered taxable person, subject to such conditions and restrictions as may be notified by the Commissioner of SGST on the recommendation of the Council, whose aggregative turnover in the previous financial year is not in excess of Rs.2 crores may opt to pay, in lieu of tax payable under this Act by him, an amount calculated at such rate as may be prescribed not being more than one per cent of the taxable value of first supplies in the year not exceeding Rs.50 lacs.

Provided that all registered taxable persons having the same PAN as held by the taxable person also opt to pay tax under this section

- (2) *A taxable person to whom the provisions of sub-section (1) applies shall not collect any tax from the recipient on the supplies made by him nor shall he be entitled to any credit of input tax;*

Provided that where any tax is charged on the supplies by such taxable person then the tax so charged shall be payable to the appropriate Government in addition to the tax payable under this section along with interest under section 36 and penalty equal to 20% of the tax so charged in contravention of this section after affording an opportunity of being heard

- (3) *In addition to the tax payable under sub-section (1) and (2), a taxable person to whom the provisions of sub-section (1) applies, shall be liable to pay tax applicable under sub-section (1) of section 7, on his inward taxable supplies that has not suffered taxes.*

22. Basic Exemption Limit for Small Suppliers

Section 9 Chapter III of proposed Model GST law states that a person who is required to be registered under GST Act shall not be considered as a taxable person until his aggregate turnover in a financial year exceeds Rs 10 lakh / Rs. 5 lakhs if a taxable person conducts his business in any of the NE States including Sikkim.

Issue(s)

The present exemption limits for small scale service providers



under Service Tax is Rs. 10 lakhs. The limit provided at present, under Central Excise Act is Rs. 1.5 Crore. While goods and services are expected to be taxed at the same rate the exemption limit should also be fixed considering the existing limits under Excise & Service Tax.

Suggestions

- *It is suggested to enhance the exemption limit to Rs. 25,00,000/- as small and medium entities may find it difficult to maintain electronic records and wish to avoid unnecessary inspections/ litigations from the tax department.*
- *Further, exclusions to be considered from aggregate turnover be clearly spelt out.*

23. Agriculturist not considered as Taxable Person

Section 9(1) of the Model GST Law provides that an agriculturist shall not be considered as a taxable person.

Section 2(8) of the model law defines “agriculturist” as a person who cultivates land personally for the purpose of agriculture.

Issue

The definition of agriculturist read with the provision of section 9(1) attracts and bring those under the tax net who have given their land for raising crops on sharing basis. Unless there is threshold limit to exclude marginal agriculturists, who are holding paternal agriculture land from generations and adopting crop sharing pattern of doing agriculture, it will put additional tax burden on such agriculturists.

Suggestion

- *It is suggested that a threshold limit be defined for those who have given land on crop sharing basis.*
- *Further, it also needs to be clarified if an agriculturist who carries any other business also will be considered as a taxable person or not.*

24. Exclusion from scope of taxable persons

Section 9(3) of the Model GST Law provides that any person engaged

in the business of exclusively supplying goods and/or services that are not liable to tax under this Act shall not be considered as taxable persons.

Issue

Ambiguity arises due to usage of the words 'liable to tax' as it is not clear if this means no tax is leviable or mean tax is leviable but not payable.

Suggestion

It is suggested that in Section 9(3) to substitute the words "that are not liable to tax under this Act" the words "on which no tax is payable/ leviable under the Act" be used.

25. Power to grant exemption from Tax

Section 10 of the model GST Law empowers Central/ State Governments to exempt Goods and/or services from whole/ part of tax leviable thereon.

Further section 10(3) provides that the Central or a State Government may, if it considers necessary or expedient so to do for the purpose of clarifying the scope or applicability of any notification issued under sub-section (1) or order issued under sub-section (2), insert an explanation in such notification or order, as the case may be, by notification at any time within one year of issue of the notification under sub-section (1) or order under sub-section (2), and every such explanation shall have effect as if it had always been the part of the first such notification or order, as the case may be.

Issue

This provision empowers the Central / State government to retrospectively change / amend / alter / modify the nature of exemption. This leads to a situation, where the benefit of exemptions intended to be granted to supplies under this section with the concurrence of the council could stand denied to supplies of such goods/services. In the possibility of retrospectivity as well as the vulnerability to introduce changes with the Council's concurrence, this sub section may be detrimental to the interest of the assesseees.

Suggestion

It is suggested that a proviso be added to sub-section 3 to provide that "every



such insertion / amendment / modification that has the effect of increasing the tax payable be effective from the date of such insertion”.

26. Remission of tax for deterioration in quality due to natural causes

Section 11 (1) of the model GST Law provides that Central or a State Government may, by rules made under this sub-section, provide for remission of tax on such supplies which are found to be deficient in quantity due to any natural causes.

Issue

Supplies includes goods as well as services. Quantifying deficiency due to any natural causes cannot be aligned with supply of services.

Suggestion

It is suggested that section 11(1) be reworded as follows:

“11(1) The Central or a State Government may as prescribed, provide for remission of tax on supplies of goods which are found to be deficient due to natural causes”

27. Taxation of Advance Payments received for goods/ services

In terms of section 12 & 13 of the Model GST Law a supply is deemed to have been made to the extent it is covered by the invoice or payment. Thus, in situations where the recipient of goods/ services makes an advance payment as per payment terms to the supplier, the tax is liable to be paid on such advance payment. Levy of tax on advance payments will disproportionately increase the cost of compliance without any substantial benefit to revenue as tax on total payment has to be made once it is received. The GST would be levied on the supply and to keep track of advance received or invoices issued will create administrative / accounting hassles to the tax payers. Government will not earn any extra revenue by this measure except receiving some small part of revenue in advance; but it entails lot of extra documentation on the part of supplier. Even today the taxability of excise or VAT/CST is on either removal of goods or Invoicing to customer.

Suggestion

- *It may be suitably clarified that for determining the time of supply of*

goods and / or services only the date of receipt of payment (final consideration) would be taken into account and not the date of receipt of advance payment.

- *It must be clarified as to whether the input tax credit of tax paid on such advances received by the supplier, is available to the recipient.*

28. Deferment of levy till Time of Supply

Section 12(1) & 13(1) of Model GST Law provides that liability to pay CGST/ SGST shall arise at the time of supply.....

Issue

The language employed appears to indicate that the levy is deferred till the time of supply. It also states that the 'liability is on the goods' - this is not the case in GST. Tax levied under section 7 appears to be suspended until time of supply under sections 12& 13.

