SUGGESTIONS ON REVISED MODEL GST LAW

(November 2016)

Indirect Taxes Committee

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

NEW DELHI

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. Sushil Goyal, Vice-Chairman, Indirect Taxes Committee	9830088400	skgoyal@icai.org
CA. Sharad Singhal, Secretary, Indirect Taxes Committee	09310542608 0120-3045954	idtc@icai.in

For any further information, please visit the website of Indirect Taxes Committee: www.idtc.icai.org.

II. EXECUTIVE SUMMARY

S. No.	Topic(s)	Suggestion(s)
1.	Definition of Capital goods	➢ *It is suggested that an exception be provided for items which are written off during the year of purchase in books of accounts to treat them as capital goods even if not capitalised in books of accounts.* ➢ *Further, it is suggested that this definition may also include the goods, the value of which is amortized over a period of time in the books of accounts.* ➢ *Additionally, the term "in the course or furtherance of business" be replaced with "for the purpose of business" so that no scope for restriction of credit is left. Same change may also be done for definitions of "Input" & "Input Services", "Outward Supply" and also in Schedule I & II.* ➢ *The term "value" be replaced with the words 'purchase consideration' for better clarity.*
2.	Definition of Exempt Supply	➢ *It is suggested that non-taxable supplies should be taken outside the ambit of 'exempt supplies' as well as 'aggregate turnover'. Inclusion of non-taxable supplies in aggregate turnover results in an effectively lower limit for composition levy as well as for threshold exemption. Further, when a supply is non-taxable, it should not affect the taxability indirectly by affecting the threshold exemption and composition scheme.* ➢ *It is further suggested that the words "not-taxable" be replaced with "non-taxable" to provide the correct meaning of the definition as intended.* ➢ *Therefore, an amendment may be required in said definition that ''Exempt supply means any supply of goods/services which are not taxable under this act other than supply for job work in accordance with Section 55 of the Act and includes such supply of goods and/or*

S. No.	Topic(s)	Suggestion(s)
		services, which attract nil rate of tax or which may be exempt from tax under section 11.
3.	Definition of First Stage Dealer & Second Stage Dealer	➢ *It is suggested that the phrase ''and is registered accordingly under the relevant provisions of Central Excise Act'' be added at the end below para (ii) of Section 2(46).* ➢ *Further, it is suggested that reference to Invoice under Rule – 11 of Central Excise Rules, 2002 be omitted, as they shall be no longer in operation after introduction of GST and invoice be required to be issued as per section 28 of the Revised Model GST Law, to avoid any contradiction with section 16 of the Revised Law.*
4.	Definition of Works Contract	➢ *It is suggested that the definition of works contract be suitably clarified to bring out the clear intent of the legislation – whether only immovable property emerging from a works contract are treated as works contract and movable property is taxed based on the concept of composite supply or whether both movable and immovable property will be works contract.* ➢ *Further it be suitably clarified as to where the contracts of repair and maintenance of moveable properties would get covered under the said definition.* ➢ *It is suggested that definition of works contract be rephrased as follows:* *"works contract means a supply of goods and services for the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract in relation to any immovable property".*
5.	Definition of Zero Rated Supply	➢ *It is therefore suggested that the definition of Zero Rated Supply as provided u/s 2(111) be omitted.*

S. No.	Topic(s)	Suggestion(s)
		➢ *Further, if definition is not decided to be omitted, the reference made be corrected to section 16 in place of section 15.* ➢ *Also exclude the use of 'zero rated supply under this Act' in section 17(2) of the CGST Act.*
6.	Importation of Services for Personal Use	➢ *It is suggested that importation of services for personal purposes be kept outside the purview of GST.*
7.	Services provided by Governmental Authority to be treated as supply	➢ *It is suggested that the words "Governmental Authority" be included in Section 3(3)(b)) of Revised Model GST Law.* ➢ *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*
8.	Levy & Collection under Reverse Charge	➢ *An explanation be added to specify that supplies other than those in course or furtherance of business are excluded from the purview of Section 8(3)*
9.	Availability of Composition Levy	➢ *It is suggested that eligibility for composition scheme be based on the turnover during a particular financial year and be made available uniformly to all suppliers whether supplying goods or services or both.* ➢ *Alternatively, Sector specific composition schemes may be designed to cater to need of different sectors.* ➢ *It is suggested that in section 9(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.*

S. No.	Topic(s)	Suggestion(s)
		➢ *The embargo placed on effecting inter-State supplies by the taxable person opting to pay tax under the composition scheme must be done away with. GST, being a destination based consumption tax and moving in the direction of being 'One India – One Tax', this embargo appears to be travelling in the opposite direction.* ➢ *Penalties in respect of cancellation of registration under a composition scheme of a registered taxable person for whatever reason must be limited to recovery of differential taxes. There must not be any further penalty / interest considering that the tax payer would be a small player and will not be in a position to follow the rigours of a GST regime.*
10.	Intimation to avail Composition Scheme	➢ *It is suggested that the requirement of permission to avail composition scheme be replaced with the requirement to be intimated by the taxpayers who are falling within the eligibility criteria.*
11.	Time of supply of goods and services under RCM	➢ *It is suggested that the time limit prescribed in both the cases be made 90 days in line with the current provision of service tax.*
12.	Meaning of term "Vouchers" for Supply of Vouchers	➢ *It is suggested that Section 13(4) be omitted from the law.* ➢ *Further it is suggested that to avoid misinterpretation the following definition of term "Voucher" be provided:* *'voucher means* ➢ *any entitlement received from an arrangement involving a supplier who will accept the same in redemption to settle payment owed in respect of a taxable supply* ➢ *any entitlement received from any Government under a law for the time being in force to redeem the same in respect*

S. No.	Topic(s)	Suggestion(s)
		of settlement of any payment owed towards any tax or duty or ➢ *any entitlement to participate in any future contingent event.*
13.	Taxes/duties paid under IGST not to be included in value of supply	➢ *Thus, it is suggested that in section 15(2)(a)after the words "other than the (SGST Act/the CGST Act)", the word "IGST Act" be inserted.* ➢ *Any taxes, duties, cesses, fee and charges levied under any other statute be excluded from the transaction value so that spirit of GST may be maintained. Such charges, being simply in the nature of statutory levies, never form part of the taxable value, as no supply is rendered by airlines per se, in lieu of such charges.*
14.	Inclusion of Interest, penalty etc. in Value of Supply	➢ *It is suggested that clause d of section15(2) be omitted.* ➢ *Alternatively, if it needs to be essentially included, it might be considered to shift this clause to section 31 as one of the circumstances requiring the issuance of debit note.*
15.	Eligibility and Conditions for taking Input Tax Credit	➢ *It is suggested that a proviso be added as follows:* *"Provided further that every registered taxable person will be entitled take credit of input tax in accordance with this section even though tax is paid on outward supply is in accordance with section 3(1)(c) or section 8(4) or any such provision from time to time".* ➢ *Further for in respect of pipeline and telecommunication tower fixed to earth by foundation or structure support full amount of credit be allowed in the financial year in which such goods are received.*

S. No.	Topic(s)	Suggestion(s)
		➢ *It is suggested that condition of being registered be not made mandatory for availing the credit.* ➢ *It is suggested that mechanism to avail input tax credit on the purchase of inputs made during the unregistered period be incorporated by way of proviso to Section 16(1) or by suitably changing the wordings contained in section 35 to "effective date of First Purchase" instead of 'effective date of registration'.* ➢ *It is also suggested that a suitable mechanism in case of matching the credit should also be provided for. This would be in line with the suggestion to allow credit in respect of reversal of bona fide exemption which is reversed by a Superior Court ruling, credit relatable to the output which is not rendered liable to GST cannot be denied.*
16.	Condition for payment and filing of return for availing input tax credit	➢ *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.* ➢ *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 taxable persons in the unorganized sector may not deposit the collected tax to Government the concept of reverse charge be made applicable to them or allowed to the recipient of supplies from such persons.* ➢ *Further, permanent denial of credit in case of non-payment to supplier of service within 3*

S. No.	Topic(s)	Suggestion(s)
		months be replaced with restoration of credit to recipient after making payment to such supplier.
17.	Time Limit for availing Input Tax Credit	➢ *It is suggested that the deadline to claim Input Tax Credit in respect to any invoice be linked with the due date rather than actual filing of the return. This would help avoid extension of time limit due to delay in filing of return.* ➢ *Further, it is suggested that the provision regarding belated claim of Input Tax Credits be suitably clarified.*
18.	Disallowance of credit in respect of Motor Vehicles	➢ *It is suggested that point ii be rephrased as follows:* ➢ *"(ii) for transportation of goods including own supplies whether or not any amount is separately charged therefor"* ➢ *Further, clarification regarding transportation of items like money, securities, alcohol, petroleum products etc. be suitably provided.* ➢ *It is suggested that credit of motor vehicles be allowed if the motor vehicle is used in the course of business for business purposes.*
19.	Dumpers and tippers or other similar nature & category of motor vehicles be made eligible Inputs	➢ *It is suggested that the dumpers and tippers or other similar nature & category of motor vehicles be included in the definition of "plant and machinery" in explanation 2 of Section 17(3)(d) and hence be eligible for Input Tax Credit and excluded from the definition of motor vehicles specifically as these motor vehicles are not used for transportation but construction (furtherance of business).*
20.	Disallowance of Credit in respect of Rent-a-cab services and other services	➢ *Rent-a-cab, today, has become a significant mode of transport of employees for business purposes. Placing such restrictions are arbitrary. Like other services credit of rent a cab should also be allowed if it is being used*

S. No.	Topic(s)	Suggestion(s)
		for taking part in business meetings, meeting with business partners etc. Non-availability of Input Tax Credit in respect of the specified service will lead to cascading effect of taxes under the GST regime. ➢ *Food and beverage is not defined in the law. It can mean food items covered in 3-4 chapters of Excise Tariff or provision of food which is declared service as per Schedule II. This will result in denial of ITC for "eateries " segment as they will be buying food as "supply of good" and providing food as "supply of service".*
21.	Denial of Credit on Goods Confiscated or detained	➢ *It is suggested that there be no denial of ITC on goods confiscated or detained.*
22.	Credit of Capital Goods held prior to registration	➢ *It is suggested that suitable clarification be provided regarding treatment of credit of Capital Goods lying on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of this Act.* ➢ *It is suggested that as a principle of Natural Justice, dealers obtaining delayed registrations be allowed to set off the tax paid on the material on which output liability is being created as Output Tax would be collected from the dealer from the date when he became liable for registration.*
23.	Tax wrongfully collected and deposited	➢ *It is suggested to provide for an allowance of revising the relevant return and adjusting the amount so incorrectly paid.* ➢ *To amend the provision to impose the recovery provision only when such credit is taken and utilised wrongly by the taxable person. It would be in consistent with the existing rule 14 under the CCR Rules, 2004.*
24.	Tax to be paid on Inputs/ Capital sent to Job Work not received back within stipulated time	➢ *It is suggested that GST paid by Principal on deemed supply be refunded if Job worker subsequently returns the processed inputs/capital goods to principal.*

S. No.	Topic(s)	Suggestion(s)
		➢ *It is suggested that these cases may call for reversal of credit which would also be in lines with Rule 4(5) CENVAT Credit Rules, 2004.*
25.	Registration in case of a person required to deduct tax under section 46	➢ *It is suggested that the supplier who is required to deduct TDS under GST not be required to obtain TAN mandatorily under Income Tax Act and may obtain registration by using PAN.* ➢ *It is suggested that as was provided in the draft report to allot temporary registration in case of enforcement cases and then converting the temporary registration to PAN based registration. A temporary registration may also be allotted in normal cases till PAN is allotted with a maximum time period of 15 days to update PAN and subsequently converting the temporary registration to PAN based.*
26.	Cancellation of Registration	➢ *It is suggested not to permit cancellation of registration from anterior (earlier) date.* ➢ *It is suggested that registration in case of non-filing of return 'without reasonable cause' only be cancelled* ➢ *It is suggested that continuous period for both regular and composition dealer be increased to 12 months and 4 tax periods respectively*
27.	Invoice to be issued in case of reverse charge	➢ *The credit be available on the basis of challan evidencing the payment of tax by the recipient of goods/ services and no need for raising any invoice.* ➢ *Further, it is suggested that the words ".....from a person who is not registered under the Act" be deleted.* ➢ *But, if the provision is to continue, please exclude import of services from this provision as invoice of overseas suppliers is required for determining time of supply and*

S. No.	Topic(s)	Suggestion(s)
		the invoice required under this provision would conflict.
28.	First Return	➢ *It is suggested that first return contains details of all the outward and inward supplies from start of the financial year in which he became liable for registration.*
29.	Time limit for furnishing of certificate of tax deducted at source to the deductee	➢ *The provision needs to be rationalized and the date of issue of certificate needs to be linked with the last date of filing the return of Tax Deduction at Source.*
30.	Refund of the Accumulated Stock of ITC	➢ *It is therefore recommended that the GST Law may provide that refund of carried forward ITC may be allowed. The law may provide for carry forward or the refund of ITC on cases to case basis.*
31.	Ambiguity on Refund of ITC on Capital Goods used in Exports	➢ *It is suggested that the provisions be clarified on the matter whether refund is allowable of Input Tax paid on Capital Goods used for Exports of Goods and/or services out of India. If at all it is allowable then whether refund is allowable on the same footing as that of other Inputs used in the Export of Goods and/or Services out of India or treating it as part of Unutilized Input Tax Credit.*
32.	Input tax credit in respect of inputs sent for job work	➢ *It is therefore suggested that the section be amended as follows:* ➢ *"if the goods sent to job worker are not received within stipulated time then, it shall be deemed that such inputs had been supplied by the principal to the job-worker* ***on expiry of said stipulated time."***
33.	Extension of time limit to furnish information by the Electronic Commerce Operator	➢ *It is therefore suggested to relax the given provision by providing extension of the time limit for furnishing of details by the Electronic Commerce Operator.*

S. No.	Topic(s)	Suggestion(s)
		➢ *Further, e-commerce operators covered by section 8(4) not be required to comply with the provisions of this section*
34.	Definition of expression "adversely affect the interest of Revenue"	➢ *It is therefore suggested that the expression "adverse effect the interest of revenue" be clearly brought out by setting some quantitative and / or qualitative parameter.*
35.	Extension of audit period	➢ *It is suggested that the period of extension not to be made more than the original/initial period i.e. 3 months which would be in lines with the existing law.*
36.	Time limit for issuance of order for tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any willful misstatement or suppression of facts	➢ *It is therefore suggested that the time limit be reduced to 12 months except for fraud, suppression etc. in which case it can be 2 years*
37.	Inventory of the seized documents along with the goods	➢ *It is suggested that sub-section (9) may be modified to cover the inventory of documents, books and things seized also along with goods.*
38.	All offences put in one class and penalty imposed thereupon	➢ *It is suggested that penalty and prosecution provisions provided under Section 85 of the Revised Model GST Law and Section 92 thereof be bifurcate into bona fide and mala fide cases. Separate means of identification, degree of proof required, defense permissible and consequences be prescribed separately for each of these two classes of offense to bring in transparency and clarity Accordingly, higher penalties and stringent prosecution shall be prescribed only for mala fide cases* ➢ *Similarly, the offences listed in section 92 may also be categorized on above grounds.* ➢ *It is suggested that Collection and non-payment beyond six months and not three months from due date is considered as an offence. Accordingly, "three" be replaced by the word "six" in Section 85(1)(iii) and*

S. No.	Topic(s)	Suggestion(s)
		Section 92 (1)(c) of the Revised Model GST Law ➢ *It is suggested that the word "appropriate" be deleted before the word "Government" in Section 85(1)(iv)*
39.	General disciplines related to penalty	➢ *It is suggested that monetary limit of minor breach be kept at Rs.1 lakh instead of Rs. 5000/-.* ➢ *Further, it is suggested to remove sub-section 6 of Section 87.*
40.	Imprisonment for 5 years for repeated offences	➢ *It is suggested that imprisonment provisions be liberalized and list of offences liable to imprisonment be reconsidered*
41.	Differential amount of pre-deposit and a upper limit to be prescribed	➢ *It is suggested to amend the section 101(9) to prescribe that the payment of pre-deposit amount only to the tune of differential amount i.e. after deducting the amount deposited before the First Appellate Authority in view of Section 98(6).* ➢ *It is therefore suggested that the percentage of pre-deposit be fixed at a lower rate say 5% or less.*
42.	Accounting expertise in the members of Appellate Tribunal	➢ *It is therefore suggested that out of two technical members for CGST and SGST, one member may be a Chartered Accountant having minimum prescribed experience in practice in Tribunal. At the least, enabling provisions be provided in the law.*
43.	Revisionary powers of Chief Commissioner or Commissioner	➢ *It is suggested that Section 99 under CGST/SGST law be deleted.*
44.	Appeal to the Appellate Tribunal (CGST + SGST law)	➢ *It is suggested that the limit of Rs.1 lakh prescribed for admitting of the appeal before the Appellate Tribunal exclude cases where the issue involved is of rate of duty or valuation.*
45.	Requirement of Mandatory Pre-Deposit (under SGST law)	➢ *It is suggested that the amount of pre-deposit for appeal to be preferred before Appellant Tribunal be 10% of the amount in dispute which is the current pre-deposit quantum in*

S. No.	Topic(s)	Suggestion(s)
		case of Appellate Tribunal, with upper cap of Rs. 10 crore. Further, clarification be provided that the amount of 10% is not additional amount over 7.5% already paid before first appellant authority and the amount paid before the first appellate authority can be adjusted against the mandatory pre-deposit under this section. ➢ *"Amount in dispute" be equivalent to:* *(a) "Duty amount only" in case of assessment order levies duty or amount payable under GST and penalty and* *(b) "Penalty and fee amount" in case the assessment order only levies penalty, fee or the appeal is in respect of penalty or fee.* ➢ *It be clarified that the mandatory pre-deposit is not required for the interest amount.* ➢ *Further, the pre-deposit amount be allowed to be paid from input tax credit except when the appeal pertains to demand of CGST/ SGST under reverse charge and TDS.* ➢ *It is suggested that the amount paid during investigation or audit has to be treated as payment made under this section.* ➢ *It is suggested that to clarify that on payment of pre-deposit amount, no recovery proceedings will be initiated during the pendency of the appeal* ➢ *10% be limited to the original disputed amount and not any variation in the course of appeals as there is a position that is emerging that 10% of the 'revised disputed amount' at each appeal.* ➢ *Also permit taxable person to pay more than the said amount of 10% on his own.*
46.	Anti- Profiteering Measures	➢ *It is suggested that the following issues needs to be clearly spelt out as the provision has been inserted without providing sufficient details.* • *No mechanism has been clearly provided as to what should be the price in such cases to the satisfaction of the authority.*

S. No.	Topic(s)	Suggestion(s)
		• *Quantum of penalty has not been specified.* • *What will be 'commensurate reduction in price' in such cases and who will determine the correct price to charge in such cases.* • *How the benefit of lower rates would be pass on to the end consumers by way of reduction in the prices. There is confusion on how the clause would be measured / implemented so that it should not be turn out as harassment to the Trade or Industry*
47.	Omission to show tax credit in return furnished	➢ *An enabling provision may be added to provide the taxable person an opportunity to carry forward the credit which he is entitled to but due to certain reasons couldn't be shown in the return or the credit which is subsequently found eligible*
48.	Credit of eligible duties and taxes in respect of finished goods held in stock	➢ *It is suggested that a clear proviso be added to address this issue to avoid any anomaly and ambiguity in these cases and also to avoid double taxation. i.e. excise duty as per earlier law and GST as per new law.* ➢ *It is suggested that credit of input services procured on the inputs held in stock be available*
49.	Credit of eligible duties and taxes in respect of inputs held in stock to be allowed in certain situations	➢ *It is suggested to include even cess paid (such as Krishi Kalyan cess but Swachh Bharat Cess) under respective laws to enhance Input tax credit chain.* ➢ *It is suggested that after the words "who was not liable to be registered under the earlier law" the words "for any reason whatsoever" be added.*
50.	Transitional provisions where CENVAT credit reversed under earlier law	➢ *It is suggested that the transitional provisions be amended to include the situation for availment of credit for cases where CENVAT credit has already been reversed under*

S. No.	Topic(s)	Suggestion(s)
		Current regime and goods are received after the appointed date.
51.	Taxability of supply of services/ goods where Point of taxation is before appointed day	➢ *It is suggested that Section 188 & 189 be deleted. There would not be need to monitor point of taxation compliance under earlier law after the introduction of GST*
52.	Definition of Business Assets	➢ *It is suggested that the term "Business Assets" be replaced with words "Inputs & Capital Goods" to curb the interpretational issues.*
53.	Exemption for Services provided by employer to employee in the course of or in relation to employment	➢ *It is therefore suggested that such facilities provided by employer to employee whether with or without consideration and the notice pay recoveries during the course or in relation to employment not be made chargeable under GST.*
54.	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*
SUGGESTIONS ON REVISED MODEL IGST LAW		
55.	Place of supply where immovable property or boat or vessel are located in multiple states	*It is suggested that:* ➢ *Explanation to Section 9(4) provides for immovable property located at more than one state. In that section the Word "boat" be accompanied with word "house", since only "House boat" would become immovable property.* ➢ *Word "Vessel" be omitted from section 9(4), as Vessel being movable, it cannot be termed as Immovable Property* ➢ *It is suggested that a clear mechanism be provided to determine supply of services at multiple locations in case of absence of contract or agreement in this regard.*
56.	Place of supply of services provided by way of admission to a cultural, artistic, sporting, scientific, educational, or entertainment event or amusement park etc.	➢ *It is suggested that the words "or where the park or such other place is located" be deleted.* ➢ *Also, a mechanism be provided for cases where services are provided at multiple locations under a single contract.* ➢ *A proviso be added as: **Provided** where the basis of allocation is not forthcoming, the duration in each State as a proportion to the total duration of the event shall be applied.*

S. No.	Topic(s)	Suggestion(s)
57.	Zero Rated Supplies	➢ *It is therefore suggested that the definition of Zero Rated Supply as provided u/s 2(111) be omitted.* ➢ *Further, if definition is not decided to be omitted, the reference made be corrected to section 16 in place of section 15.* ➢ *Also, exclude the use of 'zero rated supply under this Act' in section 17(2) of the CGST Act.* ➢ *Section 16(4) be amended as it requires refund to be applied by SEZ unit instead of DTA supplier applying for refund for zero-rated supplies to SEZ.*

III. SUGGESTIONS ON REVISED MODEL GST LAW

1. Definition of term Aggregate Turnover

Section 2(6) of Revised Model GST Law provides that "aggregate turnover" means the aggregate value of all taxable supplies, exempt supplies, **exports of goods and/or services** and inter-State supplies of a person having the same PAN, to be computed on all India basis and excludes taxes, if any, charged under the CGST Act, SGST Act and the IGST Act, as the case may be;

Explanation. Aggregate turnover does not include the value of inward supplies on which tax is payable by a person on reverse charge basis under sub-section (3) of Section 8 and the value of inward supplies.