Suggestion

It is suggested to clarify that the levy under section 7 would be final but the payment of the levy would be deferred under time of supply under section 12. Alternatively, it may be clarified that the levy under section 7 is complete only at the time of supply under sections 12& 13.

Thus, section 12(1) & 13(1) may be reworded as "Tax levied under section 7 is payable at the time of supply as determined in terms of the provisions of this section."

29. Time of Supply of Goods not to include receipt of payment

Clause 12(2) Chapter IV of Model GST Law provides that the time of supply of goods shall be the earliest of the following dates, namely,-

- (a) (i) the date on which the goods are removed by the supplier for supply/to the recipient, in a case where the goods are required to be removed; or
- (ii) the date on which the goods are made available to the recipient, in a case where the goods are not required to be removed; or
- (b) the date on which the supplier issues the invoice with respect to the supply; or



- (c) the date on which the supplier receives the payment with respect to the supply; or
- (d) the date on which the recipient shows the receipt of the goods in his books of account.

Issue

It is near impossible for a person to make out as to when the recipient records the receipt of goods in his books of accounts. Supplier will have no knowledge or control over the recording of Entries in books by Recipient. It is neither possible nor feasible to determine in each and every case the date of receipt of goods in the books of the recipient. It may also lead to unwarranted litigation where the recipient records the date of receipt on an earlier date.

Currently there are only 3 conditions in POT Rules, which takes care of all situations properly without any ambiguity

When there is no malafide intention on the part of the taxable person, the date of supply should be based on the date on which he issues the invoice, receives the payment or makes the supply whichever is earlier. This will remove the complication of determining the date of receipt recorded by the recipient in every case.

Suggestion

- *It is suggested that section 12(2)(d) of Model GST Law be deleted and Section 66(1)(i) of Finance Act 1994 may contain a proviso that "Provided that any supplies made in contravention of this Act may be deemed to have been supplied at the time when the receipt records the supplies in his books of accounts"*
- *Alternatively, the section may be suitably worded to indicate that "this be taken into consideration only when the date of invoice, payment and supply is not available".*

30. Reverse Charge on Goods

Section 12(5) of the Model GST Law provides that in case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earliest of the following dates, namely—

- (a) the date of the receipt of goods, or
- (b) the date on which the payment is made, or

- (c) the date of receipt of invoice, or
- (d) the date of debit in the books of accounts.

Suggestions

It be suitably clarified as to whether “reverse charge is intended to cover supply of goods also and if yes, circumstances in which such reverse charge is otherwise applicable, be spelt out”.

31. Time of Supply of goods sent or taken on approval or sale or return or similar terms

Section 12(6) of the Model GST Law provides that if the goods (being sent or taken on approval or sale or return or similar terms) are removed before it is known whether a supply will take place, the time of supply shall be at the time when it becomes known that the supply has taken place or six months from the date of removal, whichever is earlier.

Issue

Words with different or alternative meaning like 'removal' is used without an intention of their implication from sub-section 2(a)(i) or 'sent or taken' is used which permits extension and use in other contexts. Care in usage of words with alternative meaning is required.

Reference can be drawn from section 24 of Sales of Goods Act which provides that “Goods sent on approval or “on sale or return” –when goods are delivered to the buyer for approval or “on sale or return” or other similar terms, the property therein passes to the buyer”

Suggestion

It is suggested that the words “the words “Notwithstanding anything contained in section 3, goods supplied on sale or return shall not be deemed to be a supply till.....” Be added at the beginning of the sub-section.

32. Cessation of services before completion of contract

Section 13(6) of the Model GST law provides that in a case where the supply of services ceases under a contract before the completion of



the supply, such services shall be deemed to have been provided at the time when the supply ceases.

Suggestion

In order to make the provision more explicit and clear the words “to the extent supplied before such cessation” be added at the end of the provision.

33. Change in Rate of tax w.r.t Supply of Services

Section 14 of the Model GST Law indicates the provisions for determining the time of supply in cases where there is a change in the effective rate of tax in respect of services.

In case service has been provided before change in rate of tax the time of supply will be date of payment or invoice whichever is earlier.

In case service has been provided after change in rate of tax the time of supply will be date of payment or invoice whichever is later. In case both payment and invoice are received before change in rate of tax the time of supply will be earlier of the two dates.

Suggestions

- *In order to avoid possible litigation, it must be suitably clarified regarding time of supply in case of change in rate of tax w.r.t deemed services like works contract, leases etc.*
- *The time of supply in cases where service has been provided before change in rate of tax the time of supply is determined on the basis on date of payment or invoice. This contradicts with charging section 7 where levy is on supply. This is diametrically opposite to the law laid down by the Hon'ble Supreme Court in the case of Vazir Sultan Tobacco.*
- *Clarification regarding Time of supply being earlier of date of payment or invoice in case service is provided after change in rate of tax, may also be provided.*

34. Value of Taxable Supply

Section 15 of Model GST law provides that the value of a supply of goods and/or services shall be the transaction value, that is the price

actually paid or payable for the said supply of goods and/or services where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

Further, Section 15(4) lists down the special situations where the transaction value cannot be determined as such and needs to be determined as per the rules.

Suggestions

- *It is suggested that the words “for the purpose of this Act and notwithstanding anything contrary to any other law for the time being in force” be added before the words “value of supply.....” so as to enable section 15 application to CGST, SGST & IGST.*
- *A proviso be added to state that the transaction value shall be determined in accordance with the GST Valuation Rules.*
- *The words “Notwithstanding anything in sub-section (1),” be added at the beginning of sub-section (4) as certain cases covered by section 15(1) may also need to be examined by the Rules. Hence, this sub-section needs to override sub-section (1) but be made applicable in the cases specified.*

35. Method of determination of Value

Rule 3(1) of the GST Valuation Rules states that “subject to Rule 7, the value of goods and/ or services shall be transaction value”

Issue

There exists an ambiguity as it is nowhere specified that the transaction value so determined is for the purpose of Section 15.

Suggestion

It is suggested that Rule 3(1) be redrafted as “For the purposes of section 15, value of goods and / or services shall, subject to rule 7, be the transaction value”.

36. Authority of proper officer to reject declared value

Rule 7 of GST Valuation (Determination of the Value of Supply of Goods and Services) Rules, 2016 provides that if a proper officer has a



reason to believe that the declared value does not represent the transaction value he may call for further information and if doubt persists it shall be deemed that the transaction value of such goods and/or services cannot be determined under the provisions of sub-rule (1) of rule 3.

Issue

The rule provides an inclusive list of the reasons to doubt the truth or accuracy of the value of the supply declared by the supplier to the proper officer. As the reason to doubt the truth and accuracy are not limited to the list provided, the provision puts an arbitrary power in the hands of proper officer which may prove draconian and work against the assessee

Suggestion

It is suggested that an exhaustive list of the reasons to doubt the truth or accuracy of the value of the supply declared by the supplier be provided to the proper officer in place of an inclusive list to negate the possible ambiguities.

37. Eligibility for Availing Input Tax Credit

Section 16(1) of the Model GST Law provides that **every registered** taxable person shall, subject to such conditions and restrictions as may be prescribed and within the time and manner specified in section 35, be entitled to take credit of input tax admissible to him and the said amount shall be credited to the electronic credit ledger of such person.

Issue

Credit is a vested right, and in case of a bona fide belief relating to exemption is negative by a Court decision, then credit cannot be denied. Hence, registration status cannot be made a vesting condition for credit.

Suggestion

It is suggested that condition of being registered not be made mandatory for availing the credit.

38. Availment of pre-registration Credit

Section 16(2) of the Model GST Law provides that a person who has applied for registration under the Act within thirty days from the date on which he becomes liable to registration and has been granted such registration shall be 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 on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of this Act.

Issue

Credit entitlement need not be denied if demand is expected to be enforced for arrears. Period of limitation for demand of arrears and relatable credit must be same.

Suggestion

It is suggested that pre-registration credit be allowed in full for all the cases on a first time tax payment subject to eligibility of such credit.

39. Non-availability of Input Tax Credit w.r.t to certain supplies

Section 16(9) of Model GST Law provides that input tax credit shall not be available in respect of:

- (a) motor vehicles, except when they are supplied in the usual course of business or are used for providing the following taxable services—
 - (i) transportation of passengers, or
 - (ii) transportation of goods, or
 - (iii) imparting training on motor driving skills;
- (b) goods and / or services provided in relation to food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as leave or home travel concession, when such goods and/or services are used primarily for personal use or consumption of any employee;
- (c) goods and/or services acquired by the principal in the execution of works contract when such contract results in construction of immovable property, other than plant and machinery;



- (d) goods acquired by a principal, the property in which is not transferred (whether as goods or in some other form) to any other person, which are used in the construction of immovable property, other than plant and machinery;
- (e) goods and/or services on which tax has been paid under section 8; and
- (f) goods and/or services used for private or personal consumption, to the extent they are so consumed

Issue

Non-availability of Input Tax Credit in respect of the 6 specified services will lead to cascading of taxes under the GST regime which was one of the major reasons for introducing GST. Further such disallowances might also discourage FDI in India.

Also for clauses 'c' & 'd' as stated supra restricting ITC in respect of all works contracts resulting in immovable property at large would be against the principles of GST, which is designed to provide for seamless flow of credits.

E.g.: In respect of construction of buildings, the final output is no doubt immovable property. However, the SC has in the case of L&T (65 VST 1) held that the proportion of work done after the agreement with the customer would qualify as 'works contract'. Under GST, such portion of the work contract would qualify as 'supply of taxable services'.

Suggestions

- *It is suggested that disallowance of input tax credit for these 6 cases be reconsidered and allowed so as to reduce the impact of cascading of taxes.*
- *Supplies for personal or private consumption also qualify as taxable supply as per Schedule I and thus Input Tax Credit be allowed on such usage.*
- *It may be suitably clarified that list of services specified for personal use or consumption of any employee are illustrative in nature and not exhaustive. The words "or similar supplies" be added after the words "home travel concession" to imply that any other supplies which are for personal consumption of the employee would be restricted for the purposes of ITC.*

- *The restriction of ITC in respect of all works contracts resulting in immovable property at large be removed since in large number of contracts which qualify as works contracts, the end result would be immovable property'.*

40. Condition for payment and filing of return for availing input tax credit

Section 16(11) of Model GST law provides that notwithstanding anything contained in this section, but subject to the provisions of section 28, no registered taxable person shall be entitled to the credit of any input tax in respect of any supply of goods and/or services to him unless..... ;

- (c) the tax charged in respect of such supply has been actually paid to the credit of the appropriate Government, either in cash or through utilization of input tax credit admissible in respect of the said supply; and
- (d) he has furnished the return under section 27

Issue

Once invoice is issued by a supplier under section 23 with applicable tax reflected on it, the recipient cannot be burdened with the responsibility of knowing if that tax has actually been credited to the Government. Onerous burden being cast on recipient to prove tax has been deposited by the supplier.

Further, filing of Return (as in the case of registration) is procedural requirement and intimation to department. These cannot be made pre-conditions for entitlement to credit.

Suggestion

It is suggested that the pre-conditions relating to payment of tax to the credit of Government and mandatory filing of return be deleted / removed.

41. Tax to be paid to the credit of Government for utilizing input tax credit

Section 16(11)(c) of Model GST Law provides that no registered



taxable person shall be entitled to the credit of any input tax in respect of any supply of goods and/or services to him unless the tax charged in respect of such supply has been actually paid to the credit of the appropriate Government, either in cash or through utilization of input tax credit admissible in respect of the said supply.

Issue

The condition of tax to be deposited by the supplier to the credit of appropriate Government in order to enable the purchaser to avail the input tax credit on such supply made may cause undue hardship to the assesseees. For example; A makes a sale of goods to B who in turn uses such goods to manufacture other goods. As per this provision B will not be able to claim input tax credit of tax paid on goods purchased from A until A deposits the tax so collected from B to the credit of appropriate government. In case B deals with 100-200 of such suppliers it would be difficult for him to keep a tab of which supplier has made tax payment to the government to enable him to take input tax credit.

Suggestions

- *It is suggested that the condition of tax being deposited by supplier to the credit of appropriate Government in order to enable the purchaser to avail the input tax credit on such supply be reconsidered and liberalized to enable the traders to avail input tax credit of tax paid by them.*
- *Alternatively, if the Government believes that certain some taxable persons in the unorganized sector may not deposit the collected tax to Government the concept of reverse charge be made applicable to them.*

42. Setting up Procedure for availing Input Tax Credit

Section 16 Chapter V of Model GST Law provides for the manner of taking Input Tax Credit. Input tax credit needs to be taken within one year from the date of issue of tax invoice.