Issue

(i) The term "exports of goods and/or services" cover all the exports which may be taxable as well as non-taxable. Reference may be drawn from wordings in section 2(99) (taxable supply) Revised Model GST Law (CGST) read with sections 2(5) (export of goods) and 2(6) (export of services) Revised IGST Law.

(ii) If 'exempt supplies' are included in the aforesaid threshold of Rs. 20 lakh that would mean that if a dealer is involved in exclusive supply of exempt goods/services and if he happens to make a small supply of taxable goods/services, then he will become liable for registration. As such the turnover limit of Rs. 20 lakh is too low a limit and if the exempt supplies are also included therein than a very large number of people will become liable for registration without any substantial revenue to the Government.

Suggestion

(i) It is therefore suggested that the reference of the words "export of goods / services" be accordingly removed from definition of Aggregate Turnover.

(ii) It is suggested that instead of words "aggregate turnover" the words "aggregate turnover of taxable supplies" be used.

2. Definition of term Agriculture

Section 2(7) of Revised Model GST Law provides that "agriculture" with all its grammatical variations and cognate expressions, includes floriculture, horticulture, sericulture, the raising of crops, grass or garden produce and also grazing, but does not include dairy farming, poultry farming, stock breeding, the mere cutting of wood or grass, gathering of fruit, raising of man-made forest or rearing of seedlings or plants;

Issue

- The definition of the term 'agriculture' has been given with reference to exclusion from taxability, an inclusive definition can result in huge litigation. The meaning of 'agriculture' as pronounced by *Hon'ble Supreme Court in the matter of CIT v. Benoy Kumar Sahas Roy AIR 1957 SC 768* may be adopted here. Agriculture means cultivation of field which of course implies expenditure of human skill and labour upon land.
- The definition excluded words "rearing of seedlings or plants", "Gathering of fruits'' from the scope of agriculture. The definition also needs to be aligned with definition of agriculture income given in 2(1A) of the Income Tax Act,1961.

Suggestion

- *It is therefore suggested that definition pronounced by Hon'ble Supreme Court be adopted under GST and inclusions and exclusions given at present be stated after such definition.*
- *The words "rearing of seedlings or plants "be included in the definition of Agriculture since its exclusion will create problems for farmers, for example rice and onion cultivators, nursery planters.*
- *This definition be aligned with definition of agriculture income given in 2(1A) of the Income Tax Act, 1961.Otherwise farmers who are giving their agriculture land on rent for cultivation will be affected by this definition.*
- *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.*

3. Definition of agriculturist

Section 2(8) defines the term "agriculturist" as a person who cultivates land personally, for the purpose of agriculture.

Issue

Definition of the term 'agriculturist' is not in line with the definition of the term 'agriculture'.

Suggestion

It is suggested that the definition may be changed to "a person who undertakes agriculture personally". The term 'cultivates land' here is like a further addition to all the conditions prescribed in the definition of the term 'agriculture'.

4. Business Vertical definition w.r.t to Ind AS

Section 2(18) of the Revised Model GST Law provides that "business vertical" means a distinguishable component of an enterprise that is engaged in supplying an individual

product or service or a group of related products or services and that is subject to risks and returns that are different from those of other business verticals;

Explanation: Factors that should be considered in determining whether products or services are related include:

(a) the nature of the products or services;

(b) the nature of the production processes;

(c) the type or class of customers for the products or services;

(d) the methods used to distribute the products or provide the services; and

(e) if applicable, the nature of the regulatory environment, for example, banking, insurance, or public utilities.

Issue

Excluding geographic segmentation is a departure from ordinary meaning of business segment. Further, any development in the accounting standard definition from time to time will be available to keep GST definition upto date if the definition is provided with reference to Ind AS.

Suggestion

- *It is suggested that definition from Ind AS 108 or such other accounting standard published under the Chartered Accountants Act be used to keep it in lines with Ind AS.*
- *The word 'product' be replaced by the expression 'goods', to remove any possible ambiguity that may arise.*

5. Definition of Capital Goods

Section 2(19) of Revised GST Law provides that "capital goods" means goods, the value of which is capitalised in the books of accounts of the person claiming the credit and which are used or intended to be used in the course or furtherance of business;

Issue

Under this definition, no treatment for the items have been provided which will be expensed during the year of purchase but not written off in the books due to their nature and use in industry.

Suggestion

- *It is suggested that an exception be provided for items which are written off during the year of purchase in books of accounts to treat them as capital goods even if not capitalised in books of accounts.*
- *Further, it is suggested that this definition may also include the goods, the value of which is amortized over a period of time in the books of accounts.*

- *Additionally, the term "in the course or furtherance of business" be replaced with "for the purpose of business" so that no scope for restriction of credit is left. Same change may also be done for definitions of* ***"Input" & "Input Services", "Outward Supply" and also in Schedule I & II.***
- *The term "value" be replaced with the words 'purchase consideration' for better clarity.*

6. Illustrations provided with definition of Composite Supply

Section 2(27) of Revised Model GST Law provides that "composite supply" means a supply made by a taxable person to a recipient comprising two or more supplies of goods or services, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;

Illustration: Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is the principal supply.

Issue

The illustration so provided is simple and may create a confusion *viz a viz* mixed Supply.

Suggestions

It is suggested that few more illustrations be added as follows:

Illustration 2: Supply of goods and their erection or installation or commissioning or such other ancillary activity of supply.

Illustration 3: Supply of goods and first-time supply of accessories of all forms even if separately supplied.

Illustration 4: Supply of goods and warranty and extended warranty opted at the time of first supply.

Illustration 5: Supply of services where goods are used in the used or used-up in the course of supply of the goods

7. Definition of the term Consideration

As per Section 2(28) of Revised Model GST Law, "consideration" in relation to the supply of goods or services includes: -

(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

(b) the monetary value of any act or forbearance, whether or not voluntary, in respect of, in response to, or for the inducement of, the supply of goods or services, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government:

PROVIDED that a deposit, whether refundable or not, given in respect of the supply of goods or services shall not be considered as payment made for the supply unless the supplier applies the deposit as consideration for the supply.

Issue

- Consideration is not what the buyer pays but what the seller receives. Section 2(d) of Indian Contract Act recognizes that the promisee or 'any other person' may also pay the consideration.
- Further, the present definition does not deal with situations of composite supply of goods along-with services.

Suggestions

- *It is suggested that the words "made or to be made" be replaced with the words "received or to be received" so as to enable levy of GST on the full consideration received by air-travel agents who collect commission from passenger as well as from airline. And there any many other industry examples where there is two-way flow of consideration for the same supply*
- *Further, to remove any ambiguity the definition of consideration be rephrased as follows:*

  "consideration in relation to the supply of goods and/or services includes……..".

8. Definition of Electronic Commerce

Section 2(41) of the Revised Model GST Law defines the Electronic Commerce as supply of goods and/or services including digital products over digital or electronic network.

Issue

The current definition appears to include only 'supply on own account' and not 'supply through the portal but by other Suppliers'. Also, electronic commerce appears to exclude 'information portals' and 'customer to customer' portals but the same will be covered by section 56(1).

Suggestion

It is suggested that words" supply of" 'be replaced with the words ''facilitating the supply of ……''

9. Definition of Exempt Supply

As per the definition given in Section 2(44) of Revised Model GST Law, "exempt supply" means supply of any goods and/or services which are <u>not taxable</u> under this Act and

includes such supply of goods and/or services which attract nil rate of tax or which may be exempt from tax under section 11.

Issue

(i) Non-Taxable Supplies have been excluded from the scope of Aggregate Turnover in the Revised Model GST Law but still the term "Exempt Supply" covers the same. Thus, inclusion of non-taxable supply in the exempt supply would ultimately bring it within the scope of aggregate turnover.

(ii) Interpretation of aforesaid definition appears that supply made to job worker covered under exempt supply. Since a registered taxable person may send any inputs and/or capital goods without payment of tax, to a job worker for job-work and therefrom subsequently send to another job worker.

Suggestions

- *It is suggested that non-taxable supplies should be taken outside the ambit of 'exempt supplies' as well as 'aggregate turnover'. Inclusion of non-taxable supplies in aggregate turnover results in an effectively lower limit for composition levy as well as for threshold exemption. Further, when a supply is non-taxable, it should not affect the taxability indirectly by affecting the threshold exemption and composition scheme.*
- *It is further suggested that the words "not-taxable" be replaced with "non-taxable" to provide the correct meaning of the definition as intended.*
- *Therefore, an amendment may be required in said definition that ''Exempt supply means any supply of goods/services which are not taxable under this act* ***other than supply for job work in accordance with Section 55 of the Act*** *and includes such supply of goods and/or services, which attract nil rate of tax or which may be exempt from tax under section 11.*

10. Definition of First Stage Dealer & Second Stage Dealer

As per Section 2(46) of Revised Model GST Law, First Stage dealer means a dealer, who purchases the goods directly from, -

(i) the manufacturer under the cover of an invoice issued in terms of the provisions of Central Excise Rules, 2002 or from the depot of the said manufacturer, or from premises of the consignment agent of the said manufacturer or from where the goods are sold by or on behalf of the said manufacturer, under cover of an invoice; or

(ii) an importer or from the depot of an importer or from the premises of the consignment agent of the importer, under cover of an invoice

As per Section 2(91), Second Stage dealer means a dealer who purchases the goods from a first stage dealer as defined in sub-section (46)

Issue

There is a drafting anomaly here since the current definition appears to exclude the need for registration of First Stage Dealer & Second Stage Dealer under the Central Excise Act. However, unless registered under the Central Excise Act, First Stage Dealer & Second Stage Dealer cannot issue duty-paying document for claiming credit.

Suggestion

It is suggested that the phrase ''and is registered accordingly under the relevant provisions of Central Excise Act'' be added at the end below para (ii) of Section 2(46).

Further, it is suggested that reference to Invoice under Rule – 11 of Central Excise Rules, 2002 be omitted, as they shall be no longer in operation after introduction of GST and invoice be required to be issued as per section 28 of the Revised Model GST Law, to avoid any contradiction with section 16 of the Revised Law.

11. Taxability of Actionable Claims

Section 2(49) of Revised Model GST Law provides that "goods'' means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply;

Further explanation to section 10(8) od Revised Model IGST Law provides that "For the purpose of this section, the expression "goods" shall include 'securities' as defined in sub-section (90) of section 2 of the CGST Act, 2016."

Issue

- Supplies in respect of unsecured trade debts are already taxed at the time of original supply. Again, taxing the same as actionable claim would amount to double taxation, or it would amount to taxation of money per se. In case of immovable property, it is taxed as stamp duty. Therefore, tax should not be levied again as GST.
- Definition of Goods under Revised Model GST Law and Revised Model IGST are different as one definition specifically excludes securities and other includes it.

Suggestion

- *It is suggested that Actionable claims in the nature of claims to unsecured trade debts and beneficial interest in immovable property in whatsoever manner be excluded from the definition of Goods.*
- *Definition of Goods under CGST/ SGST and IGST be synchronised to avoid interpretational issues.*

12. Definition of "Inward Supply"

Section 2(60) of Revised Model GST Law provides that "inward supply" in relation to a person, shall mean receipt of goods and/or services whether by purchase, acquisition or

any other means and **whether or not for any consideration**;

Issue

(i) Inward Supplies made without consideration are also treated as a part of total inward supplies. This means present definition shall cause the buyer to upload the purchases on GSTR2 for the free supplies which shall not be posted by the supplier causing reconciliation issues. Since there is no levy on the free of cost supplies, this inclusion of supplies without consideration need not be required.

(ii) The current definition introduces new terms like 'purchase, acquisition, etc.' which appear to convey that they are the mirror opposite of each of the forms of supply in section 3(1)(a).

Suggestion

(i) It is suggested that supplies made without consideration be kept outside the purview of the definition of "Inward Supply".

(ii) The above definition be changed to 'Inward supply' in relation to a person with reference to whom the place of supply is determined means the corresponding supply by the supplier of the outward supply".

13. Definition of Job Work

Section 2(61) of Revised Model GST Law provides that "job work" means undertaking any treatment or process by a person on goods belonging to another registered taxable person and the expression "job worker" shall be construed accordingly.

Issue

The definition of job work appears to overlap with repairs etc.

Suggestion

It is suggested that a proviso be inserted to the definition of Job Work to provide that job-work will not include repair or maintenance or other forms of supply which are carried out with respect to the goods belonging to another taxable person.

14. Definition of Works Contract

As per Section 2(110) of the CGST/SGST Act, "works contract" means a contract wherein transfer of property in goods is involved in the execution of such contract and includes contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any 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

(i) There lies an ambiguity in the given definition as the first part of the definition is provided to include all the contracts wherein transfer of property in goods is involved in the execution of such contract. In such a case, even a mere contract to sell goods say cement shall be construed as works contract. For Example, ABC Limited contracts XYZ Limited to supply certain quantity of raw-material for the consideration agreed upon. In the above contract, transfer of property in goods is involved in the execution of such contract. Therefore, the same shall be considered as a "Works contract".

(ii) The above definition appears to leave the service portion of the works contract outside the scope of definition of works contract.

(iii) The definition 'works contract' in terms of section 2(110) 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.

The Revised 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

- *It is suggested that the definition of works contract be suitably clarified to bring out the clear intent of the legislation – whether only immovable property emerging from a works contract are treated as works contract and movable property is taxed based on the concept of composite supply or whether both movable and immovable property will be works contract.*
- *Further it be suitably clarified as to where the contracts of repair and maintenance of moveable properties would get covered under the said definition.*
- *It is suggested that definition of works contract be rephrased as follows:*

  "works contract means a supply of goods and services for the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract ***in relation to any immovable property".***

15. Definition of Zero Rated Supply

Section 2(111) of the Revised Model GST Law provides that "zero-rated supply" means supply of any goods and/or services in terms of section 15 of the IGST Act 2016; and

Further Section 17(2) of Revised Model IGST Law provides that Where the goods and / or services are used by the registered taxable person partly for effecting taxable supplies including zero-rated supplies under this Act or under the IGST Act, 2016 and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.

Explanation- For the purposes of this sub-section, exempt supplies shall include supplies on which recipient is liable to pay tax on reverse charge basis under subsection (3) of section 8.

Issue

Section 17(2) refers to the possibility of a zero-rated supply being covered both under the CGST Act and under the IGST Act. However, this situation is not enabled by the definition. Zero rated supply (as used in section 17(2)) is understood to mean a supply where the applicable rate is 0%.

Secondly, definition of zero rated supply shall have the meaning assigned to it under section 16 and not section 15 of IGST Act as provided in the definition.

Suggestion

- *It is therefore suggested that the definition of Zero Rated Supply as provided u/s 2(111) be omitted.*

- *Further, if definition is not decided to be omitted, the reference made be corrected to section 16 in place of section 15.*
- *Also exclude the use of 'zero rated supply under this Act' in section 17(2) of the CGST Act.*

16. Meaning and Scope of Supply

Section 3(1)(a) of Revised Model GST Law provides that Supply includes— (a) 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,

Schedule I covers matters to be treated as supply even if made without consideration and includes Supply of goods or services between related persons, or between distinct persons as specified in section 10, when made in the course or furtherance of business.

Issue

When it is a case of related persons, not only is it covered by section 3(1)(a), it is also covered by suitable valuation provisions u/s 15. Making special mention of supply between related persons indicates that there exists certain doubt if it is not covered by section 3(1)(a). Further, reference 'when made in the course or furtherance of business' is redundant in Schedule I.

Suggestion

It is suggested that reference of related persons in Schedule I point 2 be removed and it be read as "Supply of goods or services between distinct persons as specified in section 10".

17. Removal of words "such as" as the definition of Supply is inclusive one.

Section 3(1)(a) of the Revised Model GST Law provides that

Supply includes—(a) 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,

Issue

In section 3(1)(a), the words 'such as' while listing the various forms of supply appears to be an indicative list and due to this various concerns arise.

It appears to render 'manufacture' also to be liable to GST even if it is only in preparation of supply. Contracts signed without any goods or services being appropriated appears to attract GST.

Suggestion

It is suggested to remove words 'such as' and even after deletion supply does not become limited in any way as the definition is inclusive to take care of any extraneous situation.

18. Taxability of Importation of Services

Section 3(1)(b) of Revised Model GST Law provides that supply includes importation of services, for a consideration whether or not in the course or furtherance of business, and

Further, Schedule I Point 4 of the Revised Model GST Law provides that Importation of services by a taxable person from a related person or from any of his other establishments outside India, in the course or furtherance of business will be treated as supply even if made without consideration.

Issue

Importation of services is anyway covered in section 3(1)(b) and establishments outside India is a distinct person u/s 10 which will apply to import of services also. Dual coverage of importation of services might lead to interpretational issues.

Suggestion

It is suggested that entry 4 of Schedule I of Revised Model GST Law be deleted.

19. Importation of Services for Personal Use

Clause b of Section 3(1) of Revised Model GST provides that supply includes importation of services, for a consideration whether or not in the course or furtherance of business.

Issue

As per clause b persons importing services for personal purposes shall also be liable to GST on reverse charge basis since the importation of service would be treated as a Supply whether or not for the business purposes. 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 assessee.

Suggestion

It is suggested that importation of services for personal purposes be kept outside the purview of GST.

20. Permanent transfer/disposal of business assets

Section 3(1) of the Revised GST Laws provides that supply includes—

(a) 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,

(b) importation of services, for a consideration whether or not in the course or furtherance of business, and

(c) a supply specified in Schedule I, made or agreed to be made without a consideration.

Schedule I covers the matters to be treated as supply even if made without consideration which includes permanent transfer/disposal of business assets where input tax credit has been availed on such assets.

Issue

There is a drafting anomaly between both the sections. It appears that as per para 1 of Schedule I, if credit is not availed on business assets (which would be capitalized in the books) then it is not a supply. But section 3(1)(a) itself covers the permanent transfer/disposal of any asset for furtherance of business whether the credit is availed or not on such assets.

Suggestion

It is therefore suggested to clarify the transaction related to permanent transfer/disposal of business assets

21. Drafting anomaly in section 3(5)

Section 3 of the Revised Model GST Law provides for the meaning and scope of supply.

However, sub-section (5) of the section 3 provides the manner in which the tax liability on the composite or mixed supply shall be determined i.e. categorization method.

Issue

The categorization method specified in the Section 3(5) for composite or mixed supply is in contradiction with the meaning and scope of supply. Schedule II provides for the manner of 'treating' any supply. If provisions of sub-section (5) are shifted to Schedule II, then the structural integrity of both section 3 as well as Schedule II will be preserved.

Suggestion

Section 3(5) providing the meaning of supply would not include a computation or supply-categorization method here. It is therefore suggested that section 3(5) be shifted to Schedule II.

22. Services provided by Governmental Authority to be treated as supply

Section 3(4) of Revised Model GST Law provides that notwithstanding anything contained in sub-section (1), (a) activities or transactions specified in schedule III; or (b) activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities as specified in Schedule IV, shall be treated neither as a supply of goods nor a supply of services.

Issue

Schedule IV specifies the activities and transactions undertaken by the Government, Local Authority or Governmental Authority. However, in the referred Section the words "Governmental Authority" are missing. Consequently, it may be argued that the activities undertaken by the Governmental Authority shall be treated as a supply of goods and/or services.

Suggestions

- *It is suggested that the words "Governmental Authority" be included in Section 3(3)(b)) of Revised Model GST Law.*
- *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*

23. Dual payment of tax for reverse charge cases as per section 8(3)

Section 8(2)of the Revised Model GST Law provides that the CGST/SGST shall be paid by every taxable person in accordance with the provisions of this Act and Section8(3)

provides that 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 recipient of 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 the supply of such goods and/or services.

Issue

Section 8(2) and 8(3) are in conflict because both prescribe who is to pay the tax. In such case, either notwithstanding is required in 8(2) or subject to 8(3) is required to resolve the conflict.

Absence of non-obstante clause appears to retain the liability on forward charge basis on the actual supplier (if within taxable territory).

Suggestion

It is suggested to add non-obstante clause to subsection 3 i.e. "Notwithstanding anything contained in sub-section (2)" to resolve the ambiguity and to be in line with the intent of law.

24. Levy & Collection under Reverse Charge

Section 8(3) of the Revised 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

An explanation be added to specify that supplies other than those in course or furtherance of business are excluded from the purview of Section 8(3)

25. Availability of Composition Levy

Section 9 of the Revised Model GST Law provides that benefit of Composition Scheme would be available to a registered taxable person, whose aggregate turnover in the preceding financial year did not exceed Rs. 50 lakhs, to pay, in lieu of the tax payable by him, an amount calculated at such rate as may be prescribed, but not less than 2.5% in case of a manufacturer and 1% in any other case, of the turnover in a State during the year:

PROVIDED that no such permission shall be granted to a taxable person-

(a) who is engaged in the supply of services; or

(b) who makes any supply of goods which are not leviable to tax under this Act; or

(c) who makes any inter-State outward supplies of goods; or

(d) who makes any supply of goods through an electronic commerce operator who is required to collect tax at source under section 56; or

(e) who is a manufacturer of such goods as may be notified on the recommendation of the Council:

Further sub-section (4) of Section 9 provides that if the proper officer has reasons to believe that a taxable person was not eligible to pay tax under sub-section (1), such person shall, in addition to any tax that may be payable by him under other provisions of this Act, be liable to a penalty and the provisions of section 66 or 67, as the case may be, shall apply mutatis mutandis for determination of tax and penalty.

Issue

Non-availability of composition scheme to those who are supplying services or making any supply of goods which are not leviable to tax under the Act seems to be harsh on such person. Small suppliers, supplying services only shall be required to comply with the normal provisions of the law which could prove to be cumbersome for such suppliers. Further, small suppliers making few of the supplies not chargeable to tax while majority of supplies are taxable may find this provision an unnecessary burden on them.

Suggestion

- *It is suggested that eligibility for composition scheme be based on the turnover during a particular financial year and be made available uniformly to all suppliers whether supplying goods or services or both.*
- *Alternatively, Sector specific composition schemes may be designed to cater to need of different sectors.*
- *It is suggested that in section 9(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.*
- *The embargo placed on effecting inter-State supplies by the taxable person opting to pay tax under the composition scheme must be done away with. GST, being a destination based consumption tax and moving in the direction of being 'One India – One Tax', this embargo appears to be travelling in the opposite direction.*
- *Penalties in respect of cancellation of registration under a composition scheme of a registered taxable person for whatever reason must be limited to recovery of differential taxes. There must not be any further penalty / interest considering that the tax payer would be a small player and will not be in a position to follow the rigours of a GST regime.*

26. Intimation to avail Composition Scheme

Section 9(1) of Revised Model GST Law provides that notwithstanding anything to the contrary contained in the Act but subject to subsection (3) of section 8, 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 the preceding financial year did not exceed Rs. 50 lacs, to pay, in lieu of the tax payable by him, an amount calculated at such rate as may be prescribed, but not less than 2.5% in case of a manufacturer and 1% in any other case, of the turnover in a State during the year.

Suggestion

It is suggested that the requirement of permission to avail composition scheme be replaced with the requirement to be intimated by the taxpayers who are falling within the eligibility criteria.

27. Power to grant exemption from Tax

Section 11 of the Revised Model GST Law empowers Central/ State Governments to exempt ……. Goods and/or services from whole/ part of tax leviable thereon.

Further section 11(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 assessees.

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".

28. Time of supply of goods and services under RCM

Section 12(3) of the Revised Model GST Laws provides that in case of supplies of goods

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 immediately following thirty days from the date of issue of invoice by the supplier

However, as per section 13(3) of the Revised Model GST Laws provides that in case of supplies of services, the time of supply shall be the earlier of the following dates, namely-

(a) the date on which the payment is made, or

(b) the date immediately following sixty days from the date of issue of invoice by the supplier

Issue

The time period of 30/60 days from the date of issue of invoice by the supplier is quite short considering the time taken for delivery of goods with invoice and may create unnecessary interest liability if payment is not made within 30 or 60 days.

Suggestion

It is suggested that the time limit prescribed in both the cases be made 90 days in line with the current provision of service tax.

29. Meaning of term "Vouchers" for Supply of Vouchers

Section 12(4) of Revised Model GST Law provides that in case of supply of vouchers, by whatever name called, by a supplier, the time of supply shall be-

(a) the date of issue of voucher, if the supply is identifiable at that point; or

(b) the date of redemption of voucher, in all other cases;

Similar provisions are provided in section 13(4) under Place of Supply of Services.

Issue

The term 'vouchers' has nowhere been defined under the law and is open to interpretations which in turn may give rise to interpretational issues.

Further, Vouchers are understood to be as actionable claim and since actionable claims are goods the time of supply of it shall be provided only in sec 12 and not in 13.

Suggestion

- *It is suggested that Section 13(4) be omitted from the law.*
- *Further it is suggested that to avoid misinterpretation the following definition of term "Voucher" be provided:*

*'**voucher** means*

(a) *any entitlement received from an arrangement involving a supplier who will accept the same in redemption to settle payment owed in respect of a taxable supply*

(b) *any entitlement received from any Government under a law for the time being in force to redeem the same in respect of settlement of any payment owed towards any tax or duty or*

(c) *any entitlement to participate in any future contingent event.*

Explanation 1: voucher shall not include a system of payment recognized under the Payment and Settlement Systems Act, 2007 or any other law for the time being in force.

Explanation 2: any supply attendant to issuance of such voucher shall not be excluded"

30. Deferment of levy till Time of Supply

Section 12(1) & 13(1) of Revised Model GST Law provide 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 8 appears to be suspended until time of supply under sections 12 & 13.

Suggestion

- *It is suggested to clarify that the levy under section 8 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 8 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 8 is payable at the time of supply as determined in terms of the provisions of this section."*

31. Taxes/duties paid under IGST not to be included in value of supply

Section 15 of the Revised Model GST Law provides for the valuation of supply. Sub-section (2)(a) of section 15 includes any taxes, duties, cesses, fees and charges levied under any statute, other than the {SGST Act/the CGST Act} and the Goods and Services Tax (Compensation to the States for Loss of Revenue) Act, 2016, if charged separately by the supplier to the recipient.

Issue

- Though the taxes, duties, cesses, fees and charges levied under SGST Act/the CGST Act are excluded from the value of supply but it appears that the taxes levied under IGST Act shall be included in the transaction value under Section 15(2) (a). If IGST

Act is not mentioned in the Section 15(2) (a), the GST would be levied on it which would lead to cascading effect of taxes.

- Inclusion of any taxes, duties, cesses, fee and charges levied under any other statute would defeat the very purpose of eliminating tax cascading and may lead to interpretational issues as well as litigations at a later date. The charges such as Passenger Service Fee (PSF), User Development Fee (UDF), and other alike charges are levied by Airport Authority of India, under Airport Authority of India Act, 1994, and collected by Airlines on the tickets issued to passengers

Suggestion

- *Thus, it is suggested that in section 15(2)(a)after the words "other than the (SGST Act/the CGST Act)", the word "IGST Act" be inserted.*
- Any taxes, duties, cesses, fee and charges levied under any other statute be excluded from the transaction value *so that spirit of GST may be maintained.Such charges, being simply in the nature of statutory levies, never form part of the taxable value, as no supply is rendered by airlines per se, in lieu of such charges.*

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

Section 14 of the Revised Model GST Law indicates the provisions for determining the time of supply in cases where there is a change in the 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.

33. Value of Taxable Supply

Section 15 of Revised 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.

Also, add a proviso that 'transaction value will not be rejected by imputing consideration that is notional in transactions between unrelated persons such as penetration of market or marketing or publicity'. This is likely misapplication of FIAT judgement.

34. Manner of determination of amount liable to be paid by the supplier

Section 15(2)(b) of the Revised Model GST Laws provides that the value of supply shall include any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods and/or services

Issue

Since the value of supply includes an amount liable to be paid by the supplier but incurred by the buyer, the basis for determination of the amount liable to be paid by supplier is not specifically mentioned herein. It could lead to large scale litigations if the amount to be determined is left open to the discretion of taxpayers.

Suggestion

Therefore, it is suggested that the amount liable to be paid by supplier could have a reference to the contract or agreement between suppliers and recipient by the words 'by reason of or in connection with'. So, supplier's liability should be restricted within the scope of the contract or agreement.

35. Inclusion of Interest, penalty etc. in Value of Supply

Section 15(2)(d) of Revised Model GST Law provides that the value of supply shall include interest or late fee or penalty for delayed payment of any consideration for any supply.

Issue

In most of the cases the amount of interest or penalty is not known at the time of supply. To be required to be included in the valuation at the time of supply is a cumbersome task.

Suggestions

- *It is suggested that clause d of section15(2) be omitted.*
- *Alternatively, if it needs to be essentially included, it might be considered to shift this clause to section 31 as one of the circumstances requiring the issuance of debit note.*

36. Eligibility and Conditions for taking Input Tax Credit

Section 16(1) of Revised 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 44, be entitled to take credit of input tax charged on any

supply of goods or services to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person:

PROVIDED that credit of input tax in respect of pipelines and telecommunication tower fixed to earth by foundation or structural support including foundation and structural support thereto shall not exceed—

(a) one-third of the total input tax in the financial year in which the said goods are received,

(b) two-third of the total input tax, including the credit availed in the first financial year, in the financial year immediately succeeding the year referred to in clause (a) in which the said goods are received, and

(c) the balance of the amount of credit in any subsequent financial year.

Issue

- Where tax is payable by a person other than the supplier such as principal or agent in Schedule I or section 8(4), the books of account will not reflect the turnover although such turnover will be considered for tax purposes. In such cases, it is necessary to include a proviso that the payer of the tax will not be denied all credits subject to compliance with section 16(2).
- For credit of input tax in respect of pipelines and telecommunication tower fixed to earth by foundation or structural support including foundation and structural support, availability of such credit in instalment and over a period of three years shall call for working capital blockage for the assessee as the assessee shall be entitled only to a part of the total eligible credit.
- 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.
- There may arise a situation where after the appointed day, an unregistered person buys inputs from a registered person on payment of tax and such unregistered person obtains registration subsequently. He would want to claim the input tax credit on purchases made during his unregistered period. This situation is not provided for in Section 16(1). This facility is available in the current Excise and Service Tax Laws on the premise that such inputs were used for manufacturing output goods and/or providing output services.

Suggestions

- *It is suggested that a proviso be added as follows:*

  "Provided further that every registered taxable person will be entitled take credit of input tax in accordance with this section even though tax is paid on outward supply is in accordance with section 3(1)(c) or section 8(4) or any such provision from time to time".

- *Further forin respect of pipeline and telecommunication tower fixed to earth by foundation or structure support full amount of credit be allowed in the financial year in which such goods are received.*
- *It is suggested that condition of being registered be not made mandatory for availing the credit.*
- *It is suggested that mechanism to avail input tax credit on the purchase of inputs made during the unregistered period be incorporated by way of proviso to Section 16(1) or by suitably changing the wordings contained in section 35 to "effective date of First Purchase" instead of 'effective date of registration'.*
- *It is also suggested that a suitable mechanism in case of matching the credit should also be provided for. This would be in line with the suggestion to allow credit in respect of reversal of bona fide exemption which is reversed by a Superior Court ruling, credit relatable to the output which is not rendered liable to GST cannot be denied.*

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

Section 16(2) of Revised Model GST Law provides that notwithstanding anything contained in this section, but subject to the provisions of section 36, 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……;

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other taxpaying document(s) as may be prescribed;

(b) he has received the goods and/or services;

(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 34

Issue

Once invoice is issued by a supplier under section 28 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. Here onerous burden is 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.

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 assessees. 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 pre-conditions relating to payment of tax to the credit of Government and mandatory filing of return be deleted / removed.*
- *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 taxable persons in the unorganized sector may not deposit the collected tax to Government the concept of reverse charge be made applicable to them or allowed to the recipient of supplies from such persons.*
- *Further, permanent denial of credit in case of non-payment to supplier of service within 3 months be replaced with restoration of credit to recipient after making payment to such supplier.*

38. Reversal of Credit on non-payment of taxes

Second proviso to the Section 16(2) of the Revised Model GST Law provides that where a recipient fails to pay to the supplier of services, the amount towards the value of supply of services along with tax payable thereon within a period of 3 months from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in the manner as may be prescribed.

Suggestion

(i) It is suggested that extending time limit to September or filing of annual return or merge with sub-section (4) be considered.

39. Time Limit for availing Input Tax Credit

As per section 16(4) of Revised Model GST Law a taxable person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services after furnishing of the return under section 34 for the month of September following the end of financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier.

Issue

- If we analyse the provisions in the law and the compliance based system developed in GST, it would be appropriate that the deadline in proviso of Section 32(3), 34(5),

34(9) and 16(4) are linked with respect to the due date of filing of return for the month of September following the end of financial year rather than actual filing of the Return for the month of September of the next financial year or annual return whichever is earlier

- Further, there is no clarity as to whether belated claim of ITC shall be claimed in the return for the tax period of September following the end of the financial year or in the annual return as the case may be. The filing of revised return may not be permissible in such cases

Suggestions

- *It is suggested that thedeadline to claim Input Tax Credit in respect to any invoice be linked with the due date rather than actual filing of the return. This would help avoid extension of time limit due to delay in filing of return.*
- *Further, it is suggested that the provision regarding belated claim of Input Tax Credits be suitably clarified.*

40. Basis of apportionment of Credits or Blocked Credits

Section 17 (1) & (2) of Revised Model GST Law provide that

(1) Where the goods and/or services are used by the registered taxable person partly for the purpose of any business and partly for other purposes, the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business.

(2) Where the goods and / or services are used by the registered taxable person partly for effecting taxable supplies including zero-rated supplies under this Act or under the IGST Act, 2016 and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.

However, the basis of apportionment has not been provided for in both the cases.

Suggestion

It is suggested that a basis of apportionment like based on the turnover be provided for accurate attribution of credit.

41. Exempt Supplies to include reverse charge supplies for credit apportionment

Explanation to Section 17(2) of Revised Model GST Law provides that for the purposes of this sub-section, exempt supplies shall include supplies on which recipient is liable to pay tax on reverse charge basis under subsection (3) of section 8.

Issue

Supplies on which reverse charge is applicable is an input service & cannot be used in pro-rata formula for determining pro-rata credit between taxable & exempt supplies. Inclusion of supplies (covered under RCM) into value of exempt supplies for the above purposes will have effect of same supply being taxed two times. Such supplies being considered as exempt seems to be illogical as such supplies are taxed, though tax has been paid by the recipient instead supplier.

Suggestion

It is therefore suggested that supplies covered under reverse charge mechanism be kept outside the ambit of exempt supplies for the purpose of proportionate credits.

42. Input Tax credit availment Restriction for Banks & Financial Institutions

Section 17(3) of Revised Model GST Law provides that a banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances shall have the option to either comply with the provisions of sub-section (2), or avail of, every month, an amount equal to 50% of the eligible input tax credit on inputs, capital goods and input services in that month.

Issue

This 50% denial of credit may tantamount to the increase in cost of Leasing/ Hire purchase, since the procurement cost of the infrastructure and essential manufacturing equipment's would rise and would adversely affect the Leasing industry as a whole.

Also, it is important to note that since these goods have been received as inputs during the erstwhile tax regime, full tax must have been paid to the respective vendors.

Suggestion

It is therefore suggested that restriction to Banking and Financial institutions be removed or if at all any such restriction is proposed, it be made with a specific condition that there not be any conditions imposed over correlation of output services/ goods with input services and goods. In such scenario, the entire tax paid for the procurement of goods and services, irrespective of whether the same are directly used in the business be allowed to be availed and thereafter reversal of a specific percentage.

43. Disallowance of credit in respect of Motor Vehicles

Clause a Section 17(4) of Revised Model GST Law provides that input tax credit shall not be available in respect of the following: (a) motor vehicles and other conveyances except when they are used

(i) for making the following taxable supplies, namely (A) further supply of such vehicles or conveyances; or (B) transportation of passengers; or (C) imparting

training on driving, flying, navigating such vehicles or conveyances;

(ii) for transportation of goods.

Issue

- A plain reading of this provision provides that assessees who use their own vehicles to transport goods such as mining companies, food companies, etc., stand to lose credit and are forced to constitute another taxable person to undertake transport activity.
- Further, businesses that are involved in transportation of items not covered under definition of goods will get suffered from denial of input tax credit. For example, business of transportation of money (as defined) i.e. those who are engaged in refill of ATM's.
- Further there is doubt whether "petroleum products", "Alcohol" would be treated as goods under GST where transportation involved largely.

Suggestion

- *It is suggested that point ii be rephrased as follows:*

  "(ii) for transportation of goods including own supplies whether or not any amount is separately charged therefor"

- *Further, clarification regarding transportation of items like money, securities, alcohol, petroleum products etc. be suitably provided.*
- *It is suggested that credit of motor vehicles be allowed if the motor vehicle is used in the course of business for business purposes.*

44. Dumpers and tippers or other similar nature & category of motor vehicles be made eligible Inputs

As per Section 17(4)(a) of Revised Model GST Law, no Input Tax Credit shall be available of motor vehicles except in specified circumstances.

As per Section 17(4) of Revised Model GST Law, Works contract services are not entitled to any Input Tax Credit on the inward supply of motor vehicles.

Issue

Dumpers and tippers are integral to the process of works contract. Works, such as road making, earth work etc. are not possible without the assistance of such motor vehicles. As of now, the works contractors can purchase dumpers and tippers @2% on issuance of C Form. By putting such motor vehicles on negative list, hardship will be caused to the works contractors.

Suggestion

It is suggested that the dumpers and tippers or other similar nature & category of motor vehicles be included in the definition of "plant and machinery" in explanation 2 of Section 17(3)(d) and hence be eligible for Input Tax Credit and excluded from the definition of motor vehicles specifically as these motor vehicles are not used for transportation but construction (furtherance of business).

45. Disallowance of Credit in respect of Rent-a-cab services and other services

Clause b of Section 17(4) of Revised Model GST Law provides that input tax credit will not be available in respect of supply of goods and services, namely,

(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery except where such inward supply of goods or services of a particular category is used by a registered taxable person for making an outward taxable supply of the same category of goods or services;

(ii) membership of a club, health and fitness centre,

(iii) rent-a-cab, life insurance, health insurance except where the Government notifies the services which are obligatory for an employer to provide to its employees under any law for the time being in force; and

(iv) travel benefits extended to employees on vacation such as leave or home travel concession.

Issue

- Rent-a-cab, today, has become a significant mode of transport of employees for business purposes. Placing such restrictions are arbitrary. Like other services credit of rent a cab should also be allowed if it is being used for taking part in business meetings, meeting with business partners etc. Non-availability of Input Tax Credit in respect of the specified service will lead to cascading effect of taxes under the GST regime.
- Food and beverage is not defined in the law. It can mean food items covered in 3-4 chapters of Excise Tariff or provision of food which is declared service as per Schedule II. This will result in denial of ITC for "eateries " segment as they will be buying food as "supply of good" and providing food as "supply of service".

Suggestion

- *It is suggested that restriction of availing credit on Ren-a-cab services be dispensed and credit be allowed for rent-a-cab used in course of business.*
- *Further, it is suggested to remove restriction on availing credits on travel benefits extended to employees on vacation such as leave or home travel concession as provided in Sec17(4)(b)(iv).*
- *It is suggested that words "food and beverages" be removed from Sec17(4)(b)(i).*

46. Disallowance of Credit in respect of works contract services

Clause c Section 17(4) of Revised Model GST Law provides that works contract services when supplied for construction of immovable property, other than plant and machinery, except where it is an input service for further supply of works contract service.

Clause d provides that goods or services received by a taxable person for construction of an immovable property on his own account, other than plant and machinery, even when used in course or furtherance of business.

Explanation 1. For the purpose of this clause, the word "construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property.

Issue

- Works contract is already limited to immovable property; hence the current language is redundant.
- Further, suppose that a person constructs a Factory Building, Hotel Building or a building which he wants to or has let out on rent, as per provisions of Section 17(4) (c) and (d) of the Revised Model GST Law, credit of any taxes paid on construction of Immovable property would not be allowed. This is a differential treatment being laid out that firstly where being a tenant of a building, a person would be getting the credit of the taxes paid on the rent to the owner of the Immoveable property but if a person has constructed building himself, then he would not be getting any credit of the taxes paid. This would be a huge negative for the Hotel Industry of the Manufacturing Industry wherein large investment is required in Building for the rendering of the supplies. Immovable Property in case of Hotel Industry, Industries and used in Letting out on rent forms an important part of the supply chain and cannot be treated as being used for self-consumption.