Suggestions

- *It is suggested that a clear cut framework and process for claiming input tax credit be defined and the pre-condition of tax on inputs beings paid to the credit of government(s) by the supplier be re-considered.*

- *It is further suggested that a National Invoicing Platform (NIP) be created on the lines of the TDS platform under the Income Tax Act, 1961. The NIP can be integrated with accounting softwares of the suppliers and any invoice on which supplier wants to avail credit will be routed through NIP. This routing of all the invoices through a common platform will eliminate frauds or inaccuracies as against the present system wherein the genuine transactions are to be manually verified.*

43. Input Tax Credit of inputs sent for job work

Section 16A Chapter V of Model GST Law provides that where the inputs or capital goods, are not received back by the “principal” within the specified time, he shall pay an amount equivalent to the input tax credit availed of on the said inputs or capital goods, along with interest specified under section 36(1). The amount plus interest may be reclaimed when the inputs or capital goods are received back by him at his place of business.

Issues

There may arise a situation wherein inputs/ capital goods are to be kept with the job workers beyond the specified time limits and prolonged jobs are a requirement of manufacturing process. Further levying of interest in addition to reversal of credit may harm the liquidity position and it also involves an opportunity cost as high value of material is sent for job work by many industries.

Suggestions

It is suggested that no interest be levied in cases where inputs/ capital goods sent for job work are not received within stipulated time. Such cases may call for reversal of credit which would also be in lines with Rule 4(5) CENVAT Credit Rules, 2004.

44. Time Limit for availing CENVAT Credit

Section 16(3A) of the Model GST Law provides that a taxable person shall not be entitled to take input tax credit in respect of any supply of goods and / or services to him after the expiry of 1 year from the date of issue of tax invoice relating to such supply.

Further, section 16(15) provides that a taxable person shall not be entitled to take input tax credit in respect of any invoice for supply of



goods and/or services, after the filing of the return under section 27 for the month of September following the end of financial year to which such invoice pertains or filing of the relevant annual return (31st December), whichever is earlier.

Issue

Provisions of section 16(3A) & 16(15) contradict each other. Consider an instance where a manufacturer purchased inputs on 25th March 2016 for the year ending 31st March 2016. Now as per Section 16(3A) he is entitled to avail credit within 1 year i.e. till 24th March 2017. However, as per section 16(15) he can avail credit of the said invoice on or before 31st December 2016. This might cause litigation as well as interpretational issues.

Suggestion

It is suggested that provisions of sections 16(3A) & 16(15) be reconsidered and redrafted to avoid litigation as well as interpretational issues.

Further, it is suggested that filing of return not be linked to entitlement to credit.

45. Recovery of excess input credit distributed by Input Service Distributor

Section 18 of the Model GST Law provides that where the credit distributed by the Input Service Distributor is in excess of the credit available for distribution by him, the excess credit so distributed shall be recovered from such distributor along with interest.

Where the Input Service Distributor distributes the credit in contravention of the provisions contained in section 17 resulting in excess distribution of credit to one or more suppliers, the excess credit so distributed shall be recovered from such supplier(s) along with interest.

Suggestion

As the sub-sections are overlapping in nature it is suggested to clarify which of the sub-section prevails in case of overlap.

Further, in section 18(2) the words 'will be recovered from such supplier(s)' be replaced with 'will be recovered from such input service distributor' since in case of any incorrect distribution of credit by the ISD, it should be the person who has committed the error from whom it should be recovered and

not the recipient of the credit from such ISD. Also, practically, it is from the books of the ISD that it can be established that it is incorrectly distributed. After identifying this, if an officer of some other jurisdiction has to enforce recovery, it would be an administrative menace.

46. Time limit to fix effective date of Registration

Section 19(8A) of the Model GST Law provides that a certificate of registration shall be issued in the prescribed form, with effective date as may be prescribed.

Suggestion

It is suggested that a time limit to fix the effective date be provided in the Model GST law itself to provide better transparency and binding.

47. Explicit contents of a Tax Invoice

Section 23 of the Model GST Law provides that a registered taxable person supplying,-

- (i) taxable goods shall issue, at the time of supply, a tax invoice showing the description, quantity and value of goods, the tax charged thereon and such other particulars as may be prescribed;
- (ii) taxable services shall issue a tax invoice, within the prescribed time, showing the description, the tax charged thereon and such other particulars as may be prescribed

Issue

The invoice so prescribed indicates no clarity about the contents of the invoice. An invoice should contain details of the description, quantity and value of supply, parties to supply, tax credited/creditable to the government, entitlement of credit to recipient etc. If at least these parameters are not evidenced by tax invoice, then there is nothing that the invoice evidences. In that case, the importance in issuing an invoice would be illusory.

Suggestion

It is suggested that details to be covered by an invoice be made more elaborate and exhaustive.



48. Amount of tax to be indicated in tax invoice and other documents

Section 23A of the Model GST Law mandates that where any supply is made for a consideration, every person who is liable to pay tax for such supply shall prominently indicate in all documents relating to assessment, tax invoice and other like documents, the amount of tax which will form part of the price at which such supply is made.

Issue

It may not be practical to disclose in all the documents the amount of tax which will form part of the price.

Suggestion

It is suggested that the disclosure of amount of tax be limited to invoice only. Assessment documents would anyway cover this fact for other reasons.

49. Clarification regarding furnishing details of outward supplies

Section 25(1) of the Model GST Law provides that every registered taxable person needs to electronically furnish details of outward supplies of goods and/or services effected, during a tax period on or before the 10th day of the month succeeding the said tax period and such details shall be communicated to the recipient of the said supplies within the time and in the manner as may be prescribed.

Suggestion

It be suitably clarified that the details required to be communicated to the recipient of the supplies will be done through GSTN and there need not be any requirement for any communication by the supplier as it creates unnecessary compliance requirement on the part of the supplier to communicate details of each supply to each recipient.

50. Rectification of Returns by Input Service Distributors (ISD)

Section 27(1) of Model GST Law requires every registered taxable person to furnish a monthly return electronically in prescribed form & particulars within 20 days from the end of the month.

Section 27(6) requires every ISD to furnish a monthly electronic return within 12 days from the end of the month.

Section 27(7) permits rectification of return owing to omission or

incorrect particulars subject to payment of interest as specified.

Issue

As per Section 27(7), any Registered Taxable Person who has furnished a return under sub-section (1) may rectify any error noticed in such return subject to provisions of the Section 27(7). However, an ISD is required to file a return under Section 27(6) and therefore would not be covered by Section 27(7). ISD cannot be included in the definition of Registered Taxable Person who is required to furnish return under sub-section (1) as it would imply that an ISD will be required to submit two returns on two different dates in accordance with the provisions of sub-sections (1) and (6).

Suggestion

It is suggested that provisions of section 27(7) be made applicable to Input Service Distributors and they be allowed to rectify their returns owing to omission or incorrect particulars subject to payment of interest as specified.