Suggestions

- *It is suggested that clause c be rephrased as "works contract and goods or services used in a works contract except where it is an input for further supply as works contract".*
- *It is suggested that the provisions under Section 17 relating to the Input Tax Credit be rationalized and brought at par with the simple concept that if outward supplies of a person is taxable then the inward supplies of the goods and/or services should be allowed as credit.*
- *Further, it is suggested that renovation works, repairs etc. be eligible for credit if they are in course / furtherance of business.*
- *The restriction of ITC in respect of all works contracts resulting in immoveable property at large be removed since in large number of contracts which qualify as works contracts, the end result would be immovable property'.*

47. Ensuring free flow of credit

There is no requirement to create such a degree of suspicion about business and personal expenses. If the business needs justify the expense, then subject to the safeguard in section 17(1), credit should not be restricted. Provisions under Section 17 relating to the Input Tax Credit needs to be simplified and brought at par with the simple concept that if outward supplies of a person is taxable then the inward supplies of the goods and/or services should be allowed as credit.

Suggestion

It is suggested to delete the sub-section (4) and may include cross-link to any income-tax disallowance of expenses being personal in nature.

48. Credit of Canteen Services in Factory Premises

Sub-clause (i) of clause (b) of Section 17(4) of Revised Model GST Law provides that credit of outdoor catering is not allowed whereas sub- clause (iii) provides that credit of rent-a-cab, life insurance and health insurance service shall be available if the Government notifies the services which are obligatory for an employer to provide to its employees under any law for the time being in force.

Further, Section 46 of the Factories Act, 1948 provides that the canteen shall be maintained by the factories having more than 250 employees.

Suggestion

- *It is suggested that as maintenance of a canteen in the factory is a statutory requirement, the credit of the tax paid on canteen service be allowed.*
- *Further, exceptions to obligatory services required to be provided under Law by an employer to an employee be allowed for claiming credit.*

49. Input tax credit to be made available in respect of goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples.

Section 17(4)(g) of Revised Model GST Law provides that Input tax credit shall not be available in respect of goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples." The provision is creating problem for credit on capital goods which will have to be reversed if they are lost, destroyed or stolen after many years of purchase.

Suggestion

- *It is suggested that there be specific exclusion for capital goods/inputs and if required disallowance may be made for some portion of the credit and not the whole amount. It is required so that the genuine credit available to the supplier is not taken away.*
- *Clarify that 'written-off' does not mean capital goods which are charged as revenue expenditure or where depreciation at the rate of 100% is applied.*

- *Further, credit in respect of goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples be allowed fully when any of such event is directly related to business activities being carried on by the assessee.*

50. Denial of Credit on Goods Confiscated or detained

Clause h of Section 17(4) of Revised Model GST Law provides that input tax credit shall not be available in respect of the any tax paid in terms of 89 or 90 dealing with confiscation and detainment of goods.

Issue

When the Confiscated Goods are released and sold it will be subject to tax and hence to deny the credit thereon is not appropriate.

Suggestion

It is suggested that there be no denial of ITC on goods confiscated or detained.

51. Any other civil structure not to be excluded from Plant and machinery

Explanation 2 to clause d of Sec 17(4) of Revised Model GST Law provides that the 'Plant and Machinery' means apparatus, equipment, machinery, pipelines, telecommunication tower fixed to earth by foundation or structural support that are used for making outward supply and includes such foundation and structural supports but excludes land, building or any other civil structures.

Issue

Inclusion of the term "Other civil structures" may lead to numerous disputes on the eligibility of credit on various plant and machineries as various plant and machineries require civil works to support their operation.

Suggestion

It is therefore suggested that the words "other civil structures" be removed from the said Explanation. Clear statement also be made with respect of passive structures that are used for furtherance of business and even if they are considered as 'immovable property' for purposes of municipal taxes by special provisions in that law.

52. Credit of Capital Goods held prior to registration

Section 18(1) of Revised 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, subject to such conditions and restrictions as may be prescribed, 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

- Though the 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 is allowed, no clarification is provided as to credit of Capital Goods lying on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of this Act.
- Law only allows the Input Tax Credit for dealers applying for registration within thirty days from the date on which he becomes liable for registration and does not provides for dealer applying for registration beyond the period of thirty days. The law is trying to penalize the dealer on wrong front. It is agreed that the dealer has not taken registration within the prescribed time limit. He should be penalized for that with stringent penalty provisions.

Suggestion

- *It is suggested that suitable clarification be provided regarding treatment of credit of Capital Goods lying on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of this Act.*
- *It is suggested that as a principle of Natural Justice, dealers obtaining delayed registrations be allowed to set off the tax paid on the material on which output liability is being created as Output Tax would be collected from the dealer from the date when he became liable for registration.*

53. Exempt Supply becoming Taxable Supply

Section 18(4) of Revised Model GST Law provides that where an exempt supply of goods or services by a registered taxable person becomes a taxable supply, such person shall, subject to such conditions and restrictions as may be prescribed, 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 relatable to such exempt supply and on capital goods exclusively used for such exempt supply on the day immediately preceding the date from which such supply becomes taxable: PROVIDED that the credit on capital goods shall be reduced by such percentage points as may be prescribed in this behalf.

Issue

Bona fide view entertained about non-exigibility to tax cannot become such a burden that industry will be forced to look for ways to escape from such consequences.

Suggestion

Following explanations be added to Section 18(4)

"Explanation 1 – exempt supply becomes a taxable supply includes when a bone fide view is

overturned by law or decision of a Court or Tribunal and such bona fides declared in the law so laid down.

Explanation 2 – notwithstanding anything to the contrary in this Act, entitlement to take credit on input tax shall refer to input tax related to input, input service and capital goods, computed as aforesaid, used in relation to such supply"

54. Time Limit for availing CENVAT Credit

Section 18(5) of the Revised 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(4) 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 34 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 18(5) & 16(4) 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 18(5) he is entitled to avail credit within 1 year i.e. till 24th March 2017. However, as per section 16(4) he can avail credit of the said invoice on or before 31st December 2016. This might cause litigation as well as interpretational issues.

Suggestions

- *It is suggested that provisions of sections 18(5) & 16(4) 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.*

55. Goods/ Services supplied by a taxable person become exempt

Section 18(7) of the Revised Model GST Law provides that where any registered taxable person who has availed of input tax credit switches over as a taxable person for paying tax under section 9 or, where the goods and/ or services supplied by him become exempt absolutely under section 11, he shall pay an amount, by way of debit in the electronic credit or cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock and on capital goods, reduced by such percentage points as may be prescribed, on the day immediately preceding the date of such switch over or, as the case may be, the date of such exemption:

PROVIDED that after payment of such amount, the balance of input tax credit, if any, lying in his electronic credit ledger shall lapse.

Issue

Person dealing in Multiple Goods/Services and one or some of the goods and/or services have been exempted from levy of tax It might be possible that a particular goods and/or services have been exempted and rest of the goods and/or services supplied by the person might be taxable. The provision of the section is not very clear that whether it speaks of lapse of entire Input Tax Credit in electronic credit ledger of the taxable person or Input Tax Credit relating to goods or services which have been exempted from tax.

Suggestion

It is suggested that in cases where a taxable person is dealing in Multiple Goods/Services and one or some of the goods and/or services have been exempted from levy of tax, then in such case the credit should lapse only to the extent of the goods which have been exempted from the levy of tax and it should not be that the entire tax credit should be reversed i.e. Credit restriction be in lines with section 17(2).

56. Supply of Input Tax Credit paid Capital Goods

Section 18(10) of Revised Model GST Law provides that in case of supply of capital goods or plant and machinery, on which input tax credit has been taken, the registered taxable person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and machinery reduced by the percentage points as may be specified in this behalf or the tax on the transaction value of such capital goods or plant and machinery under sub-section (1) of section 15, whichever is higher:

PROVIDED FURTHER that where refractory bricks, moulds and dies, jigs and fixtures are supplied as scrap, the taxable person may pay tax on the transaction value of such goods under sub-section (1) of section 15.

Issue

The provision deals with reversal of input tax credit in case of removal of capital goods but the current wordings "In case of supply of capital goods or plant and machinery" have a far-reaching impact. First it uses the term supply which includes even renting of that capital goods i.e. to say in case the capital goods is rented out, Sec 18(10) triggers and there would be reversal of ITC which is not the intention and secondly the use of word plant and machinery is not required as they are already covered under the meaning of capital goods. It will help give the provision intended scope and not hit those transactions which are not intended.

Suggestion

It is suggested that the in place of words "in case of supply of capital goods or plant and machinery" the words "In case of removal or sale or disposal of capital goods , on which input tax credit….." be used.

57. Tax wrongfully collected and deposited

Section 19 of Revised Model GST Law provides that where credit has been taken wrongly, the same shall be recovered from the registered taxable person in accordance with the provisions of this Act.

Issue

A plain reading of this Section envisages payment of tax by a registered taxable person in cases where taxes have been paid incorrectly or wrongfully. For instance, an inter-State supply may have been classified as intra-State supply and tax may have been discharged accordingly. In such a scenario, Section 19 envisages payment of the correct tax under the correct Statue while relegating the incorrect tax as refund. This will have a huge impact on working capital and hence this should be allowed to correct under the revised return.

Suggestion

(i) It is suggested to provide for an allowance of revising the relevant return and adjusting the amount so incorrectly paid.

(ii) To amend the provision to impose the recovery provision only when such credit is taken and utilised wrongly by the taxable person. It would be in consistent with the existing rule 14 under the CCR Rules, 2004.

58. Tax to be paid on Inputs/ Capital sent to Job Work not received back within stipulated time

Section 20 (3) & (6) of the Revised Model GST Law provide that where the inputs/ capital goods sent for job-work are not received back by the "principal" after completion of job-work or otherwise or are not supplied from the place of business of the job worker in accordance with clause (b) of sub-section (1) of section 55 within a period of 1 year/ 3 years of their being sent out, it shall be deemed that such inputs had been supplied by the principal to the job-worker on the day when the said inputs were sent out:

PROVIDED that where the inputs are sent directly to a job worker, the period of 1 year/ 3 years shall be counted from the date of receipt of inputs by the job worker

Issue

There is no provision to refund tax if inputs/capital goods sent back by Job Worker after the stipulated timeline. There may be genuine commercial reasons for non-meeting of timeline by the Job Worker. Hence principal should not be penalized if Job worker returns the processed inputs/Capital Goods.

Suggestion

(i) It is suggested that GST paid by Principal on deemed supply be refunded if Job worker subsequently returns the processed inputs/capital goods to principal.

(ii) It is suggested that these cases may call for reversal of credit which would also be in lines

with Rule 4(5) CENVAT Credit Rules, 2004.

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

Section 22 of the Revised Model GST Law provides that where the Input Service Distributor distributes the credit in contravention of the provisions contained in section 21 resulting in excess distribution of credit to one or more recipients of credit, the excess credit so distributed shall be recovered from such recipient(s) along with interest, and the provisions of section 66 or 67, as the case may be, shall apply mutatis mutandis for effecting such recovery.

Suggestions

It is suggested that the words 'shall be recovered from such recipient(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.

60. Provision of Centralized Registration

Schedule V of Revised 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. 20 lakhs/ 10 lakhs as the case may be.

Section 23 Chapter VI provides that every person who is liable to be registered under Schedule V of this Act shall apply for registration in every such State in which he is so liable within thirty days from the date on which he becomes liable to registration, in such manner and subject to such conditions as may be prescribed:

PROVIDED that a casual taxable person or a non-resident taxable person shall apply for registration at least five days prior to the commencement of business.

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. This can be enabled by stating 'where supplies are made under the IGST Act in accordance therewith, presence of a fixed establishment in the State to which the supply is made shall not compel registration in such State whether or not the recipient is a taxable person.*

- *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.*

61. Registration in case of a person required to deduct tax under section 46

Section 23(4) of the Revised Model GST Law provides that every person shall have a Permanent Account Number issued under the Income Tax Act, 1961 (43 of 1961) in order to be eligible for grant of registration under sub-section (1), (2) or (3):

PROVIDED that a person required to deduct tax under section 46 shall have, in lieu of a Permanent Account Number, a Tax Deduction and Collection Account Number (TAN) issued under the said Act in order to be eligible for grant of registration.

Issue

- It might be possible that the supplier is required to deduct TDS under GST law but is not required to deduct TDS under income tax act but mandating him to obtain tan under income tax act will add compliance burden.
- The entire issue boils down to the fact that, it an agreed and acceptable argument that PAN would be the bedrock for GST. Since PAN is not mandatory for every citizen of India, it would be a long-drawn process, and if for any reason allotment of PAN is delayed then the person would be suffering from loss of Input credit and penalty for delay in filing of application would also be levied on him. Loss of Input Tax Credit on the Capital Goods would be an even bigger loss.

Suggestion

- *It is suggested that the supplier who is required to deduct TDS under GST not be required to obtain TAN mandatorily under Income Tax Act and may obtain registration by using PAN.*
- *It is suggested that as was provided in the draft report to allot temporary registration in case of enforcement cases and then converting the temporary registration to PAN based registration. A temporary registration may also be allotted in normal cases till PAN is allotted with a maximum time period of 15 days to update PAN and subsequently converting the temporary registration to PAN based.*

62. Time limit to fix effective date of Registration

Section 23(9) of the Revised 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 Revised Model GST Law itself to provide better transparency.

63. Deemed Registration

Section 23(10) of the Revised Model GST Law provides that a registration or an Unique Identity Number shall be deemed to have been granted after the period prescribed under sub-section (8), if no deficiency has been communicated to the applicant by the proper officer within that period.

Issue

Even if, deemed registration may be granted, the dealer would not be able to proceed with GST compliances such as payment of taxes, filling of returns, etc. unless the registration number is activated.

Suggestion

It is suggested to activate the deemed number on immediate basis, so as to facilitate dealers in commencement of paying GST. Further, to ensure this in law add the words "and activated" after the word "granted" in Section23 (10) of the Revised Model GST Law.

64. Special provisions relating to casual taxable person and non-resident taxable person

Section 24(2) of the Revised Model GST Law provides that: Notwithstanding anything to the contrary contained GST Revised Law, a casual taxable person or a non-resident taxable person shall, at the time of submission of application for registration under Section 2419(1), make an advance deposit of tax in an amount equivalent to the estimated tax liability of such person for the period for which the registration is sought.

Suggestions

- *It is suggested to provide clarity as to whether the estimated tax liability would be gross liability or net liability i.e. after claiming input tax credit.*
- *It is also suggested to clarify that who would make the estimate of tax liability. Since, it is possible that authorities may intervene and reject estimate made by the dealer.*

65. Cancellation of Registration

Section 26(2) of the Revised Model GST Law provides that the proper officer may, in the manner as may be prescribed, cancel the registration of taxable person from such date, including any anterior date, as he may deem fit, where,-

(a) the registered taxable person has contravened such provisions of the Act or the rules made thereunder as may be prescribed; or

(b) a person paying tax under section 9 has not furnished returns for three consecutive

tax periods; or (c) any taxable person, other than a person specified in clause (b), has not furnished returns for a continuous period of six months; or

(d) any person who has taken voluntary registration under sub-section (3) of section 23 has not commenced business within six months from the date of registration.

Issue

- If cancellation of registration is permitted from anterior (earlier) date, it would lead to disruption of whole credit chain and difficulties will be faced by persons who have already availed credit.
- Dealers may not be able to file periodical returns on time due to financial hardship in paying tax. Hence, stringent times for non-filing of returns would lead to cancellation of registration, which may not be required.

Suggestion

- *It is suggested not to permit cancellation of registration from anterior (earlier) date.*
- *It is suggested that registration in case of non-filing of return 'without reasonable cause' only be cancelled*
- *It is suggested that continuous period for both regular and composition dealer be increased to 12 months and 4 tax periods respectively*

66. Issue of Tax Invoice, Credit & Debit Notes

Proviso to Section 28(3)(b) of the Revised Model GST Laws provides that the registered taxable person may not issue a bill of supply if the value of the goods or services supplied is less than one hundred rupees except where the recipient of the goods or services requires such bill.

Issue

The given amount limit of one hundred rupees seems to be very less in the current scenario and same would not be in line with the existing service tax laws.

Suggestion

It is therefore suggested that the amount limit of Rs. 100 be enhanced to Rs. 1000 in the light of the existing service tax laws.

67. Invoice to be issued in case of reverse charge

Section 28(3)(d) of the Revised Model GST Law provides that a registered taxable person who is liable to pay tax under sub-section (3) of section 8 shall issue an invoice in respect of goods or services received by him on the date of receipt of goods or services from a person who is not registered under the Act.

Issue

There would be difficulties for the business where the invoice on self would be required to be issued each time the goods or services specified under Section 8(3) are received from unregistered persons.

Suggestion

- *The credit be available on the basis of challan evidencing the payment of tax by the recipient of goods/ services and no need for raising any invoice.*
- *Further, it is suggested that the words ".....from a person who is not registered under the Act" be deleted.*
- *But, if the provision is to continue, please exclude import of services from this provision as invoice of overseas suppliers is required for determining time of supply and the invoice required under this provision would conflict.*

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

Section 30 of the Revised 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.

69. Furnishing details of outward and inward supplies by the casual taxable person

Section 32(1) of the Revised Model GST Law provides that every registered taxable person, other than an input service distributor, a non-resident taxable person and a person paying tax under the provisions of section 9, section 46 or section 56, shall furnish, electronically, in such form and manner as may be prescribed, the details of outward supplies of goods or services effected, during a tax period on or before the tenth 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.

Further, Section 33(1) of the Revised Model GST Law provides that every registered taxable person, other than an input service distributor or a non-resident taxable person or a person paying tax under section 9, section 46 or section 56, shall verify, validate, modify or, if required, delete the details relating to outward supplies and credit or debit notes communicated under sub-section (1) of section 32 to prepare the details of his inward supplies and credit or debit notes and may include therein, the details of inward

supplies and credit or debit notes received by him in respect of such supplies that have not been declared by the supplier under sub-section (1) of section 32. Check 33

Issue

The given provisions are silent in case of the casual taxable person since the provisions related to non-resident and casual taxable persons are almost similar under the Revised Model GST Laws.

Suggestion

- *It is therefore suggested that the casual taxable person be excluded from the scope of Section32(1) & Section 33(1).*
- *Also, a casual trader should be asked to furnish quarterly return under section 34.*

70. Inconsistency in Provisions for Rectification of error in Monthly return

Proviso to Section 32(3) of the Revised Model GST Laws provides that no rectification of error or omission in respect of the details furnished under sub-section (1) shall be allowed after furnishing of the return under section 34 for the month of September following the end of the financial year to which such details pertain, or furnishing of the relevant annual return, whichever is earlier.

However, proviso to Section 33(5) of the Revised Model GST Laws provides that no rectification of error or omission in respect of the details furnished under sub-section (2) shall be allowed after furnishing of the return under section 34 for the month of September following the end of the financial year to which such details pertain, or furnishing of the relevant annual return, whichever is earlier.

Proviso to Section 34(9) of the Revised Model GST Laws provides that no such rectification of any omission or incorrect particulars shall be allowed after the due date for furnishing of return for the month of September or second quarter, as the case may be, following the end of the financial year, or the actual date of furnishing of relevant annual return, whichever is earlier.

Issue

It appears that the given provisions are inconsistent with each other since GSTR-1 and GSTR-2 can be rectified till the actual furnishing of return for the month of September of next Financial Year and GSTR-3 which would be auto-populated by GSTR-1 and GSTR-2 can only be revised till the due date for return for the month of September of next financial year.

Suggestions

It is therefore suggested that the provisions of law need to be brought in consonance with each other and both proviso to Section 32(3) and 33(5) need to be amended to bring them in line with proviso to section 34(9) or vice versa. This would bring in parity in the law.

71. Furnishing of return by a registered taxable person under Section 9

Section 34(2) of the Revised Model GST Law provides that every taxable person paying tax under the provisions of section 9 shall, for each quarter or part thereof, furnish, in such form and in such manner as may be prescribed, a return, electronically, of inward supplies of goods or services, tax payable and tax paid within eighteen days after the end of such quarter.

Issue

There appears a clerical mistake in section 34(2) wherein it has used the words "inward supplies of goods or services".

Suggestion

It is suggested that the words "inward supplies of goods or services" be replaced with the phrase "inward and outward supplies of goods and/or services".

72. First Return

Section 35 of the Revised Model GST Law provides that every registered taxable person who has made outward supplies in the period between the date on which he became liable to registration till the date on which registration has been granted shall declare the same in the first return filed by him after grant of registration.

Issue

- If the first return contains details of all the outward supplies from start of the financial year in which he became liable for registration, it will help in determining total turnover by taxable person, including during the period they were covered as unregistered, especially for supplies covered under composition. Further, it will also help under matching principles.
- If the first return contains details of all the inward supplies from start of the financial year in which he became liable for registration, then any input which they have acquired during the period he was an unregistered dealer but has been used for supplies made after registration will be eligible for credit, as presently under VAT & Excise such inputs are classified as eligible input.

Suggestion

It is suggested that first return contains details of all the outward and inward supplies from start of the financial year in which he became liable for registration.

73. Matching, reversal and reclaim of input tax credit

Section 37(1) of the Revised Model GST Law provides that the details of every inward supply furnished by a registered taxable person (hereinafter referred to in this section as the 'recipient') for a tax period shall, in the manner and within the time prescribed, be matched-

(a) with the corresponding details of outward supply furnished by the corresponding taxable person (hereinafter referred to in this section as the 'supplier') in his valid return for the same tax period or any preceding tax period,

(b) with the additional duty of customs paid under section 3 of the Customs Tariff Act, 1975 (51 of 1975) in respect of goods imported by him, and

Issue

There is no provision to cover situations where recipient pays tax on reverse charge which is not disclosed by the supplier. Where a recipient of Goods or Services pays the taxes on reverse Charge basis he should not be denied ITC of the same merely on the grounds that it is not disclosed by a Supplier.

Suggestion

It is therefore suggested that a specific provision be added to cover this aspect for the purpose of better compliance by supplier.

Also exclude from the operation of this section in cases covered by section 18(4) – bona fide exemption reversed.

74. No interest recovery on the credit reversal on date of completion of building

Section 45 of the Revised Model GST Law provides that every person liable to pay tax in accordance with the provisions of the Act or rules made thereunder, who fails to pay the tax or any part thereof to the account of the Central or a State Government within the period prescribed, shall, on his own, for the period for which the tax or any part thereof remains unpaid, pay interest at such rates as may be notified, on the recommendation of the Council, by the Central or a State Government.

Issue

There may be bona fide cases where the CENVAT credit was rightly availed at the time of availment but some external event (like grant of Original Certificate for building) can result in GST not being applicable. In such cases, demanding the interest recovery on the GST amount would be inequitable

Suggestion

It is suggested to insert a proviso in the section as under: -

"Provided that no interest would be payable in case of reversal of credit due to grant of permission or certificate in respect of building referred in Schedule II para 5(b)".

75. Time limit for furnishing of certificate of tax deducted at source to the deductee

Section 46(4) of the Revised GST Laws provides that the deductor is required to furnish the tax deduction certificate to the deductee, after deducting the tax at source, within five days of crediting the amount so deducted to the appropriate Government.

Issue

The law is not clear that how certificate of tax deducted at source would be generated i.e. whether after filing of the return or through separate procedure. If the certificate would be generated after filing of the return, then the provisions of this section would tantamount to last date of filing of return would be 5 days from the date of crediting of the amount to the credit of the appropriate government or if the certificate would be generated by a separate procedure then the same should have been avoided and should have been integrated with the return.

Suggestion

The provision needs to be rationalized and the date of issue of certificate needs to be linked with the last date of filing the return of Tax Deduction at Source.

76. Refund of the Accumulated Stock of ITC

Section 48 of the Revised GST Laws provides that any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application in that regard to the proper officer of IGST/CGST/SGST before the expiry of two years from the relevant date in such form and in such manner as may be prescribed.

Issue

The Accumulated amount of Input Tax Credit on account of accumulation of stock or capital goods is allowed to be carried forward under the GST Law but there is no provision for refund of such an amount which couldn't be denied in all the cases since it would lead to blockage of the tax payer money.

Suggestion

It is therefore recommended that the GST Law may provide that refund of carried forward ITC may be allowed. The law may provide for carry forward or the refund of ITC on cases to case basis.

77. Relevant date in case the tax becomes refundable as a consequence of judgment, decree, order or direction of the Appellate Authority

Explanation 2(d) of section 48 of Revised Model GST Law states that the relevant date for the case where the tax becomes refundable as a consequence of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any Court would be the date of communication of such judgment, decree, order or direction.

Suggestion

It is suggested that the relevant date in case of refund as a consequence of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any Court be made ***the date of receipt of order.***

78. Ambiguity on Refund of ITC on Capital Goods used in Exports

Section 48(3) of Revised Model GST Law provides that subject to the provisions of sub-section (10), a taxable person may claim refund of any unutilized input tax credit at the end of any tax period

As per Explanation to Section 48 of the Revised Model GST Law, "refund" includes refund of tax on goods and/or services exported out of India or on inputs or input services used in the goods and/or services which are exported out of India, or refund of tax on the supply of goods regarded as deemed exports, or refund of unutilized input tax credit as provided under sub-section (3).

Issue

The question now arises that whether this provision means that exporter would not be allowed refund of the Input Tax Credit paid on capital goods. The provisions of Section 48(8)(a) restricts the refund in case of export to the inputs or input services used in the goods/services exported out of India and the definition of Input does not include capital goods.

Suggestion

It is suggested that the provisions be clarified on the matter whether refund is allowable of Input Tax paid on Capital Goods used for Exports of Goods and/or services out of India. If at all it is allowable then whether refund is allowable on the same footing as that of other Inputs used in the Export of Goods and/or Services out of India or treating it as part of Unutilized Input Tax Credit.

79. Payment of refundable amount to applicant

Section 48(8) of the Revised Model GST Law provides that the refundable amount shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to –

(a) refund of tax on goods and/or services exported out of India or on inputs or input services used in the goods and/or services which are exported out of India;

(b) refund of unutilized input tax credit under sub-section (3);

(c) refund of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued;

(d) refund of tax in pursuance of section 70;

(e) the tax and interest, if any, or any other amount paid by the applicant, if he had not passed on the incidence of such tax and interest to any other person; or

(f) 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 48(6).*
- *Further, it is suggested to include advance deposit of tax made by Casual taxable person or non-resident taxable person as well as TDS deducted and its Refund & TCS refund.*

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

Section 53 of the Revised Model GST Law provides that every registered taxable person shall keep and maintain, at his principal place of business, as mentioned in the certificate of registration, 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:

PROVIDED that where more than one place of business is specified in the certificate of registration, the accounts relating to each place of business shall be kept at such places of business concerned:

PROVIDED FURTHER that the registered taxable person may keep and maintain such accounts and other particulars in the electronic form in the manner as may be prescribed.

Suggestion

It is suggested to 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.

81. Intimation for sending inputs and/or capital goods for job work

Section 55(1) of the Revised Model GST Law provides that a registered taxable person (hereinafter referred to in this section as the "principal") may, under intimation and subject to such conditions as may be prescribed, send any inputs and/or capital goods, without payment of tax, to a job worker for job-work and from there subsequently send to another job worker and likewise.

Schedule I provides the matters to be treated as supply even if made without consideration which includes:-

(a) Supply of goods or services between related persons, or between distinct persons as specified in section 10, when made in the course or furtherance of business

(b) Importation of services by a taxable person from a related person or from any of his other establishments outside India, in the course or furtherance of business.

Issue

- There is no provision with respect to supply of goods provided by Job worker.
- There is no clarity on job work done by related person. A factory of related taxable person is permitted to send goods to another factory on job work basis without payment of GST.

Suggestion

- *It is suggested that the conflict between Section 55 and Schedule I be resolved by adding a non-obstante clause in either Section 55 or Schedule I.*
- *It is suggested that the intimation be made similar to way bill in order to ensure ease of business.*

82. Input tax credit in respect of inputs sent for job work

As per section 55 (3) & (4) of the Revised Model GST Law, if the goods sent to job worker are not received within stipulated time then, it shall be deemed that such inputs had been supplied by the principal to the job-worker on the day when the said inputs were sent out.

Issue

In case goods are received back subsequently i.e. after the period of 1/3 years, the levy of interest amount along with GST in such cases will be harsh to some extent.

Suggestion

It is therefore suggested that the section be amended as follows:

"if the goods sent to job worker are not received within stipulated time then, it shall be deemed that such inputs had been supplied by the principal to the job-worker ***on expiry ofsaid stipulated time."***

83. Electronic Commerce

The provisions relating to tax collection at source and thereby depositing the same with Government, by electronic commerce operator are provided in the Section 56 of the Revised Model GST Law. However, provision regarding '*issuance of certificate for payment of taxes so collected at source'* appears to be missing. Accordingly, it would be difficult for the Supplier to claim credit of tax collected by the electronic commerce operators.

Suggestion

- *It is suggested that enabling provision regarding issuance of tax collection certificate may be incorporated in the Revised Model GST Law and the Forms be notified by way of Rules.*
- *Further, e-commerce operators covered by section 8(4) not be required to comply with the provisions of this section.*

84. Extension of time limit to furnish information by the Electronic Commerce Operator

Section 56(9) of the Revised Model GST Law provides that any authority not below the rank of Joint Commissioner may serve a notice, either before or during the course of any proceeding under this Act, requiring the operator to furnish such details relating to—

(a) Supplies of goods or services effected through such operator during any period, or

(b) Stock of goods held by the suppliers making supplies through such operator in the godowns or warehouses, by whatever name called, managed by such operators and declared as additional places of business by such suppliers –

Also, Section 56(10) of the Revised Model GST Laws provides that every operator on whom a notice has been served under sub-section (9) shall furnish the required information within fifteen working days of the date of service of such notice.

Issue

Every operator on whom a notice has been served under sub-section (10) shall furnish the required information within fifteen working days of the date of service of such notice. There is no provision for extension of this time period which may lead to difficulties.

Suggestion

- *It is therefore suggested to relax the given provision by providing extension of the time limit for furnishing of details by the Electronic Commerce Operator.*
- *Further, e-commerce operators covered by section 8(4) not be required to comply with the provisions of this section*

85. Certificate of tax collection in case of e-commerce operators

Section 56 of the Revised Model GST Law provides that every electronic commerce operator, not being an agent, shall collect an amount calculated at the rate of one percent of the net value of taxable supplies made through it where the consideration with respect to such supplies is to be collected by the operator.

Issue

- The provision regarding issuance of certificate for payment of taxes collected at source appears to be missing. Accordingly, it would be difficult for the supplier to claim credit of tax collected by the electronic commerce operators.
- The requirement to establish the absence of agency is cumbersome. As long as the

supply (a) is not by the Electronic Commerce Operator on his own account and (b) payment is passed through the Electronic Commerce Operator, then TCS is applicable

Suggestions

- *It is therefore suggested that the enabling provisions regarding issuance of tax collection certificate be incorporated and suitable forms to be notified by way of rules.*
- *Further, it is suggested that the words "not being agent" be deleted.*
- *Further, e-commerce operators covered by section 8(4) not be required to comply with the provisions of this section.*

86. Scrutiny of Returns

Section 59 of the Revised 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.*

87. Definition of expression "adversely affect the interest of Revenue"

Section 62(1) of Revised Model GST Law provides that the proper officer may, on any evidence showing a tax liability of a person coming to his notice, with the previous permission of [Additional/Joint Commissioner], proceed to assess the tax liability of such person to protect the interest of revenue and issue an assessment order, if he has sufficient grounds to believe that any delay in doing so will adversely affect the interest of revenue.

Issue

The expression "adversely affects the interest of Revenue" is vague which may create conflicts between assessee and adjudicating authority as to whether the grounds on which summary assessment is done adversely affects the interest of revenue or not. Moreover, wide powers given under this section possibly may be misused by circumventing the provision allowing issuance of show cause notice

Suggestion

It is therefore suggested that the expression "adverse effect the interest of revenue" be clearly brought out by setting some quantitative and / or qualitative parameter.

88. Extension of audit period

Section 63(4) of the Revised Model GST Law provides that the audit under sub-section (1) shall be completed within a period of three months from the date of commencement of audit:

PROVIDED that where the Commissioner is satisfied that audit in respect of such taxable person cannot be completed within three months from the date of commencement of audit, he may, for the reasons to be recorded in writing, extend the period by a further period not exceeding six months

Suggestion

It is suggested that the period of extension not to be made more than the original/initial period i.e. 3 months which would be in lines with the existing law.

89. Time limit for issuance of order for tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any willful misstatement or suppression of facts

Section 66(8) of the Revised Model GST Law provides that the proper officer shall issue the order determining the amount of tax, interest and any penalty within a period of five years from the due date for filing of annual return for the year to which the tax not paid or short paid or input tax credit wrongly availed or utilized relates or, as the case may be, within five years from the date of erroneous refund.

Issue

The time limit for issuance of order under sub-section (8) is in excess of the time limit currently prescribed under the existing laws. Since all the transactions are nowadays online and compliance systems are designed with enough safeguards & cross tally. In such a tech-savvy environment, the time frame of 3 years is not warranted.

Suggestion

It is therefore suggested that the time limit be reduced to 12 months except for fraud, suppression etc. in which case it can be 2 years

90. General provisions relating to determination of tax

Section 68(2) of Revised Model GST Law provides that: Where any appellate authority or Tribunal or Court concludes that the notice issued under sub-section (1) or (3) of Section 67 is not sustainable for reason that the charges of fraud or any wilful statement is not sustainable for the reason that the charges of fraud or any wilfulmis-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 (1) or (3) of Section 66.

Further, Section 68(10) of Revised Model GST Law provides that: the adjudication proceedings shall be deemed to be concluded if the order is not issued within three years as provided for in sub-section **(8) of Section 66 or within five years as provided for in sub-section (8) of Section 67**

Issue

- Section 68(2) mandates that where the appellate authority or the Court hold that the notice issued either under sub-section (1) or (3) of sub-section 68 is not sustainable, it is obvious that the notice so issued would be quashed by the Appellate or the Court, as the case may be. Consequently, once the notice is quashed, how can the non-existing notice be deemed as issued under sub-sections (1) or (3) of Section 66? Further, if the notice quashed/set-aside is for one year, how can such a notice deemed to have been issued for a period of "three years", more so when sub-section (2) of Section 66 mandates that "the proper officer shall issue a notice" and sub-section (7) of Section 68 mandates that the amount of tax, interest and penalty determined in the order of assessment shall not be in excess of the amount proposed/specified in the notice.
- Section 68(10) mandates impliedly, that the proceedings of assessment under Section 66(7) and 67 (8) are deemed to be adjudicated, if the said proceedings are not completed/ concluded within the time limit of three years specified in Section 66(8) or five years specified in Section 67(8). Whereas, sub-section (6) of Section 68 mandates that the order of assessment shall be a speaking order i.e. " (6) the proper officer, in his order, shall set out the relevant facts and the basis of his decision."

Suggestions

- *It be suitably clarified that for section 68(2) the object of insertion of the expression "three years" is to fix the time limit for concluding/completing assessment and not for enhancing the period of assessment from one year to three years.*
- *Further, it is suggested to suitably clarify the provisions of section 68(10) to enable analyzing its impact on taxable persons.*

91. General provision related to demand

Section 68(11) of the Revised Model GST Law provides that where an issue on which the First Appellate Authority or the Appellate Tribunal or the High Court has given its decision which is prejudicial to the interest of revenue in some other proceedings and an appeal to the Appellate Tribunal or the High Court or the Supreme Court against such decision of the First Appellate Authority or the Appellate Tribunal or as the case may be, the High Court is pending, the following periods be excluded in computing the period referred to in Section 66(8) or Section 67(8), as the case may be, where proceedings are initiated by way of issue of a show cause notice under Section 66:

- between the date of the decision of the First Appellate Authority and the date of decision of the Appellate Tribunal or
- the date of decision of the Appellate Tribunal and the date of the decision of the High Court or as the case may be or
- the date of the decision of the High Court and the date of the decision of the Supreme Court

Issue

Section 68(11) provides exclusion of time limit for issuance of order by proper officer, where the matter was under challenge before any court of law. The provision does not limit itself to matters which are pending to the assessee's own case and accordingly this could result in difficult situations. For e.g. where a decision is passed in case of some other assessee, the period of limitation gets extended for all other assessees. Similarly the provisions of excluding of time limit should apply only on account of the appeals pending in that particular State , as it may result in situations where other States may have already completed assessment and the same would be re-opened based on decision of dispute pertaining to some other State.

Suggestion

It is suggested that exclusion of time limit under Section 68(11) be qua assesse and qua state.

92. Double tax payment for tax wrongfully collected and deposited

Section 70 of the Revised 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 be granted refund of the amount of CGST /SGST (in SGST Act) so paid in such manner and subject to such 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 48 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. This may be done where the same invoice is referred for payment of output tax in CGST-SGST as well as IGST columns, then the earlier payment be automatically added to taxes deposited or reduced from output tax liability for the tax period in which the later liability is shown in the return.*

93. Reasons to believe Suppression to undertake a search

Section 79(1) of the Revised 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.

94. Inventory of the seized documents along with the goods

Section 79(9) of the Revised Model GST Law provides that where any goods, being goods specified under sub-section (8), have been seized by a proper officer under sub-section (2), he shall prepare an inventory of such goods in the manner as may be prescribed in this behalf.

Issue

Under sub-section (2), in case of search and seizure the proper officer seizes not only goods but also documents, books or things.

Suggestion

It is suggested that sub-section (9) may be modified to cover the inventory of documents, books and things seized also along with goods.

95. Stringent Power to Arrest and Prosecution Provisions

Section 81 & Section 92 of the Revised Model GST Law prescribe arrest and prosecution provisions if an assessee attempts to commit, or abets the commission of, any of the specified offences.

Issue

Provisions relating to arrest, prosecution etc. are very stringent for lapses like (e) takes and/or utilizes input tax credit without actual receipt of goods and/or Services (l) fails to supply any information which he is required to supply under this Act or the rules. Considering that law is just introduced & will be subject to a lot of interpretation in its initial stage, it will take some time for understanding and compliance by both Department & assessee. In the beginning the assesse should be dealt with "kids glove" just as was done when service tax was introduced for the first time. The stringent provisions like arrest, prosecution etc. can always be inserted after 2-3 years when the law is more familiar & there is enough clarity.

Suggestion

It is suggested that arrest and prosecution provisions need not be applied for minor offences instead assessee may be penalised only with interest and penalty provisions.

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

Section 83(1) of the Revised 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 79 and not under section 83. Section 83 only declares availability of access the premises and must not be interpreted to grant a power for search which is provided by section 79. Access to premises under this section would provide a back-door to do what is not permitted under section 79.

Suggestion

It is suggested that the power to search and access premises be restricted to section 79 only.

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

Section 85(1) of the Revised Model GST Law provides a list of 21 offences liable to penalty under the GST Act. Offences if committed by a taxable person shall attract penalty of Rs. 10,000/- or an amount equivalent to the tax evaded or the tax not deducted or short deducted or deducted but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, as the case may be, whichever is higher.

Further, in terms of Section 92, whoever commits any offences mentioned in Section 92(1), shall be prosecuted.

Issues

- Section 76 of the Finance Act, 1994 provides for penalties in bona fide cases while Section 78 thereof provides for penalties in mala fide cases. Whereas, Section 85 of the Revised Model GST Law prescribes offences and then provides for levy of heavy penalty upto maximum of 100% of tax evaded. The offences and penalties are not bifurcated as bona fide or mala fide. This may result in levy of heavy penalties even in bona fide cases.
- Collection and non-payment beyond three months from due date is considered as an offence under Section 85(1)(iii) and Section 92 (1) (c) of the Revised Model GST Law. While at present, Service tax collected but not paid within six months from due date is considered as an offence.
- Failure to pay the tax to appropriate Government is considered to be offence. In case, the assessee pays CGST/SGST as against IGST and vice versa, the same would be considered as offence even after payment of tax by assessee. Erroneous payment of tax as CGST/SGST instead of IGST or vice versa may be as a result of either interpretational error or mistake. Moreover, since the tax liability has been discharged by assesse it may not be considered as offence.

Suggestion

- *It is suggested that penalty and prosecution provisions provided under Section 85 of the Revised Model GST Law and Section 92 thereof be bifurcate into bona fide and mala fide cases. Separate means of identification, degree of proof required, defence permissible and consequences be prescribed separately for each of these two classes of offense to bring in transparency and clarity Accordingly, higher penalties and stringent prosecution shall be prescribed only for mala fide cases*
- *Similarly, the offences listed in section 92 may also be categorized on above grounds.*
- *It is suggested that Collection and non-payment beyond six months and not three months from due date is considered as an offence. Accordingly, "three" be replaced by the word "six" in Section 85(1)(iii) and Section 92 (1)(c) of the Revised Model GST Law*
- *It is suggested that the word "appropriate" be deleted before the word "Government" in Section 85(1)(iv)*

98. General disciplines related to penalty

Section 87 of the GST Revised Law *interalia* provides that, no tax authority shall impose substantial penalties for minor breaches i.e., a breach of tax amount less than Rs. 5000/- of tax regulations or procedural requirements. In particular, no penalty in respect of any omission or mistake in documentation which is easily rectifiable and obviously made

without fraudulent intent or gross negligence shall be greater than necessary to serve merely as a warning.

Further, in terms of Section 87(6), provisions of this section will not apply in cases, where the penalty prescribed under the Act is either a fixed sum or expressed as a fixed percentage.

Issue

- The monetary limit of minor breach has been kept at a trivial amount of five thousand rupees. Considering inflation, the monetary limit of minor breach may be kept at Rs. One lakh.
- Section 87(6) provides that general disciplines relating to penalties shall not be applicable in specified circumstances. Therefore, the provision seems to be discriminatory in nature.

Further, as per Hon'ble Supreme Court in case of ***Pratibha Processors 1996 (88) ELT 12 (SC)***, penalty is different from interest. Interest for delayed payment of taxes is to compensate the Exchequer for loss occurred due to the delay by the taxpayer. Contrast to the interest, penalty is ordinarily levied for some contumacious conduct or for a deliberate violation of the provisions of the particular statute. Therefore, it is suggested that in order to have fair judicial proceedings, general disciplines related to penalty shall be applicable to all penalties leviable under the Act irrespective of the penalty being either a fixed sum or expressed as a fixed percentage.