51. Interest on delayed payment of tax

Section 36(3) of the Model GST Law provides that in case a taxable person makes an undue or excess claim of input tax credit under sub-section (10) of section 29, he shall be liable to pay interest on such undue or excess claim at the prescribed rate for the period computed in the manner prescribed.

Further section 29A(10) of the Model GST Law provides that the amount reduced from output tax liability in contravention of the provision of sub-section (7) shall be added to the output tax liability of the supplier in his return for the month in which such contravention takes place and such supplier shall be liable to pay interest on the amount so added at the rate specified in **sub-section (3) of section 36.**

Suggestion

It is suggested that section 36(3) be suitably amended as sub-section 10 of section 29 as well as 29A both have a reference of section 36(3) therein.

52. Payment of refundable amount to applicant

Section 38(6) of the Model GST Law provides that the refundable amount shall be directly paid to the applicant instead of being credited to the Fund if it is related to:



- (a) refund of tax on goods and/or services or inputs used therein exported out of India;
- (b) refund of unutilized input tax credit under sub-section (2);
- (c) the tax and interest, if he had not passed on the incidence of such tax and interest to any other person; or
- (d) the tax or interest borne by such other class of applicants as the Central or a State Government may, on the recommendation of the Council, by notification, specify

Suggestion

- *It is suggested that all the input tax credits be seamlessly covered under the provisions of Section 38(6).*
- *Further, it is suggested to include advance deposit of tax made by Casual taxable person or non-resident taxable person as per provisions of section 19A as well as TDS deducted and its Refund & TCS refund.*

53. Definition of Books of Accounts for the purpose of GST

Section 42 of the Model GST Law provides that every registered taxable person is required to maintain a true and correct account of production or manufacture of goods, of inward or outward supply of goods and/or services, of stock of goods, of input tax credit availed, of output tax payable and paid, and such other particulars as may be prescribed in this behalf.

Suggested

It is suggested to suitably define the term "Books of Accounts" for the purpose of GST. The reference for the books of accounts has also been made in Time of Supply provisions. A clear meaning would thus support correct interpretation.

54. Removal of goods for job work

Section 43A of the Model GST Law prescribes procedures to send taxable goods without payment of tax for job work and receiving or supplying such goods after completion of job work.

Issue

The provision covers only situations where the goods which are sent

to the job worker are received 'after completion of job work'. There will also be situations where goods may be returned by the job workers without finishing the job work or where the goods are moved from one job worker to another for completion of the job work etc. Therefore, the condition of 'after completion of job work' should be removed.

Suggestion

It is suggested that at the end of sub Section (1), the words 'and may, after completion of job work' be omitted.

55. Definition of "Brand Name" referring only to a service

Section 43B of Model GST Law defines 'brand name or trade name' means, a brand name or a trade name,, which is used for the purpose of indicating, or so as to indicate a connection, in the course of trade, **between a service and some other person** using the name or mark with or without any indication of the identity of that person;

Issue

Using the word service and some other person makes the definition restricted to services in course of trade

Suggestion

It is suggested that words "between a service and some other person" be replaced with "between a supply and some other person".

56. Collection of Tax at Source by e-Commerce operators

Section 43C of Model GST Law provides that every electronic commerce operator shall, at the time of credit of any amount to the account of the supplier of goods and/or services or at the time of payment of any amount, collect an amount, out of the amount payable or paid to the supplier, representing consideration towards the supply of goods and /or services made through it, calculated at such rate as may be notified.

Any amount collected in accordance with the provisions of this section and paid to the credit of the appropriate Government shall be deemed to be a payment of tax on behalf of the concerned supplier and the supplier shall claim credit, in his electronic cash ledger, of the



tax collected and reflected in the statement of the operator.

Issue

The suppliers under proposed GST regime can claim input tax credit on commission paid to E-Commerce, on purchase of goods and TCS collected by e-commerce operators. This will result in a situation of refund for suppliers and additional compliance for E-Commerce Companies.

Suggestion

It is suggested that the concept of Tax collection at source be done away with as it proves to be detrimental to small suppliers and leads to blockage of funds in TCS.

57. Return of goods received in pursuance of an inward supply

Explanation to Section 44 of Model GST Law provides that where goods received in pursuance of an inward supply are returned by the recipient to the supplier within a period of six months from the date of the relevant invoice, the tax payable on such return supply shall be equal to the input tax credit availed of earlier in respect of such inward supply.

Suggestion

It is suggested that the return of goods by the recipient be allowed to be made to the supplier or his order. Just as recipient can be an agent of the customer who pays, returns too should be permitted to supplier or his order.

58. Scrutiny of Returns

Section 45 of the Model GST Law provides that the proper officer may scrutinize the return and related particulars furnished by the taxable person to verify the correctness of the return in such manner as may be prescribed. He shall inform the taxable person of the discrepancies noticed, if any, after such scrutiny and seek his explanation thereto. In case the explanation is found acceptable, the taxable person shall be informed accordingly and no further action shall be taken in this regard.

Issue

The words “related particulars furnished” provide an authority to the proper officer to scrutinize more than what is filed by the taxable person. Elaborate inquisitorial audit might be undertaken under these provisions. Also, the acceptance to explanation regarding discrepancies provided by taxable person is left to the disposal of the proper officer. He may or may not accept the explanation. As such returns provisions are clear so as not to warrant any discretion to accept explanations by tax payer

Suggestion

It is suggested that scrutiny be restricted to the return filed only. Further, it is suggested that a basis for accepting an explanation be provided or the requirement of offering an explanation be done away with.

59. Filing of return to revoke best judgement assessment

Section 46(2) of the Model GST Law provides that where the taxable person furnishes a valid return within 30 days of the service of the assessment order the said assessment order shall be deemed to have been withdrawn.

Explanation— For removal of doubts it is clarified that nothing in this section shall preclude the payment of interest under section 36 or payment of late fee under section 33.

Issue

This provision might be misused by the taxpayers who may file incorrect returns in order to escape a best-judgement assessment by the proper officer as per section 46(1). The validity of the return so filed still needs to be assessed by the proper officer who may pass yet another order and send the process into appeal.

Further the explanation lacks clarity as to whether it is about the liability or the payment of interest that is not precluded.

Suggestion

It is suggested that the words “valid return” be replaced with “bonafide return” and a proviso be inserted to provide that the taxable person will not be entitled to file such a return more than once for the period covered by the order under sub-section (1).

Further, it is suggested that in the explanation the words “liability for” be



inserted before the words “payment of interest.....”