Suggestion

- *It is suggested that monetary limit of minor breach be kept at Rs.1 lakh instead of Rs. 5000/-.*
- *Further, it is suggested to remove sub-section 6 of Section 87.*

99. Confiscation of goods and/or conveyances and levy of penalty

Section 90 of the GST Revised Law provides that if any person –

(i) supplies or receives any goods in contravention of any of the provisions of this Act or rules made thereunder with intent to evade payment of tax; or

(ii) does not account for any goods on which he is liable to pay tax under this Act; or

(iii) supplies any goods liable to tax under this Act without having applied for registration; or

(iv) contravenes any of the provisions of this Act or rules made thereunder with intent to evade payment of tax; or

(v) uses any conveyance as a means of transport for carriage of taxable goods in contravention of the provisions of this Act or rules made thereunder unless the owner of the conveyance proves that it was so used without the knowledge or

connivance of the owner himself, his agent, if any, and the person in charge of the conveyance, then all such goods and / or conveyance shall be liable to confiscation and the person shall be liable to penalty under section 85.

Whenever confiscation of any goods or conveyance is authorized by this Act, the

CGST/SGST officer adjudging it shall give to the owner of the goods or, where such owner is not known, the person from whose possession or custody such goods have been seized or the owner or the person in-charge of the conveyance, an option to pay in lieu of confiscation such fine as the said officer thinks fit:

Issue

This Section does not prescribe the time limit within which show cause notice will be issued in case of such confiscation

Suggestion

- *It is suggested to prescribe the time limit within which show cause notice will be issued*

Accordingly, following sub clause is to be inserted in Section 90:

"No order of confiscation of conveyance shall be issued without giving a notice to show cause ***within three months from the date of such confiscation*** *and without giving the person a reasonable opportunity of being heard.*

Provided further that the conveyance will be liable to be released if no show cause notice is issued within the time prescribed."

100. Imprisonment for 5 years for repeated offences

Section 92 of Revised Model GST Law deals with Prosecution provisions for any of the 13 enlisted offences committed by an assessee.

Sub-section 2 of section 92 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.

101. Compounding of offences

Section 97(2) of the GST Revised Law *interalia* provides the maximum amount for compounding of offences shall not being more than rupees thirty thousand or one hundred and fifty per cent of the tax, whichever is greater.

Issue

Revised Model GST Law proposes for the monetary limit for compounding to be maximum upto one hundred and fifty percent of tax amount. While, Rule 5 of Central Excise (Compounding of offences) Rules, 2005 provides for a table providing compounding amounts in specified situations and the maximum monetary limit for compounding under the present law is fifty percent of the duty evasion.

Suggestion

It is suggested that the maximum monetary limit for compounding of offences be fifty percent of duty evasion.

Accordingly, Section 97(2) be modified as:

"(2) The amount for compounding of offences under this section shall be as may be prescribed under the rules to be made under sub-section (1), subject to the minimum amount not being less than rupees ten thousand or fifty per cent of the tax involved, whichever is greater, ***and the maximum amount not being more than rupees thirty thousand or fifty per cent of the tax, whichever is greater****."*

102. Criteria for determining range of compounding amount

Section 97(3) of the Revised 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 dispose of if the criteria is justifiable.

Suggestion

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

103. Appeals to First Appellate Authority& Appellate Tribunal

Section 98 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.

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).*

104. Differential amount of pre-deposit and a upper limit to be prescribed

As per Section 98(6) of Revised Model GST Law, no appeal shall be filed before the First Appellate Authority unless the appellant has deposited the admitted tax along with interest, fine, fee and penalty in full along with a sum equal to 10% of the remaining amount of tax in dispute in relation to which appeal has been filed.

Similarly, as per Section 101(9) of Revised Model GST Law, no appeal shall be filed before the Appellate Tribunal unless the appellant has deposited the admitted tax along with interest, fine, fee and penalty in full along with a sum equal to 10% of the remaining amount of tax in dispute in relation to which appeal has been filed.

Issue

- As per Section 101(9)(a)(ii), the said 10% of the remaining amount of tax in dispute is required to be paid in addition to the amount already deposited before the First Appellate Authority in view of Section 98 (6).
- Also, an upper limit for payment of such pre-deposit amount has neither been prescribed in section 98 (6) nor section 101 (9).
- The amount/percentage of pre-deposit required to be made is quite high which

could lead to delay in filing since the mechanism of appeal is considered to be basic fundamental right that every citizen of this country have

Suggestion

- *It is suggested to amend the section 101(9) to prescribe that the payment of pre-deposit amount only to the tune of differential amount i.e. after deducting the amount deposited before the First Appellate Authority in view of Section 98(6).*
- *It is therefore suggested that the percentage of pre-deposit be fixed at a lower rate say 5% or less.*

105. Revisionary powers of Chief Commissioner or Commissioner

In terms Section 99 (CGST/SGST) of the Revised Model GST Law, the Commissioner may revise the order passed by his subordinates so far as it is prejudicial to the interest of the revenue after giving the person concerned an opportunity of being heard and after making such further inquiry as may be necessary

Further, Section 99(5) provides that:

"If the decision or order passed under this Act by an officer subordinate to the Commissioner involves an issue on which the Appellate Tribunal or the High Court has given its decision which is prejudicial to the interest of revenue in some other proceedings and an appeal to the High Court or the Supreme Court against such decision of the Appellate Tribunal or as the case may be, the High Court is pending, the period spent between the date of the decision of the Appellate Tribunal and the date of the decision of the High Court or as the case may be, the date of the decision of the High Court and the date of the decision of the Supreme Court shall be excluded in computing the period referred to in clause (b) of sub-section (2) where proceedings for revision have beeninitiated by way of issue of a notice under this section."

Issue

1. Further, the revisionary power given in Section 99 of the Revised Model GST Law is similar to power conferred under Section 263 under the Income Tax Act, 1961. Section 264 of Income Tax Act, 1961 empowers the Commissioner to revise order in favour of the assesse while no such provision exists in GST regime.
2. Another issue is that Section 99(5) provides for exclusion of the time when a similar issue is under challenge before any Appellate Tribunal or Court of law. The provision does not limit itself to matters which are pending to the assesses's own case and accordingly this could result in difficult situations. In case a decision is passed in case of some other assessee, the same would result in extension of period of limitation for all other assessee. Similarly, the provisions of excluding of time limit should apply only on account of the appeals pending in that particular state, as it may result in situations where other states may have already completed assessment and the same would be re-opened based on decision of dispute pertaining to some other state.

Thus, the pendency of an appeal by any other assessee and anywhere in India will result in reopening of the proceedings by an assessee. Therefore, the reversionary proceedings can be initiated even after the period of 8-10 years by the reversionary authority. Thus, the scope of revision will be very wide.

3. Last but not the least, the concept of revision power of Commissioner is not present under the Central Taxes as it is opposed to fundamental principles of Administrative Law. Departmental appeal is a more equitable route than SMR proceedings. Under the GST regime the provisions of CGST and SGST should be *parimateria* and progressive still rather than permitting Executive Authorities to annul orders of Quasi-Judicial Authorities even if there is risk of orders adverse to revenue interests. Further, the power of revision of orders are highly likely to be mis-used and thus increases litigation. Therefore, no power of revision be available under CGST/SGST law also.

Suggestion

It is suggested that Section 99 under CGST/SGST law be deleted.

106. Accounting expertise in the members of Appellate Tribunal

Section 100(6) of the Revised Model GST Law provides that the qualifications, eligibility conditions and the manner of selection and appointment of the National President, Members (Judicial) and the Member (Technical-CGST) shall be such as may be prescribed by the Central Government on the recommendations of the Council.

Issue

Appellate Tribunal is the final fact finding authority. Since the authority needs to perform the perusal of documents to arrive at the final decision which involves documents like Financial Statements, Trial Balance, Income tax returns, cost audit reports, etc., therefore the lack of specialised accounting knowledge on the part of staff poses problems in the decision making. This is not uncommon for members of the bar are identified and elevated to the bench in the Judiciary mainly to address the requirement of Judges. With every State requiring a Tribunal, it is imminent that the GST Tribunals will be short of members.

Suggestion

It is therefore suggested that out of two technical members for CGST and SGST, one member may be a Chartered Accountant having minimum prescribed experience in practice in Tribunal. At the least, enabling provisions be provided in the law.

107. Appeal to the Appellate Tribunal (CGST + SGST law)

Section 101(2) of the Revised Model GST Law, provides a discretionary power to the Appellant Tribunal for refusing to admit an appeal where the tax or input tax credit involved or the difference in tax or input tax credit involved or the amount of fine, fee or penalty determined by such order, does not exceed Rs. 1 lakh.

Issue

As per the current provisions, the Appellate Tribunal cannot refuse to admit an appeal below the specified limit which involves the question relating to rate of duty or valuation of goods. The said exception has been made since the dispute relating to determination of rate of duty and valuation are recurring in nature and therefore needs to be adjudged irrespective of the quantum. However, no such exception is considered under the draft revised of GST law for the same.

Suggestion

It is suggested that the limit of Rs.1 lakh prescribed for admitting of the appeal before the Appellate Tribunal exclude cases where the issue involved is of rate of duty or valuation.

108. Explicit powers be granted to Appellate Tribunal to condone the delay in filing appeal by assessee

As per Section 101(1) of Revised Model GST Law, any person aggrieved by an order passed by first adjudicating authority u/s.98 or revisionary authority u/s.99 may appeal to Appellate Tribunal within three months of date of communication of such order.

As per Section 101(4) of Revised Model GST Law read with Section 101 (5), the time limit for filing appeal by Revenue is six months from the date of communication of such order.

Similarly, as per Section 101 (6), the time limit for filing memorandum of cross objections is 45 days from the date of receipt of notice of filing such appeal.

Issue

Section 101 (7) empowers the Appellate Tribunal to condone the delay in filing of appeal as well as memorandum of cross objections under section 101 (5) and section 101 (6) respectively.

However, no explicit powers are granted to Appellate Tribunal to condone the delay in filing appeal by assessee u/s.101(1).

Suggestion

It is therefore suggested that Section 101(7) be amended suitably to include reference to section 101(1) also besides the reference to sections 101(5) and section 101(6).

109. Requirement of Mandatory Pre-Deposit (under SGST law)

Mandatory Pre-Deposit needs to be made before preferring an appeal before the First Appellate Authority and the Appellate Tribunal in terms of Section 98(6) and Section 101(9) (a) of the Revised Model GST Law respectively. The pre- deposit amount under both the aforesaid section is:

In terms of Section 98(6) and Section 101(9) (a) of the Revised Model GST Law, no appeal shall be preferred before the First Appellate Authority and the Appellate Tribunal

respectively, unless the appellant has deposited:

1. Amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him, and
2. Sum equal to 10% of the amount in dispute arising from impugned order.

Provided that nothing in this sub-section shall affect the right of the departmental authorities to apply to the First Appellate Authority/ Appellate Tribunal for ordering a higher amount of pre-deposit, not exceeding 25% of the amount in the dispute, in a case which is considered by the Commissioner of GST to be a "serious case".

Where serious case" shall mean a case in which an order has been passed under section 67 involving a disputed tax liability of not less than Rupees Twenty Five Crores.

Suggestions

- *It is suggested that the amount of pre-deposit for appeal to be preferred before Appellant Tribunal be 10% of the amount in dispute which is the current pre-deposit quantum in case of Appellate Tribunal, with upper cap of Rs. 10 crore. Further, clarification be provided that the amount of 10% is not additional amount over 7.5% already paid before first appellant authority and the amount paid before the first appellate authority can be adjusted against the mandatory pre-deposit under this section.*
- *"Amount in dispute" be equivalent to:*
  - *(c) "Duty amount only" in case of assessment order levies duty or amount payable under GST and penalty and*
  - *(d) "Penalty and fee amount" in case the assessment order only levies penalty, fee or the appeal is in respect of penalty or fee.*
- *It be clarified that the mandatory pre-deposit is not required for the interest amount.*
- *Further, the pre-deposit amount be allowed to be paid from input tax credit except when the appeal pertains to demand of CGST/ SGST under reverse charge and TDS.*
- *It is suggested that the amount paid during investigation or audit has to be treated as payment made under this section.*
- *It is suggested that to clarify that on payment of pre-deposit amount, no recovery proceedings will be initiated during the pendency of the appeal*
- *10% be limited to the original disputed amount and not any variation in the course of appeals as there is a position that is emerging that 10% of the 'revised disputed amount' at each appeal.*
- *Also permit taxable person to pay more than the said amount of 10% on his own.*

110. Appeals to the Appellate Tribunal under SGST law

Section 101 of the Revised Model GST Law *interalia* provides that, pre-deposit has to be made by the appellant before filing an appeal to the Appellant Tribunal. Further, in terms of Section 101(9)(b) thereof, the provision of pre deposit given under Section 101(9)(a) shall apply mutatis mutandis to cross objections filed under Section 101(6)

Further, Section 101(6) interalia provides that, on receipt of notice that an appeal has been preferred under this section, the party against whom the appeal has been preferred may, notwithstanding that he may not have appealed against such order or any part thereof, file, within 45 days of the receipt of the notice, a memorandum of cross-objections, verified in the prescribed manner, against any part of the order appealed against.

Issue

The cross-objection is filled by assessee, when the order of the Lower Authority is in favour of the assessee and an appeal has been preferred. It implies that, there is no outstanding demand against the said assessee. Therefore, the assessee should not be asked to make a mandatory pre-deposit in cases where they intend to file cross-objections. There, is no similar provision under CGST law or any central laws currently. This provision creates a liability on the assessee even in cases where the order under challenge is in his favour.

Suggestion

It is suggested to delete Section 101(9)(b).

111. Orders of Appellate Tribunal (CGST law + SGST law)

In terms of Section 102(3) of the Revised Model GST Law, the Appellate Tribunal may amend any order passed by it under Section 102(1) thereof, to rectify any mistake apparent from the record, if such mistake is noticed by it on its own accord, or is brought to its notice by the Commissioner of GST or the other party to the appeal within a period of three months from the date of the order

Issue

Currently the time limit for rectification of mistake by Appellate Tribunal is 6 months from the date of the order.

Suggestion

It is suggested that the time limit for rectification of mistakes in the order of Appellant Tribunal be increased from 3 months to 6 months.

112. Procedure of Appellate Tribunal

Section 103(3) of the GST Revised Law provides that:

"The National President or a State President, or any other member of the Appellate Tribunal authorized in this behalf by the National President or a State President, may, sitting singly,

dispose of any case which has been allotted to the Bench of which he is a member, where in any disputed case, the tax or input tax credit involved or the difference in tax or input tax credit involved or the amount of fine, fee or penalty involved, does not exceed Rs. 10 lakh."

Issue

The current limit of appeals to be heard before the Single Member Court is Rs. 50 lakhs and therefore the limit of Rs.10 lakhs provided herein is very less.

Suggestion

The limit for appeals to be heard by Single Member Bench be increased to Rs. 50 lakhs.

113. Calling of records for admitting application for Advance Ruling

Section 117 of the Revised 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:

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 admissible.

Suggestion

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

114. Penalty for failure to furnish information return

Section 140 of the Revised Model GST Law provides that if a person who is required to furnish an information return under section 139 fails to do so within the period specified in the notice issued under sub-section (3) thereof, the prescribed authority may direct that such person shall pay, by way of penalty, a sum of one hundred rupees for each day of the period during which the failure to furnish such return continues.

Issue

There is no maximum ceiling provided in the section for failure to furnish information return which could lead to enormous amount of penalty to be payable by the taxpayers.

Suggestion

It is therefore suggested that a maximum limit be prescribed for the failure to furnish information.

115. Anti- Profiteering Measures

Section 163 of the Revised Model GST Law provides that the Central Government may by law constitute an Authority, or entrust an existing Authority constituted under any law, to examine whether input tax credits availed by any registered taxable person or the reduction in the price on account of any reduction in the tax rate have actually resulted in a commensurate reduction in the price of the said goods and/or services supplied by him.

The said Authority shall exercise such functions and have such powers, including those for imposition of penalty, as may be prescribed in cases where it finds that the price being charged has not been reduced as aforesaid.

Issue(s)

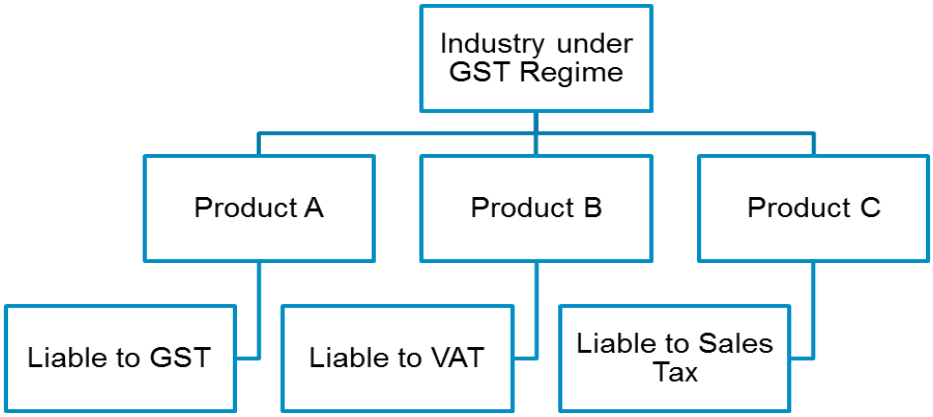
- No mechanism has been clearly provided as to what should be the price in such cases to the satisfaction of the authority.
- Quantum of penalty has not been specified.
- What will be 'commensurate reduction in price' in such cases and who will determine the correct price to charge in such cases.
- How the benefit of lower rates would be pass on to the end consumers by way of reduction in the prices. There is confusion on how the clause would be measured / implemented so that it should not be turn out as harassment to the Trade or Industry.

Suggestion

It is suggested that the issues needs to be clearly spelt out as the provision has been inserted without providing sufficient details.

116. Goods covered under erstwhile sales tax / VAT laws

There are certain commodities covered under erstwhile sales tax / VAT laws. For instance, a motor spirt is taxable under sales tax law and furnace oil is governed by VAT laws. *It is suggested that one of the laws be repealed*.



Suggestion

Section 164 be amended as follows:

Goods covered under the erstwhile laws (SGST laws)

164(2) *The following ……*

(a) ***…….***

……

(e) ……

(f) General Sales Tax laws of the State

……..

(4) Goods to which the provisions of clause (f) of sub-section (2) are applicable will be included in the schedule to the VAT Act from the appointed date and the rate of tax applicable will be reduced by one-half of the rate applicable under the General Sales Tax laws and with input tax deduction in accordance with the provisions of the VAT Act.

117. Transitional provisions pertaining to CENVAT credit

In terms of Section 167(1) of the Revised Model GST Law, a registered taxable person shall be entitled to take credit of the amount of CENVAT credit carried forward in a return furnished under the earlier law in respect of the period prior to the appointed day.

Further, as per Section 168(1) of the Revised Model GST Law, a registered taxable person shall be entitled to take credit of the amount of unavailed CENVAT credit on capital goods, not carried forward in a return, furnished under the earlier law in respect of the period prior to the appointed day

Furthermore, proviso to Section 167(1) and Section 168(1) states that such credit shall not be allowed unless the credit is admissible under this Act.

Besides above, Section 169(1) and Section 172(1) *interalia* provides that, a registered taxable person, who was:

- Not liable to be registered under the earlier law or who was engaged in the

manufacture of exempted goods under the earlier law but which are liable to tax under Revised Model GST Law;

- Either paying tax at a fixed rate or paying a fixed amount in lieu of the tax payable under the earlier law

shall be entitled to take credit of eligible duties and taxes in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day provided the said taxable person is eligible for input tax credit under GST regime.

Issue

No transitional provision has been provided in the Revised Model GST Law regarding eligibility of CENVAT Credit to importers and dealers who pass on the CENVAT credit under the existing Central Excise Act, 1944 and Rules made thereunder. Such persons are required to pay GST on all their supplies made on or after the appointed day. In the absence of specific provision allowing the CENVAT credit on goods held in stock as on the day immediately preceding the appointed day, it would result in double taxation and impact is very severe and will be an injustice to such persons.

Suggestion

- *It is suggested to allow set-off in case of purchases from PSI (Packaged Scheme of Incentive) & Backward Area dealers is available on staggered basis i.e. as and when sales take place*

118. Omission to show tax credit in return furnished

Section 167(1) of the Revised Model GST Law: In cases, where there was an inadvertent omission to reflect any tax credit in the return furnished and the time required for furnishing the revised return has elapsed, the taxable person has to be given the opportunity to carry forward the tax credit to which he was entitled to, but for the mistake. Similarly, any credit which is subsequently found to be eligible but not carried forward in a return shall also be allowed (E.g. credit reversed due to non-payment of invoice within three months not carried forward in the return furnished but subsequently available on the payment of invoice).

Suggestion

An enabling provision may be added to provide the taxable person an opportunity to carry forward the credit which he is entitled to but due to certain reasons couldn't be shown in the return or the credit which is subsequently found eligible.

119. Unavailed CENVAT credit on capital goods, not carried forward in a return, to be allowed in certain situations

*A*s per Section 168 of the SGST Law, a registered taxable person shall be entitled to take credit of the amount of unavailed input tax credit in respect of capital goods, not carried

forward in a return, furnished under the earlier law in respect of the period prior to the appointed day provided the credit is admissible under the earlier law and is also admissible as input tax credit under GST regime. Further, the amount taken as credit under Section 168(1) shall be recovered as an arrear of tax under GST regime from the taxable person if the said amount is found to be recoverable as a result of any proceeding instituted, whether before or after the appointed day, against such person under the earlier law.

In terms of Section (5) of MVAT Act "capital asset" shall have the same meaning as assigned to it, from time to time, in the Income Tax Act, 1961 (43 of 1961), but the said expression shall not include jewellery held for personal use or property not connected with the business.

Issue

Section 168(1) & (2) of revised SGST Law provides for transition of CENVAT credit on capital goods. However, it is worth noting that under Maharashtra Value Added Tax, 2002, capital goods is not defined while it defines capital assets.

Suggestion

It is suggested that the terminology in respective SGST Laws should be modified so as to align the terminologies used under the relevant State VAT law. For e.g. - In Maharashtra SGST Act, terminology preferred may be 'capital assets'.

120. Unavailed CENVAT credit on capital goods in transit

Section 168 of the Revised Model GST Laws provides that a registered taxable person, other than a person opting to pay tax under section 9, shall be entitled to take, in his electronic credit ledger, credit of the unavailed CENVAT credit in respect of capital goods, not carried forward in a return, furnished under the earlier law by him, for the period ending with the day immediately preceding the appointed day in such manner as may be prescribed.

Explanation 1.- For the purposes of this section, the expression "unavailed CENVAT credit" means the amount that remains after subtracting the amount of CENVAT credit already availed in respect of capital goods by the taxable person under the earlier law from the aggregate amount of CENVAT credit to which the said person was entitled in respect of the said capital goods under the earlier law.

Issue

The section provides CENVAT credit in respect of the said capital goods under the earlier law but the law is silent regarding the capital goods which are in transit on the appointed date. Under the earlier CENVAT Credit Rules, 2004, entitlement for credit depends on the receipt of goods at the factory of manufacture and since the capital goods in transit have not been received by manufacture, the credit cannot be availed on them.

Suggestion

It is hereby suggested that a suitable explanation be added in the Section 168 to cover the case of capital goods in transit and the unavailed CENVAT credit thereon so that the genuine credit is not denied to the assessee.

121. Credit of eligible duties and taxes in respect of finished goods held in stock

Section 169(1) of the Revised Model GST Law provides that a registered taxable person, who was not liable to be registered under the earlier law, or who was engaged in the manufacture of exempted goods or provision of exempted services, or who was providing works contract service and was availing of the benefit of *Notification No. 26/2012-Service Tax, dated 20.06.2012* or a first stage dealer or a second stage dealer or a registered importer, shall be entitled to take, in his electronic credit ledger, credit of eligible duties and taxes in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day.

Issue

In the given section, Credit of input services in respect of inputs held in stock is not clarified.

Suggestion

(i) It is suggested that a clear proviso be added to address this issue to avoid any anomaly and ambiguity in these cases and also to avoid double taxation. i.e. excise duty as per earlier law and GST as per new law.

(ii) It is suggested that credit of input services procured on the inputs held in stock be available

122. Conditions for availing credit of eligible duties and taxes in respect of inputs held in stock

Section 169 of the Revised Model GST Law provides the conditions subject to which a registered taxable person shall be entitled to take, in his electronic credit ledger, credit of eligible duties and taxes in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock. One of the condition being "the supplier of services is not eligible for any abatement under the Act".

Issue

It is not clear whether eligibility of abatement is for earlier law or this Act as the word says "the Act".

Suggestion

It is suggested that the words "the Act" at the end should be replaced either by the words "the earlier law".

123. Credit of eligible duties and taxes in respect of inputs held in stock to be allowed in

certain situations

Section 169(1) of the Revised Model GST Law provides that a registered taxable person, who was not liable to be registered under the earlier law, or who was engaged in the manufacture of exempted goods or provision of exempted services, or who was providing works contract service and was availing of the benefit of *Notification No. 26/2012-Service Tax, dated 20.06.2012* or a first stage dealer or a second stage dealer or a registered importer, shall be entitled to take, in his electronic credit ledger, credit of eligible duties and taxes in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day subject to the conditions. One of the condition to claim duties & taxes is that the supplier of services is not eligible for any abatement under the Act.

Section 169(2) of the Revised Model GST Law provides that the amount of credit under sub-section (1) shall be calculated in such manner as may be prescribed.

Explanation — For the purpose of this section and section 170, section 171 and section 172, the expression "eligible duties and taxes" means-

(i) the duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985(5 of 1986);

(ii) the duty of excise specified in the Second Schedule to the Central Excise Tariff Act, 1985(5 of 1986);

(iii) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978 (40 of 1978);

(iv) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957(58 of 1957);

(v) the National Calamity Contingent Duty leviable under section 136 of the Finance Act, 2001(14 of 2001);

(vi) the additional duty leviable under sub-section (1) of section 3 of the Customs Tariff Act, 1975 (51 of 1975);

(vii) the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, 1975 (51 of 1975); and

(viii) the service tax leviable under section 66B of the Finance Act, 1994 (32 of 1994); —

in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day.

Issue

The eligible duties and taxes would not cover the cess paid under the respective laws.

Suggestion

(i) It is suggested to include even cess paid (such as Krishi Kalyan cess but Swachh Bharat Cess)

under respective laws to enhance Input tax credit chain.

(ii) It is suggested that after the words"who was not liable to be registered under the earlier law" the words "for any reason whatsoever" be added.

124. The term" taxes" missed in some of the provisions

Section 170(1)(b) of the Revised Model GST Law provides that the registered taxable person who was engaged in the manufacture of non-exempted as well as exempted goods under the Central Excise Act, 1944 or provision of non-exempted as well as exempted services under Chapter V of Finance Act, 1994 person be entitled to the amount of CENVAT credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished goods held in stock on the appointed day.

Section 172(1) of the Revised Model GST Law provides that a registered taxable person, who was either paying tax at a fixed rate or paying a fixed amount in lieu of the tax payable under the earlier law (hereinafter referred to in this section as a "composition taxpayer"), shall be entitled to take, in his electronic credit ledger, credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed date.

Suggestion

It is suggested to incorporate the term "& taxes" in both the Sections 170(1)(b) and 172 (1) along with credit of eligible duties.

125. Credit of eligible duties and taxes in respect of inputs held in stock to be allowed under SGST Law

Section 170 of the Revised Model GST Law provides that a registered taxable person, who was engaged in the manufacture of non-exempted as well as exempted goods under the Central Excise Act, 1944 (1 of 1944) or provision of non-exempted as well as exempted services under Chapter V of Finance Act, 1994 (32 of 1994), shall be entitled to take, in his electronic credit ledger,

(a) the amount of CENVAT credit carried forward in a return furnished under the earlier law by him in terms of section 167; and

(b) the amount of CENVAT credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day, relating to exempted goods or services, in terms of section 169.

However, these provisions are applicable only in case of CGST and not SGST.

Suggestion

It is suggested that the section 170 be replicated in case of SGST Law also.

126. Credit of eligible duties & taxes paid within 30 days of the Appointed day

Section 171 of the Revised Model GST Law provides that a registered taxable person shall be entitled to take, in his electronic credit ledger, credit of eligible duties and taxes in respect of inputs or input services received on or after the appointed day but the duty or tax in respect of which has been paid before the appointed day, subject to the condition that the invoice or any other duty/tax paying document of the same was recorded in the books of accounts of such person within a period of thirty days from the appointed day.

Issue

The given section only deals with the credit of eligible duties & taxes in respect of inputs or input services during transit and not applicable on the capital goods.

Suggestion

It is suggested that the section be amended to include the credit on capital goods as well.Even late payments might be allowed when made as per the provisions of law. Further, the provisions shall also be amended to restrict credits which are already availed by such taxable persons. Currently the provisions do not mention anything about exclusion of already availed credits.

127. Invoices and /or other prescribed documents were issued not earlier than 12 months immediately preceding the appointed day be the criteria for entitlement of CENVAT credit

Section 169(1) and Section 172(1) *interalia* provides that, a registered taxable person, who was:

- Not liable to be registered under the earlier law or who was engaged in the manufacture of exempted goods under the earlier law but which are liable to tax under Revised Model GST Law;
- Either paying tax at a fixed rate or paying a fixed amount in lieu of the tax payable under the earlier law

shall be entitled to take credit of eligible duties and taxes in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day provided such invoices and /or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day.

Issue

The credit of prior period duties should not be barred by limitation period of 12 months and considering the fact that tax would be payable in GST era. Disallowing credit for invoices issued earlier than 12 months from appointed day would contradict the concept of allowing seamless credit

Suggestion

It is suggested that the Section 169(1)(v) and 172(1) (v) be deleted as many industries carry some

stock for a longer period and these provisions might work against their interest.

128. Credit of eligible duties and taxes on inputs held in stock to be allowed to a taxable person switching over from composition scheme

Section 172(1) of the Revised Model GST Law *interalia* provides that, a registered taxable person, who was either paying tax at a fixed rate or paying a fixed amount in lieu of the tax payable under the earlier law shall be entitled to take credit of eligible duties and taxes in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed date subject to various conditions. One of them is provided as '*the said taxable person is eligible for input tax credit under this Ac*t."

Issue

- The Revised Model GST Law does not provide for situations falling under Service tax law especially for Construction / Works Contract Provisions. Currently, Service tax is payable on Construction Services at abated value i.e. 30 percent value of such services under N*otification No. 26/2012 dated 20 June, 2012*. Further, Service tax (Determination of Value) Rules, 2006 provides for valuation of works contract / construction services, in cases where value cannot be determined, allows service tax to be paid on 40 percent in case of original works contract and on 70 percent in case of works contract other than original works contract.

  Since, the Section pertains to cases where tax is either paid at fixed rate or fixed amount in lieu of the tax payable under the earlier law by "composition taxpayer". Ambiguity needs to be clarified whether the aforesaid case be considered or treated as composition scheme, hence covered in the purview of this section or not.

- Further, a clarification is sought as whether the input tax credit on inputs, capital goods and input services involved in supply of long-term works contract activities be eligible or not

Suggestions

- *It is suggested to clarify that whether Abatement Scheme or Standard Rate under which Service tax is paid in case of construction contracts or works contract – will the same be treated as composition scheme.*

129. Credit of eligible duties and taxes on inputs held in stock to be allowed to a taxable person switching over from composition scheme

Section 172(1), (2) & (3) of Revised SGST Law provides for transition of credit of duties in case of composition tax payer. Different composition schemes are prescribed in different States.

Issue

This section does not cover the case of composition dealers having non-taxable turnover, processing goods not amounting to manufacture and providing services under abatement scheme, who were not eligible to take CENVAT credit under the Central Excise law, but who become entitled to input tax credit under GST. The stocks lying with them on the appointed day might be containing excise duty/additional customs duties. When these stock items are taxable under GST, GST will be payable on their supply. Obviously, there has to be an enabling provision to set off the CENVAT elements contained in the stock lying with them on the appointed day. The absence of such a provision, will result in a substantial cascading effect as well as denial of a rightful tax credit doubling the tax impact to such persons.

Corresponding provisions to be inserted in SGST law also.

Suggestion

- *It is suggested that the every SGST Law be appropriately modified so as to cover relevant composition scheme under respective State VAT laws.*
- *The section be redrafted as follows:*

"(1) A registered taxable person, who was either paying tax at a fixed rate or paying a fixed amount in lieu of tax payable under the earlier law (hereinafter referred to in this section as a "composition taxpayer") in any of the circumstances specified in sub-section (1A) and which are liable to tax under this Act shall be entitled to take, in his electronic credit ledger, credit of eligible duties and taxes in respect of inputs held in stock, inputs contained in semi-finished or finished goods held in stock and on capital goods on the appointed date subject to the following conditions:

(i) such inputs and/ or goods used or intended to be used for making taxable supplies under this Act;

(ii) …….;

(iii) the said taxable person was eligible for CENVAT credit on receipt of such inputs, capital goods and / or goods under the earlier law but for his being a composition taxpayer under the said law in the circumstances specified in sub-section (1A);

(iv) ……;

(v) in respect of inputs, such invoices and / or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed date;

(vi) in respect of capital goods, date of receipt of such capital goods or date of such invoice and / or other prescribed documents, whichever is later, was not earlier than twenty four months immediately preceding the appointed date.

(1A) For the purposes of sub-section (1), the specified circumstances shall be where the composition taxpayer:

(a) was not liable for payment of duty on any part of the turnover under the earlier law;

or

(b) was undertaking a transaction not chargeable to duties of excise under the earlier laws; or

(c) was engaged in provision of services involving inputs or capital goods"

(CGST Act)

Corresponding provisions to be inserted mutatis mutandis in the SGST laws also.

(SGST laws)

130. Transitional provision for carry forward of input credit

Section 172 of the Revised Model GST Laws provides that a registered taxable person, who was either paying tax at a fixed rate or paying a fixed amount in lieu of the tax payable under the earlier law (hereinafter referred to in this section as a "composition taxpayer"), shall be entitled to take, in his electronic credit ledger, credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed date subject to the condition that invoices and /or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day.

Issue

(i) The given section only deals with the credit of eligible duties & taxes in respect of inputs (KV) and not applicable on the capital goods.

Suggestion

(i) It is suggested that the section be amended to include the credit on capital goods as well.

131. CENVAT credit in respect of Exempted goods returned within 6 months from the appointed day

Section 173 of the Revised Model GST Law provides that where any goods on which duty had been exempt under the earlier law at the time of removal thereof, not being earlier than six months prior to the appointed day, are returned to any place of business on or after the appointed day, no tax shall be payable thereon if such goods are returned to the said place of business within a period of six months from the appointed day and such goods are identifiable to the satisfaction of the proper officer.

Issue

If exempted goods are returned on or after the appointed day then no tax shall be payable on such goods. Since such goods would not have been in stock on the appointed day, therefore carry forward of the credit in respect of such goods is not possible under section 167 or section 170 thereby denying the credit which would otherwise have been allowed on the same.

Suggestion

It is suggested that the matter may be clarified.

132. Provisos to Section 173 & Section 174: Tax payable by receiver if goods returned after 6 months

If the returning person is a person whose turnover is below the threshold, for e.g. a customer returning the goods, he would be liable to take registration merely for the purpose of settling this tax incidence. This incidence may also fall upon warranties, replacements, etc. Suitable modification may be made to exclude these transactions from the purview of this proviso.

Suggestion

It is suggested that these provisos be suitably modified to take into account the cases where this return would make the person liable to tax and registration.

***Provided** that tax shall be payable by the taxable person returning the goods, if the said goods are liable to tax under this Act and are returned after a period of six months from the appointed date.*

133. Section 175 & 195: Inputs removed for job work and returned on or after the appointed day

The provisos to this Section mandate the payment of tax by job worker when he clears the goods after six months and by principal when the period of six months elapses. Here, unlike in the previous Sections, it has not been specifically given that goods are sent to a job worker. However, the heading of the Section as well as sub section (2) contains the term job work and job worker respectively. It may be clarified by way of appropriate modification as to whether the section applies to situations other than job works also, i.e. where manufacturing process is carried out on goods not belonging to the principal also.

It is not clear whether job worker will be able to take credit of the tax paid by principal at the end of the six-month period. Further, there is no provision to take credit of tax earlier reversed. This is a deviation from principles of section 169. Also, remove the recovery of tax u/s 184 of the CGST Act.

Suggestion

- *There be provided a clarification as to whether there exists a provision to take credit of the tax reversed earlier or there is permanent denial of credit in case of delay.*

  ***Provided** further that tax paid under this Section will be against issue of invoice under section 23 of this Act.*

- *Further it be suitably clarified if the job worker would be able to take credit of the tax paid by the principal upon completion of 6 months as required.*

  ***Provided** further that tax paid under this Section will be against issue of invoice under*

section 23 of this Act.

134. Transitional provisions where CENVAT credit reversed under earlier law

Sections 175, 176 and 177 of the Revised Model GST Law cover the transitional provisions for Inputs, Semi Finished Goods and Finished Goods lying with the job worker as on appointed date for carrying out certain processes and returned on or after the appointed day. Transition provisions covers a situation where goods are sent to job worker under current regime within the preceding six months from the appointed date i.e. goods on which credit is not reversed on the appointed date.

Issue

The transitional provisions do not cover those situations where goods are received back after the appointed date in respect of which CENVAT credit is already reversed prior to appointed date.

Suggestion

It is suggested that the transitional provisions be amended to include the situation for availment of credit for cases where CENVAT credit has already been reversed under Current regime and goods are received after the appointed date.

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

Section 178(2) of Revised 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.

136. Refund claims filed after the appointed day for goods cleared or services provided before the appointed day and exported before or after the appointed day to be disposed of under earlier law

Section 180 of the Revised Model GST Law provides that every claim for refund of any duty or tax paid under earlier law, filed after the appointed day, for the goods or services exported before or after the appointed day, shall be disposed of in accordance with the provisions of earlier law:

PROVIDED that where any claim for refund of CENVAT credit is fully or partially rejected, the amount so rejected shall lapse.

Issue

The given provision denies the refund claim of any amount of CENVAT credit if it is so rejected and it does not provide for an opportunity of being heard in such a case

Suggestion

It is therefore suggested that a proviso be included in section 180 by virtue of which the CENVAT credit may lapse only after being given an opportunity of being heard and based on the grounds of rejection given in writing.

137. Finalization of proceedings relating to output duty or tax liability

Section 183(1) of the Revised Model GST Law provides that every proceeding of appeal, revision, review or reference relating to any output duty or tax liability initiated whether before, on or after the appointed day, shall be disposed of in accordance with the provisions of the earlier law, and if any amount becomes recoverable as a result of such appeal, revision, review or reference, the same shall be recovered as an arrear of duty or tax under this Act and amount so recovered shall not be admissible as input tax credit under this Act.

Further, section 185 of the Revised Model GST Law provides that every proceeding of appeal, revision, review or reference relating to any output duty or tax liability initiated whether before, on or after the appointed day, shall be disposed of in accordance with the provisions of the earlier law, and any amount found to be admissible to the claimant shall be refunded to him in cash, notwithstanding anything to the contrary contained under the provisions of earlier law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 and shall not be admissible as input tax credit under this Act.

Issue

In the given sub-sections, the phrase "under the earlier law" has been omitted in the provision, leading to abnormality in the proceedings under new law.

Suggestion

It is suggested that the sub-sections (1) & (2) of section 183 be redrafted as follows: -

(1) Every proceeding of appeal, revision, review or reference relating to any output duty or tax liability initiated whether before, on or after the appointed day, ***under the earlier law****, shall be disposed of in accordance with the provisions of the earlier law, and if any amount becomes recoverable as a result of such appeal, revision, review or reference, the same shall be recovered as an arrear of duty or tax under this Act and amount so recovered shall not be admissible as input tax credit under this Act.*

(2) Every proceeding of appeal, revision, review or reference relating to any output duty or tax liability initiated whether before, on or after the appointed day, ***under the earlier law****, shall be disposed of in accordance with the provisions of the earlier law, and if any amount becomes recoverable as a result of such appeal, revision, review or reference, the same shall be recovered as an arrear of duty or tax under this Act and amount so recovered shall not be admissible as input tax credit under this Act.*

138. Section 185: Revision of returns under earlier laws

The administrative functioning of the refund mechanism will not be industry friendly. The amount, if any, erroneously refunded under this Act, may be recovered along with the consequential interest and penalties.

Suggestion

- *The increase / decrease in the amount of tax to be refunded on revision of returns under the earlier laws to be allowed as credit / debit in the same month under this Act.*

- *Delete the words "the amount so recovered shall not be admissible as input tax credit under this Act."*

Provided *that tax determined under this Section shall be paid against issue of invoice under section 28 of this Act.*

Provided *further that the tax determined under this section is a refund, such order shall be deemed to be an application for refund of the amount determined therein.*

139. Progressive or period supply of goods or services

Where taxes have been paid under the earlier laws, the exclusion from payment of tax under the GST laws is welcome even when the supply takes place after the appointed date. But, the condition that payment of the consideration must be made prior to the appointed date for availing this facility during transition is against industry interests.

Suggestion

Delete the condition of payment of consideration before the appointed date.

Section 187 be rephrased as follows:

Notwithstanding anything contained in section 12 and 13, no tax shall be payable on the value of supply of goods and/or services made on or after the appointed day to the extent the duty or tax payable thereon has already been paid under the earlier law.

(CGST Law)

Notwithstanding anything contained in section 12 and 13, no tax shall be payable on the value of supply of goods and/or services made on or after the appointed day to the extent the duty or tax payable thereon has already been paid under the earlier law.

(SGST Law)

140. Deletion of Section 188

Section 188 of the Revised GST Laws provides that notwithstanding anything contained in section 12 or 14, the tax in respect of the taxable goods shall be payable under the earlier law to the extent the point of taxation in respect of such goods arose before the appointed day

Issue

Section 186 covers such cases where GST will be payable for the goods and/or services supplied on or after the appointed day in pursuance of a contract entered into prior to the appointed day, however section 187 provides all such cases where no tax shall be payable on the supply of goods and/or services made on or after the appointed day where the consideration, whether in full or in part, for the said supply has been received prior to the appointed day and the duty or tax payable thereon has already been paid under the earlier law.

Suggestion

It is suggested that Section 188 be deleted. There would not be need to monitor point of taxation compliance under earlier law after the introduction of GST

141. Taxability of supply of goods in certain cases

Section 189 of the Revised CGST/SGST Law provides that notwithstanding anything contained in section 12 or 14, the tax in respect of the taxable goods shall be payable under the earlier law to the extent the point of taxation in respect of such goods arose before the appointed day.