60. Audit by Tax authorities of business transactions

Section 49(1) of the Model GST Law provides that the Commissioner of CGST/SGST] or any officer authorised by him, by way of a general or a specific order, may undertake audit of the **business** transactions of any taxable person for such period, at such frequency and in such manner as may be prescribed.

Issue

The provisions of the section appear to exclude non-business transactions from the scope of audit which may still be liable to GST. All the transactions of the taxable person shall be liable to audit.

Suggestions

It is suggested that the word “business” be deleted from the said provision.

61. Time Limit for issuing Notice to be prescribed.

Section 51-A & B provide that where any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilized for any reason, other than the reason of fraud etc. or by reasons of fraud etc. the proper officer shall serve notice on the person chargeable with tax requiring him to show cause why he should not pay the amount specified in the notice along with interest payable penalty leviable under the provisions of this Act or the rules made thereunder.

The time period for issuing order is 3 years in normal cases and 5 years in fraud cases. Further, section 51-C2 provides that Where any Appellate Authority or Tribunal or Court concludes that the notice issued under sub-section B (1) or B (2) is not sustainable for the reason that the charges of fraud or any wilful mis-statement or suppression of facts to evade tax has not been established against the person to whom the notice was issued, the proper officer shall determine the tax payable by such person for the period of three years, deeming as if the notice were issued under sub-section A (1) or A (2).

Issue

Section 51 only provides for the time period for issuance of adjudication order (3 years in normal cases and five years in case of fraud etc.) but there is no such time limit prescribed for the issue of show-cause notice as is provided under the existing laws. Non-provision of such a time limit may lead to late issue of notices and hasty disposal of orders in order to comply with the time limit for issue of orders.

Suggestion

It is suggested that time limit for issuance of notice be prescribed as without time limit, there is no finality to issues. It would also help to mitigate the sword of uncertainty looming over a taxable person's head.

62. Double tax payment for tax wrongfully collected and deposited

Section 53 of the Model GST Law provides that a taxable person who has paid CGST/SGST on a transaction considered by him to be an intra-state supply, but which is subsequently held to be an inter-state supply, shall, upon payment of IGST, be allowed to take the amount of CGST /SGST (in SGST Act) so paid as refund subject to the provisions of section 38 and subject to such other conditions as may be prescribed.

Issue

Even for a bonafide mistake there is a requirement to pay the tax amount again and follow the refund procedure specified in section 38 which might prove quite cumbersome resulting in locking up of working capital.

Suggestion

- *It is suggested that the requirement of double payment of taxes be eliminated.*
- *Further, the refund/adjustment procedure for such cases be made fast-tracked, simple and quick.*

63. Reasons to believe Suppression to undertake a search

Section 60(1) of the Model GST law provides that where the CGST/SGST officer, not below the rank of Joint Commissioner, has reasons to believe that a taxable person has suppressed any transaction relating to supply of goods and/or services or the stock of goods in hand, or has claimed input tax credit in excess of his



entitlement under the Act or has indulged in contravention of any of the provisions of this Act or rules made thereunder to evade tax under this Act, he may authorize in writing any other officer of CGST/SGST to inspect any places of business of the taxable person.

Suggestion

It is suggested that a copy of order of JC at the time of search be mandatorily made available to the taxable person (in the interest of equity, justice and transparency) as reasons for JCs belief about suppression will be in check.

64. Summoning taxable persons to give evidence and produce documents

Section 63(1) of the Model GST Law provides that any CGST/SGST officer, duly authorised by the competent authority in this behalf, shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry which such officer is making for any of the purposes of this Act.

Suggestion

It is suggested that a proviso be added to the said section to provide that summons are restricted only to the information contemporaneously available and no new information or format of information would be called for.

65. Access to business premises to inspect books of accounts, documents etc.

Section 64(1) of the Model GST Law provides that any authorized CGST/SGST officer authorized shall have access to any business premises to inspect books of account, documents, computers, computer programs, computer software and such other things as he may require and which may be available at such premises, for the purposes of carrying out any audit, scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.

Issue

The premises of an assessee are accessible under the provisions of section 60 and not under section 64. Section 64 only declares availability of access the premises and must not be interpreted to grant a power for search which is provided by section 60. Access to premises under this section would provide a back-door to do what is

not permitted under section 60.

Suggestion

It is suggested that the power to search and access premises be restricted to section 60 only.

66. All offences put in one class and penalty imposed thereupon

Section 66 of the Model GST law provides a list of 20 offences liable to penalty under the GST Act. Here all the offences are treated at par as there is no segregation of offences as secreted or non-secreted for levying the penalties.

Suggestion

- *It is suggested to prescribe separate means of identification, degree of proof required, defence permissible and consequences separately for each of these two classes of offense to bring in transparency and clarity.*
- *Similarly, the offences listed in section 73 may also be categorized on above grounds.*

67. Imprisonment for 5 years for repeated offences

Section 73 of Model GST Law deals with Prosecution provisions for any of the 12 enlisted offences committed by an assessee.

Sub-section 2 of section 73 provides that if any person convicted of an offence under this section is again convicted of an offence under this section, then, he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to five years and with fine.

Issue

The provisions of imprisonment for a maximum term of 5 years are draconian and anti-Industry. For example - imprisonment for 5 years for an assessee who fails to supply any information which he is required to supply under this Act or the rules made thereunder or supplies false information is not a case calling for a 5 year imprisonment. A normal monetary penalty might suffice for this failure.

Suggestion

It is suggested that imprisonment provisions be liberalized and list of



offences liable to imprisonment be reconsidered and well thought out.

68. Cognizable and Non-bailable Offences

Section 73(4) of the Model GST Law provides that the offences relating to taxable goods and/or services where the amount of tax evaded exceeds two hundred and fifty lakh rupees shall be cognizable and non-bailable.

Issue

In this time and age, Rs.2.5 crore is too low a limit for prosecution. There are enough measures to curtail offences including the inherent measure of loss of tax credit.

Suggestion

It is suggested that the limit for cognizable and non-bailable offences be increased to Rs. 10 crores.

69. Criteria for determining range of compounding amount

Section 78(3) of the Model GST law provides that on payment of such compounding amount as may be determined by the competent authority, no further proceedings shall be initiated under the Act against the accused person in respect of the same offence and any criminal proceedings, if already initiated in respect of the said offence, shall stand abated.

Issue

There are no criteria available for the competent authority to determine the compounding amount payable by the accused person which can be questioned by him. Further, in absence of proper method appeals will pile up against this amount also for being excessive. If criteria is provided then appeals can be quickly disposed off if the criteria is justifiable.

Suggestion

It is suggested that suitable criteria for determining the compounding amount by the competent authority be provided for.

70. Appeals to First Appellate Authority & Appellate Tribunal

Section 79 provides that any person aggrieved by the order passed against him may appeal to the First Appellate Authority. Every appeal under this section shall be filed within three months from the date on which the decision or order sought to be appealed against is communicated to the Commissioner of GST, or the person preferring the appeal:

Provided that the First Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months, allow it to be presented within a further period of one month.

Further, no appeal shall be filed unless the appellant has deposited a sum equal to 10% of the amount in dispute arising from the said order. Similar deposit needs to be made under section 82 while making an appeal to Appellate Tribunal.

Issues

- If an order served on an entity does not reach the concerned entity in time to file an appeal (or within such extended time), then the remedy is lost permanently. Anyway under the law of jurisprudence an appellant must justify every day of delay.
- The requirement of making a pre-deposit will further add to the litigations considering the amount and interest involved thereon

Suggestions

- *It is suggested that the First Appellate Authority be permitted to condone the delay and put the appellant 'to terms' for admission of belated appeals under section 79(4).*
- *As regards pre-deposits, it is suggested that the minimum limit be same as provided and in case an assessee wishes to pay a higher amount the same be allowed to him with consequential interest to be granted to him when payment in excess of prescribed limits are made.*

71. Calling of records for admitting application for Advance Ruling

Section 98 of the Model GST Law provides that on receipt of an application, the Authority shall cause a copy of application to be forwarded to the officers as may be prescribed and, if necessary, call upon him to furnish the relevant records:

- (2) The Authority may, after examining the application and the



records called for and after hearing the applicant or authorized representative of the applicant as well as the authorized representative of the prescribed officers, by order, either admit or reject the application.

Issue

Suspense about admissibility of application cannot be kept so long to witness examination of application, records etc. and after the entire process it is stated that the application may not be admissible.

Suggestion

It is suggested that decision to admit application is to be taken before calling for records from officers.

72. Definition of “Manufacturer”

Section 140 Chapter XXIV “Repeal & Saving” provides that from the date of commencement of the Act, the (State) General Sales Tax/Value Added Tax Act, the Central Excise Act 1944, and the Central Excise Tariff Act 1985 shall apply only in respect of goods included in the entry 84 and entry 54 of the Union List and the State List respectively, of the Schedule VII to the Constitution of India.

Further Section 2(66) provides that “manufacturer” shall have the meaning assigned to it by the Central Excise Act, 1944

Issue

There exists a contradiction here as clause 140 talks about repealing the Central Excise Act 1944 and clause 2(66) refers to the definition given in the Central Excise Act 1944.

Suggestion

It is suggested that an elaborate definition of the term “Manufacturer” be provided to avoid litigation and interpretational issues.

73. Amount of CENVAT credit carried forward in a return to be allowed as input tax credit

Section 143 of the Model GST Law relating to transition, provides that CENVAT Credit carried forward in return of earlier law would be allowed provided the said amount was admissible as CENVAT credit under the earlier law and is also admissible as input tax credit

under this Act.

Issue

There may arise a situation that certain goods/ services might be exempt under present law and taxable under GST regime or vice versa. The assessee might face a loss of credit CENVAT Credit under such situations as credit needs to be admissible under both the laws. This condition deviates from the concept of seamless credit.

On account of this provision there could be instances where CENVAT credit had been taken by the assessee under earlier law and remained unutilized till the appointed day. But he won't be able to carry forward the unutilized credit if such credit is not admissible as input tax credit under GST. This would lead to undue hardships, cascading effect of earlier or later taxes, for the assesseees who had lawfully taken CENVAT credit under earlier law and paid tax on its output liability.

Suggestion

It is suggested that Input Tax Credit be provided to the assesseees in seamless manner i.e. Credit once validly taken should not be denied by change of law. There be made transitional provisions to allow duty or taxes contained in invoices made under the earlier law as input tax credit under the GST law in the period in which it is received.

74. Transitional Provisions for Taxability on Return of goods from Job workers

Section 150 & 151 of the Model GST Law provide that if the inputs/semi-finished goods are removed/dispatched from the factory/place of business to the job worker in accordance with the provisions of the earlier law prior to the appointed day and such inputs/semi-finished goods are returned to the said factory/place of business after the appointed day, then, if such goods are:

- (i) **Returned after a period of 6 months** or the extended period of not exceeding two months from the appointed day, then the tax shall be payable by the job worker if such goods are liable to tax under GST;
- (ii) **Not returned within a period of 6 months** or extended period from the appointed day, then the tax shall be payable by the manufacturer, if such goods are liable to tax under GST.



Issue

The meaning of the words “returned after a period of 6 months” and “not returned within a period of 6 months” basically is the same. If something is not returned within a period of six months, then logically it means, it will be returned after six months, if at all it is being returned. However, incidence of tax under GST differs in these two cases. While in case of “goods returned after a period of 6 months”, job worker has been made liable to pay GST, in case of “goods not returned within a period of 6 months”, manufacturer has been made liable. The language of the law is ambiguous and will cause double taxation under GST for the same activity.

Suggestion

It is therefore suggested that the tax be payable only once – either by the manufacturer or the job worker. Hence, both sections 150 and 151 need to be amended to this extent.

75. Downward revision of price of goods after implementation of GST

Section 153(2) of Model GST Law provides that where, in pursuance of a contract entered into prior to the appointed day, the price of any goods and/or services is revised downwards on or after the appointed day, the taxable person who had removed / provided such goods and/or services may issue to the recipient a supplementary invoice or credit note, containing such particulars as may be prescribed, within thirty days of such price revision and for the purposes of this Act such supplementary invoice or credit note shall be deemed to have been issued in respect of an outward supply made under this Act:

Provided that the taxable person shall be allowed to reduce his tax liability on account of issue of the said invoice or credit note only if the recipient of the invoice or credit note has reduced his input tax credit corresponding to such reduction of tax liability.

Issue

The provision of allowing reversal of output tax if ITC has been reversed by buying dealer will create unwanted litigations as cross checking of reversal is very difficult and it has no tax impact per se.

Suggestion

It is suggested that provisions relating to downward revision be reconsidered and dropped. This is because credit of input tax, if any, may be already availed by the recipient.

76. Refund claim filed after the date of applicability of GST

Section 154 of the Model GST Law provides that every claim for refund of any duty/tax and interest, if any, paid on such duty/tax or any other amount, filed by any person before the appointed day, shall be disposed of in accordance with the provisions of earlier law and any amount eventually accruing to him shall be paid in cash. Where any claim for refund is fully or partially rejected, the amount so rejected shall lapse.