Issue

There is no point of taxation rules in respect of goods under the earlier laws. Hence, this is a mirror provision of section 188.

Suggestion

It is therefore suggested that the said section 189 of the Revised CGST/SGST Law be deleted.

142. Credit distribution of service tax by ISD

In terms of Section 190 of the Revised CGST Law the input tax credit on account of any services received prior to the appointed day by an Input Service Distributor shall be eligible for distribution as credit under this Act even if the invoice(s) relating to such services is received on or after the appointed day.

Issue

This provision does not cover a situation where the ISD has an ITC balance as on the appointed date but has not yet distributed it. If this situation is not considered, then the available balance may lapse causing financial hardship.

Suggestion

It is suggested that set off of ITC balance available on the appointed date be considered and made eligible for ITC even after the appointed date.

143. Goods sent on approval basis returned on or after the appointed day

Section 195 of the Revised Model GST Laws provides that where any goods sent on approval basis, not earlier than six months before the appointed day, are rejected or not approved by the buyer and returned to the seller on or after the appointed day, no tax shall be payable thereon if such goods are returned within six months from the appointed day.

Second proviso to the section states that "PROVIDED FURTHER that the tax shall be payable by the person returning the goods if such goods are liable to tax under this Act, and are returned after a period of six months or the extended period, as the case may be, from the appointed day"

Issue

- The section is applicable under SGST Law. The basis for non-mention of the given section under CGST Law is not available which may cause difficulties.
- The return of goods by an unregistered person is not taxable even under section 173 and 174. So, requiring tax payment by all person's u/s 195 might not be practical. There is lack of consistency with the principle followed in other transition provisions.

Suggestion

- *It is suggested that the section be made applicable under CGST Laws as well with the necessary modifications.*
- *It is suggested that the second proviso be deleted and in its place proviso from section 174 be*

used i.e. "PROVIDED that if the said goods are returned by a registered taxable person the return of the goods shall be deemed to be a supply".

144. Definition of Business Assets

Schedule I of the Revised Model GST Law provides that Permanent transfer/disposal of business assets where input tax credit has been availed on such assets would be treated as supply even if made without consideration. However, the term "Business Assets" has not been defined anywhere.

Suggestion

It is suggested that the term "Business Assets" be replaced with words "Inputs & Capital Goods" to curb the interpretational issues.

145. Supply of Information Technology software

Schedule II point 5 provides that the following matter shall be treated as supply of services: -

5c. temporary transfer or permitting the use or enjoyment of any intellectual property right

5d. development, design, programming, customisation, adaptation, upgradation, enhancement,

implementation of information technology software

Suggestion

It is suggested that the Point 5c and 5d be redrafted as: -

5c. temporary transfer or permitting the use or enjoyment of any intellectual property right ***but doesnot include supply of information technology software when supplied as goods.***

5d. development, design, programming, customisation, adaptation, upgradation, enhancement,

implementation of information technology software ***but does not include supply of information technology software when supplied as goods***

5g. except as provided in para 5c and 5d above……

146. Works Contract to be treated as Supply of Services

Point 5(f) of Schedule II of Revised Model GST Law provides that works contract including transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract will be treated as supply of services. The use of the extension following 'including' borrow the exact words from article

366(29A)(d) and this is interpreted as involving movable property also which does not align with the definition in section 2(110).

Issue

The extended language is litigation prone and is open to interpretation.

Suggestion

It is suggested that Point 5(f) of Schedule II be rephrased as "Works Contract "only and omit the words from 'including …….'

147. Certain other matters need to be clarified in Schedule II

Schedule II of the Revised Model GST Laws provides for certain matters which are either to be treated as supply of goods or supply of services. Six broad issues are covered in the said schedule which further includes sub-issues required to be addressed.

Issue

There are some other matters which need to addressed either as a supply of service or goods which include sale of canned software.

Suggestion

It is suggested that Schedule II may include the sale of canned software should be specified as deemed sale, though customized software has been stated as deemed services, canned software will still be subject to litigation, if not clarified

148. Deletion of Section3(3) and Schedule III

Section 3(3) of Revised Model GST Law provides that notwithstanding anything contained in sub-section (1),

(a) activities or transactions specified in schedule III; or

(b) activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities as specified in Schedule IV,

shall be treated neither as a supply of goods nor a supply of services.

And, Schedule III states five matters that are to be treated either as supply of goods or supply of services.

Suggestion

It is suggested that the section 3(3) and the Schedule III be deleted. Also, Matters covered under Schedule III be shifted to others as provided below: -

(a) Serial No. 1 - Existence of this form of exclusion indicates that such items are included in sub-section (1) and gives rise to confusion as to whether these supplies are includible for ITC

reversal under section 17 r/w 2(99) and 2(100)

(b) *Serial No. 2 - It can be shifted to Schedule IV as this is a sovereign function*

(c) *Serial No. 3- It can be shifted to Schedule IV as this is a Constitutional function. or exemption can be given u/s 11*

(d) *Serial No. 4- It can be shifted to Schedule IV as this is a function under International Law or exemption can be given u/s 11. Why then is UIN being issued to such organizations*

(e) *Serial No. 5- It can be exempted u/s 11*

149. Exemption for Services provided by employer to employee in the course of or in relation to employment

Schedule III clause (1) of the Revised Model GST Laws provides that services by an employee to the employer in the course of or in relation to his employment shall be treated neither as a supply of goods nor a supply of services.

Issue

In the course of employment, employer is required to provide various facilities to its employees such as Medical facility, training, transportation, holiday home facility, canteen etc. Further, as a part of employment contract employer recovers charges for such facilities such as notice pay etc.

Suggestion

It is therefore suggested that such facilities provided by employer to employee whether with or without consideration and the notice pay recoveries during the course or in relation to employment not be made chargeable under GST.

150. Services provided by Government or local authority in relation to aircraft or vessel

Schedule IV of the Revised Model GST Laws provides that the services provided by a Government or local authority to another Government or local authority shall be treated neither as a supply of goods nor a supply of services excluding certain services such as services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an aircraft.

Suggestion

It is suggested that the phrase "inside or outside the precincts of a port or an aircraft" be replaced with the words "inside or outside the precincts of a port or an airport".

151. Certificate of Incorporation issued by ROC

Para 5 of Schedule V of Revised Model GST Law provides that in a case of transfer pursuant to sanction of a scheme or an arrangement for amalgamation or, as the case may be, de-merger of two or more companies by an order of a High Court, the transferee shall be liable to be registered, where required, with effect from the date on which the Registrar of Companies issues a certificate of incorporation giving effect to such order of the High Court.

Issue

The said clause provides effective date of registration to be the date on which the Registrar of Companies issues a certificate of incorporation giving effect to such order of the High Court. ROC does not issue any Certificate of Incorporation on amalgamation or demerger under Scheme of Arrangement.

Suggestion

It is suggested that effective date be the Appointed Date under the Scheme instead of aforesaid for being liable to registration

152. Services received by employees in course or furtherance of business

The employees use/receive many services/goods in the course of furtherance of the business of the company/firm and in many instances the invoice issued by the supplier of good/service would show the name of the employee as being the recipient of service although the GSTIN of the company/firm would be reflected as the recipient of the said goods or services.

The Revised Model GST law does not deal with the issue of availment of credit on such invoices/bills.

Suggestion

It is suggested that credit of such tax paid on such goods/services used by the employees in the name of the company/ firm be made available to the company/firm and therefore the Credit provisions be specified for availing credit on such invoices/bills.

153. Specific benefits given under the State laws

The state government under the various state laws have provided certain benefits for the promotion of the industry. For Example- A RIPS (Rajasthan Investment Promotion Scheme) benefit have been given under the existing state law which helps in promoting the industries.

Issue

The issue which arises here is whether the benefits given under the state laws would be extended under the GST regime also or it would lapse.

Suggestion

It is requested to clarify if the benefits given under state law would be extended under GST regime also since the scheme would be required to have some benefits for establishment of new ventures.

154. Taxable person to pass on benefit by way of reduced prices

One of the condition subject to which the taxable person will be entitled to take input tax credit in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock is that the said taxable person passes on the benefit of such credit by way of reduced prices to the recipient.

Issue

Though the given provision has been included to protect the ultimate consumer and ensure that the benefits reach common man, the implementation / execution might be difficult to establish and subject to a lot prejudice.

Suggestion

It is suggested that the condition might be removed for availing input tax credit since the condition of proving that benefits are passed on is extremely difficult and will lead to government interference in pricing decisions of business entity.

155. Documents to be issued for Certain Specified movements

Under Revised Model GST Law most of the movement of goods would be covered by Invoice, bill of supply etc. However, no clarification has been provided for following transactions:

(a) Movement of taxable goods by a taxable person within same state

(b) Movement of non-taxable goods by a taxable person

(c) Movement of capital goods within the state

(d) Movement of goods sent on approval basis at the time of initial delivery

Suggestion

It be suitably clarified as to how movement of goods in aforesaid transactions would be covered as the same may not be covered by Invoice, bill of supply etc.

156. 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.

157. Partial rebating on inter-State stock transfers

In the VAT regime almost all States have a provision restricting the input tax credits partially in respect of inter-State stock transfers. It is suggested that a suitable transition provision be introduced to avail the tax so restricted which are in stock on the appointed date subject to suitable certification.

Suggestion

A new section be introduced as follows:

"Section XXX. Stocks transferred under earlier laws

Where any tax or duty has been paid on goods supplied by the same person to any taxable or non-taxable persons being inputs contained in semi-finished or finished goods held in stock and on capital goods on the appointed date with the recipient thereof, such tax or duty paid shall be available as input tax credit to the recipient being a taxable person under this Act.

***Provided** that the conditions of section 145 and 146 shall mutatis mutandis apply to the tax or duty paid."*

Suggestion on Integrated Goods & Services Tax (IGST)

1. Location of the recipient where the address on record exists

Section 9(3) of Revised Model IGST Law refers to the location of the recipient where the address on record exists (wherever they occur) which is potentially litigative and could result in multi-routing in the case of retail trade thereby depriving the appropriate State of their legitimate right to collect revenue.

Suggestion

- *It is suggested that appropriate clarification be provided for the cases in retail trade.*
- *A Proviso be added as:*

Provided *address of record in the case of recipient being a non-taxable person shall be the last known address in the records of the supplier.*

2. Place of supply where immovable property or boat or vessel are located in multiple states

Section 9(4) of the Revised Model IGST Law provides that Place of supply of service in relation to immovable property is location of immovable property. The term "in relation to" has a very wide connotation. The taxability of transactions such as tax consultancy related to capital gain on immovable property, valuation of immovable property, legal consultancy for suite related to immovable property etc. which is in relation to property, will be based on location of property. Currently, Place of Provision of Service Rules (PPSR) Rule 3 is applicable to such transaction and accordingly PPSR is location of service receiver.

Suggestion

It is suggested that:

- *Explanation to Section 9(4) provides for immovable property located at more than one state. In that section the Word "boat" be accompanied with word "house", since only "House boat" would become immovable property.*
- *Word "Vessel" be omitted from section 9(4), as Vessel being movable, it cannot be termed as Immovable Property.*

3. Place of supply where immovable property or boat or vessel are located in multiple states

Explanation to section 9(4) of Revised Model IGST Law states that where the immovable property or boat or vessel is located in more than one State, the supply of service shall be treated as made in each of the States in proportion to the value for services separately

collected or determined, in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other reasonable basis as may be prescribed in this behalf, is generic in nature and potentially litigative and could result in multi-routing in the case of retail trade thereby depriving the appropriate State of their legitimate right to collect revenue.

Suggestion

- *It is suggested that a clear mechanism be provided to determine supply of services at multiple locations in case of absence of contract or agreement in this regard.*

4. Place of Supply of Service (IGST)

Section 9(6) of Revised IGST Law provides that the place of supply of in relation to training and performance appraisal to a registered person, shall be the location of such person and a person other than a registered person, shall be the location where the services are actually performed

Issue

In case services mentioned in section 9(6) pertaining to supply of restaurant and catering services, personal grooming, fitness, beauty treatment, health service including cosmetic and plastic surgery are performed at various locations under a single contract, then the place of supply is not envisaged. In case it happens to be each place where the services are provided, then the break of various places should be clearly spelt out

Suggestion

- *It is suggested that clear mechanism of segregation be provided if the enlisted services are performed at multiple locations under a single contract.*
- *Also, it be suitably clarified that the list of services provided in the sub-section is an exhaustive list.*
- *Section9(6) be rephrased as follows:*

  "(6) The place of supply of restaurant and catering services, personal grooming, fitness, beauty treatment ***and*** *health service including cosmetic and plastic surgery shall be the location where the services are actually performed."*

5. Section 9(7): Place of supply of services provided by way of admission to a cultural, artistic, sporting, scientific, educational, or entertainment event or amusement park etc.

Section 9(7) of Revised Model IGST Law provides that the place of supply of services provided by way of admission to a cultural, artistic, sporting, scientific, educational, or entertainment event or amusement park or any other place and services ancillary thereto, shall be the place where the event is actually held or where the park or such other place is located.

Issue

The words "or where the park or such other place is located" may turn out to be potentially litigative. The purpose is served without these words and without any ambiguity. Furthermore, if services mentioned in section 9(7) are performed at various locations under a single contract, then the place of supply is not envisaged. In case it happens to be each place where the services are provided, then the break of various places should be clearly spelt out

Suggestion

- *It is suggested that the words "or where the park or such other place is located" be deleted.*
- *Also, a mechanism be provided for cases where services are provided at multiple locations under a single contract.*
- *A proviso be added as:* ***Provided*** *where the basis of allocation is not forthcoming, the duration in each State as a proportion to the total duration of the event shall be applied.*

6. Insurance of Immovable Properties

Section 9(14) of Revised Model IGST Law deals with situation where the place of insurance does not cover immovable properties. It is suggested that a mechanism for such coverage be incorporated in the statute.

Suggestion

It is suggested that a mechanism for insurance of immovable properties be incorporated in the statute by way of following proviso:

Provided *that in the case of insurance of immovable property, where the basis of allocation is not forthcoming, the value of immovable property situated in each State as a proportion to the total value of the immovable property shall be applied.*

7. Drafting anomalies under Revised Model IGST Law

(i) Section 10(7) of Revised Model IGST Law provides that where the services referred to in sub-sections (3), (4), (5) or (6) are supplied in more than one State, the place of supply of such services shall be taken as being in each of the States in proportion to the value of services so provided in each State as ascertained from the terms of the contract or agreement entered into in this regard or, in absence of such contract or agreement, on such other reasonable basis as may be prescribed in this behalf.

Suggestion

It is suggested that the words "or (6)" be deleted as wrong mention of sub-section is not justified.

(ii) Section 10(8) of Revised Model IGST Law provides that the place of supply of following services shall be the location of the supplier of service: -

(a) services supplied by a banking company, or a financial institution, or a nonbanking financial company, to account holders;

(b) intermediary services;

(c) services consisting of hiring of means of transport other than aircrafts and vessels except yachts, upto a period of one month.

Explanation- For the purpose of this section, the expression "goods" shall include 'securities' as defined in sub-section (90) of section 2 of the CGST Act, 2016.

Suggestion

It is suggested that explanation to the said sub-section be deleted as the same is not relevant there as word goods has not been used in this sub clause.

(iii) Section 18(2) of Revised Model IGST Law provides that in particular and without prejudice to the generality of the foregoing power, such rules may

(a) provide for settlement of cases in accordance **with Chapter XII of this Act**;

(b) provide for all or any of the matters which under any provision of this Act are required to be prescribed or to be provided for by rules.

Suggestion

It is suggested that reference to Chapter XII of the IGST Act be deleted as Chapter XII in IGST Law is not available and even in CGST law no chapter talks of Settlement of Case.

8. Ambiguity in the place of supply of services provided in taxable territory as well as non-taxable territory.

Section 10(6) of the Revised Model IGST Law provides that where any service referred to in sub-sections (3), (4), or (5) is supplied at more than one location, including a location in the taxable territory, its place of supply shall be the location in the taxable territory where the greatest proportion of the service is provided.

Also, section 10(7) of the Revised Model IGST Law provides that where the services referred to in sub-sections (3), (4), (5) or (6) are supplied in more than one State, the place of supply of such services shall be taken as being in each of the States in proportion to the value of services so provided in each state as ascertained from the terms of the contract or agreement entered into in this regard or, in absence of such contract or agreement, on such other reasonable basis as may be prescribed in this behalf

Issue

There may be cases where services are provided at more than one location, including a location in the taxable territory, in such cases both the section 10(6) and section 10(7) would be applicable. Section 10(6) would determine the place of supply in taxable territory where the greatest proportion of the service is provided and that hence place of supply of service will be the place where the greatest proportion of the service is provided. No apportionment will be done as per section 10(7).

Suggestion

Therefore, it is suggested that the words "where the greatest proportion of the service is provided" be deleted from the section 10(6) as it would lead to ambiguity in apportioning the place of supply of services.

9. Relief from payment of IGST to Representatives in India earning foreign exchange from Overseas Suppliers

Section 10(8) of Revised Model IGST Law provides that the place of supply of following services shall be the location of the supplier of service: -

(a) services supplied by a banking company, or a financial institution, or a nonbanking financial company, to account holders;

(b) intermediary services;

(c) services consisting of hiring of means of transport other than aircrafts and vessels except yachts, upto a period of one month.

Explanation- For the purpose of this section, the expression "goods" shall include 'securities' as defined in sub-section (90) of section 2 of the CGST Act, 2016.

Issue

The inclusion of intermediaries in above section might work against members engaged in assisting the overseas suppliers in the formulation of commercial and technical strategies resulting into successful marketing of their products in return for which they receive commission in convertible foreign exchange and no consideration is received from Indian customers. Though these activities satisfy all the conditions of 'Export of Services', the same has surprisingly been proposed to be taxed under the category of 'intermediary services'.

Further, the proposed provision is a clear case of double/multiple taxation within India. For example, IGST would be required to be paid on the entire value of commission received by an intermediary and the same would also be an intrinsic part of the CIF value of goods imported into India, which would be again subjected to Basic Customs Duty and IGST. It is also a settled principle of taxation to not levy same tax on same value twice. In fact, recently, the Tribunal in the case of United Shippers Ltd. vs. CCE, Thane – II reported in 2015 (37) S.T.R. 1043 has held, that on the same value, a component of service tax as well as Customs duty cannot be imposed by the Government. This

judgment has been upheld by the Supreme Court also vide its order reported in 2015 (39) S.T.R. J369 (SC). Also, this sub-rule is opposed to 'destination principle' of GST.

Suggestion

If this 'origin based tax' rule cannot be omitted, it is suggested that the general definition of an "intermediary" in Section 2(13) of Model IGST Law be reconsidered by excluding intermediary for goods to provide level playing field to members engaged in assisting the overseas suppliers in the formulation of commercial and technical strategies resulting into successful marketing of their products

10. Definition of Zero Rated Supply

Section 2(111) of the Revised Model GST Law provides that "zero-rated supply" means supply of any goods and/or services in terms of section 15 of the IGST Act 2016; and

Further Section 17(2) of Revised Model IGST Law provides that Where the goods and / or services are used by the registered taxable person partly for effecting taxable supplies including zero-rated supplies under this Act or under the IGST Act, 2016 and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.

Explanation- For the purposes of this sub-section, exempt supplies shall include supplies on which recipient is liable to pay tax on reverse charge basis under subsection (3) of section 8.

Issue

Section 17(2) refers to the possibility of a zero-rated supply being covered both under the CGST Act and under the IGST Act. However, this situation is not enabled by the definition. Zero rated supply (as used in section 17(2)) is understood to mean a supply where the applicable rate is 0%.

Secondly, definition of zero rated supply shall have the meaning assigned to it under section 16 and not section 15 of IGST Act as provided in the definition.

Suggestion

- *It is therefore suggested that the definition of Zero Rated Supply as provided u/s 2(111) be omitted.*
- *Further, if definition is not decided to be omitted, the reference made be corrected to section 16 in place of section 15.*
- *Also, exclude the use of 'zero rated supply under this Act' in section 17(2) of the CGST Act.*
- *Section 16(4) be amended as it requires refund to be applied by SEZ unit instead of DTA supplier applying for refund for zero-rated supplies to SEZ*

11. Proviso of Section 48(3) of CGST is not in line with Section 19 of IGST

Proviso to Section 48(3) of the Revised GST Laws provides that no refund of input tax credit shall be allowed if the supplier of goods or services claims refund of output tax paid under the IGST Act, 2016.

Section 19 of the IGST Law provides that a taxable person who has paid IGST on a supply considered by him to be an inter-state supply, but which is subsequently found to be an intra-State supply, shall, be granted refund of the amount of IGST so paid in such manner and subject to such conditions as may be prescribed.

Issue

There is ambiguity involved in interpretation of section 48(3) read with section 19 of the IGST law.

Suggestion

It is suggested that section 19 of the IGST law be redrafted as under: -

"Notwithstanding anything contained contrary in this act or any other act, A taxable person who has paid IGST on a supply considered by him to be an inter-state supply, but which is subsequently found to be an intra-State supply, shall, be granted refund of the amount of IGST so paid in such manner and subject to such conditions as may be prescribed.