Issue

This section does not talk about filing of refund claims during GST regime in respect of periods when earlier law was applicable. What will happen to such claims and how such claims will be filed for the period has not been dealt with by the transition provisions. Without clarity on this, there may be unwanted litigations on this aspect.

Suggestion

It is suggested that there be inserted a provision for filing of refund claims in respect of past periods after the applicability of GST, to avoid unnecessary litigations/disputes.

77. Taxability of Supply without Consideration

Schedule 1 of the Model GST Law provides list of activities which would be treated as supply without consideration:

1. Permanent transfer/disposal of business assets.
2. Temporary application of business assets to a private or non-business use.
3. Services put to a private or non-business use.
4. Assets retained after deregistration.
5. Supply of goods and / or services by a taxable person to another taxable or non-taxable person in the course or furtherance of business.

Suggestions



- *It is suggested that the meaning of both the terms 'Permanent transfer or disposal' and 'Business assets' be unambiguously stated in the law to avoid confusion. Matters like whether stock transfer from one branch to another will be covered under permanent transfer or not also be made clear.*
- *It is suggested that Point 2 "Temporary application of business assets to a private or non-business use" be reconsidered as it is a huge litigation prone area. Further, the word "application" be replaced with "transfer" as this would provide the correct purpose or intent of the clause.*
- *In the context of the word "asset" used in schedule I it is suggested that term "asset" be suitably defined. The same is also covered under section 21(7). It be made clear that only those assets in respect of which input credits have been utilised against output tax liability and which are lying in stock or as capital goods should fall within the purview of assets held after de-registration and GST will be payable on that.*
- *Further, it is suggested that the valuation mechanism be provided for valuing the transactions covered under Schedule I*
- *It is suggested to suitably clarify that 'if the supply of demo goods, warranty replacements, free samples, scrap' etc. would be covered under Schedule I and if they are covered, how will they be valued.*
- *In point 5 the term "supply" be replaced with term "Movement" as supply causes confusion and there is no necessity to state any purpose behind the movement.*
- *To avoid disputes and convey the intent of the legislature, the aspect of supply of goods and services within the same business entity by way of stock transfer/ branch transfer be specified clearly and unambiguously.*

78. Reversal of Credit for Inputs used for Personal use

As per Schedule 1 of the Model GST Law Goods/Services that are put to private or non-business use with or without a consideration will be treated as supply of goods and liable to GST.

Further, Section 16(9)(f) provides that input tax credit shall not be available in respect of goods and/ or services used for private or personal consumption to the extent consumed.

Issue

The use of goods and/ or services for personal use is treated as supply but the input tax credit for the same is not available.

Suggestion

It is suggested that a provision be inserted 'for reversal of input tax credit used for goods and/ or services used for personal or private consumption' instead of making them liable to GST and not allowing input tax credit on the same.

79. Nexus of the term "Taxable Threshold"

Explanation 1 to Clause 1 of Schedule III of Model GST Law provides that

"Explanation 1- The taxable threshold shall include all supplies made by the taxable person, whether on his own account or made on behalf of all his principals."

Issue

The term "Taxable Threshold" finds no place in the bill/ Schedules except for this very explanation.

Suggestion

- *It is suggested that in explanation 1 to clause 1 of Schedule III, the word "Taxable threshold" be replaced with the word "aggregate turnover".*
- *Alternatively, the term "taxable threshold" be suitably defined for correct interpretation.*

80. Compulsory Registration for person making Inter-state taxable supply

Schedule III of Model GST Law provides that persons making any inter-State taxable supply is required to get himself registered under the act irrespective of the specified threshold of Rs. 9 lakhs/ 4 lakhs for registration.

Issue

If a taxable person effects an inter-state supply then he would be required to get registered since inception of the law. This might put a



burden on small assesseees who in course of business/ providing services make a small amount of inter-state supply owing to which they need to seek registration immediately.

Suggestion

It is therefore suggested that inter-state supplies also be included while computing the specified threshold of Rs. 9 lakhs/ 4 lakhs for registration.

81. Provision of Centralized Registration

Schedule III of Model GST Law provides that every supplier shall be liable to be registered under GST Act in the State from where he makes a taxable supply of goods and/or services his aggregate turnover in a financial year exceeds Rs. 9 lakhs/ 4 lakhs as the case may be.

Section 19 Chapter IV provides that every person liable to be registered under Schedule III of this Act shall apply for registration in every such State in which he is so liable within 30 days from the date on which he becomes liable to registration.

Issue

The requirement of separate registration in each state will lead to additional costs and increased litigation as each state will have separate procedures for the suppliers. It will also dilute ease in doing business or advantages brought by this act.

Suggestions

- *The concept of Centralized Registration be provided for.*
- *Further, the assessee be mandated to provide in his return details of all the locations from which supply of goods/ services is made by him.*

82. Mandatory registration for Casual Taxable Person & Non-resident Taxable person

Para 5 of Schedule III of Model GST Law prescribes mandatory registration for casual taxable persons & non-resident taxable person irrespective of the specified threshold of Rs. 9 lakhs.

Section 9(1) of the Model GST Law provides that a person required to be registered under Schedule III will not be considered as a taxable person until his aggregate turnover in a financial year exceeds Rs. 10 lakhs.

Issue

A casual person and non-resident taxable person with NIL turnover are required to get themselves registered but are not taxable persons as per provisions of section 9(1).

Suggestion

It be suitably clarified that though the registration is mandatory for casual taxable persons and non-resident taxable persons the tax liability would arise if the aggregate turnover crosses threshold of Rs. 10 lakhs. (Rs. 5 lakhs for NE States).

83. Tax Treatment of Stock in Transit under GST

There may arise a situation where an assessee may have paid tax on goods in pre-GST regime which may be in transit in the course of delivery to the customer and received by the said customer post implementation of GST or may be with the customer pending his approval for completing sale. The possible situations on transit goods are:

- (i) The goods are in transit.
- (ii) The goods are pending with the customer for approval before sale.

Suggestion

It is suggested that transitional provisions be provided to entail a clear procedure for mechanism to avail transitional credit on goods in transit or pending for approval.

84. Sharing of expenses borne by Shared Service Centres

Considering a situation where in a big conglomerate the operative expenses are met by a common shared services centre which provides services across states in India using modern techniques like cloud computing, ERPs, net banking etc.; the normal chargeback of the expenses incurred by these shared services centre to different units of the same concern will amount to supply and thus would be liable to be taxed under GST.

Suggestion

It is suggested that suitable clarification be provided regarding taxability of



services provided by shared service centres.

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