

GST Impact in MSME Sector

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Medium Small and Minor enterprises contribute approximately 37% of our Nations GDP. Implication of GST, substantially affecting this segment, in an adverse manner, may directly knock off the player from the competitive business market. This article tries to put forth various issues that this industry could face upon passage of GST. This article also attempts to provide the possible solution for the issues highlighted as explained below.

1) Low Basic Threshold Limit for goods:

In GST regime efforts has been made to maintain the rate of tax prevailing right now. Keeping ssi exemption limit to Rs. 20 lacs is beneficial to MSME since earlier there were liable to registered with VAT department after crossing turnover of Rs. 10 Lac. Further composition scheme is also there for MSME. Further, in some cases of e-commerce, reverse charge, output inter-state supply activities etc. there is no basic threshold exemption given. The definition of the term 'aggregate turnover' also includes exports and exempt supplies meaning thereby even if major part of the supply is exempted but a mere small portion is taxable which is less than Rs.20 lakhs still the activity would require GST compliances to be adhered to.

In the present business environment, exemption of Rs.20 lakhs is very low and the same needs to be pegged at a little higher side. If the exemption threshold of Rs.20 lakhs continued then almost all small and medium enterprises would fall under the bracket of GST taxation which will be a radical change for them as compared to the existing taxation scenario. Further, a fair differentiation must be made in any taxation framework between a small or start-up's and a large and established one. The benefit of additional higher slab for small yet growing sector has to be given to keep balance and allow opportunity for small sectors to grow. Non-bifurcation of this could lead to erosion of this sector and also bring monopolistic market of large players instead of competitive market. The ramifications of bringing down the threshold limit curtails the competitive edge of small and medium scale businesses and therefore, it is suggested that Government should come up with some notification providing the relief in this regard which is in the best interest of this sector and supports its growth objective.

2) High Compliance burden:

It is seen that GST law demands high compliance. Key compliance requirements are as under:

- a) Two returns and one statement to be filed in each month for every state and the details in such statements and return must be furnished HSN code wise, subject to relaxations provided on the basis of turnover. Further, returns must be filed for TDS, ISD (if applicable). Also, one annual return with reconciliation statement is required on every registration number wise.
- b) Registration must be taken in every state and there is no concept of centralised registration, this shall have a high impact especially in case of a service sector where only two returns are filed in a year;
- c) Accounting needs to be timely updated and the same needs to be maintained state-wise to reconcile the GST taxation with accounts at state level;
- d) GST computations, liability calculation, credit availment etc. has to be done on monthly basis;
- e) Business houses has to be punctual to ensure that tax dues are timely paid and a valid return cannot be filed until tax payments are made having impact on working capital;

In a small and medium sector, the accounting and taxation would not be very strong, stable and streamlined as compared to the larger sectors. Sometimes, there is no separate division of accounting and the proprietor himself manages the additional task of accounting and book-keeping which is very common in any start-up and growing business. Therefore, commensurate with the existing system where number of returns are lesser and also the requirement of compliance is quarterly for small & medium sector in various VAT laws and half-yearly in case of service tax law. Further, since GST demands high automation of business processes, therefore business would have to also spend enormous amount of time, money and energy on development and maintenance of IT infrastructure. Therefore, it shall be apt for government to consider if a single quarterly return is introduced for this sector so that the compliance burden would be lesser and the focus of the entrepreneur is on business development and growth instead of compliance aspects. This also promotes the Governments agenda of 'Ease of doing Business'. Non-consideration in this aspect would lead to non-compliance and harassment and would only have a negative impact on the industry in general and unorganised sector in particular and its contribution to the economy.

3) Taxation under reverse charge for un-registered purchases:

As per GST Act. if any goods or services are supplied by a person who is unregistered and supplied to a registered person, then GST needs to be paid by the registered person under reverse charge as a recipient. Therefore, even if any small businesses who does not take registration and claim the basic exemption threshold then the person receiving goods or services from them need to pay GST under reverse charge. This provision shall have negative impact as businesses would not prefer to deal with unregistered persons and to take the additional burden of compliance under reverse charge. Therefore, this provision directly impacts the business of small sector negatively and virtually forces them to either register or to shut the business which was ideally not the principles guiding the existence of the GST taxation.

4) Taxation on stock Transfers and deemed supplies between distinct persons:

Presently, a stock transfer of goods/services is not liable to tax except in case of central excise. However, no such system is prevalent in state VAT laws. Under GST regime, stock transfer of goods/services between distinct persons is made liable to tax. This step shall lead to blockage of working capital apart from high compliance burden. It shall also defeat the idea of GST i.e. to have a free flow of goods anywhere and to create a common national market although this mechanism is required to transfer the credits. MSME's do not have adequate capacities, technology, manpower and cash flows to comply with this complex requirement of the law. However, since GST is a destination based consumption tax, it is suggested to consider atleast postponement of the taxation on stock transfers to the point when such goods are actually sold or provide for refund of excess unutilised credit of stock transfer similar to exports so that it will ease working capital and ease of tracking and payment of tax.

5) Time limit for the return of Goods sent on sale or return basis:

Under the present taxation regime, there is no time limit for the return of goods sent on sale or return basis. However, in GST regime, the maximum time limit for the return of goods sent on sale or return basis is 6 months and if the same is not approved within the said time limit then the invoice needs to be issued and the goods shall be deemed to have been supplied since time of supply for payment of tax would arise. In various small scale industries like ready-made garment industry, the norm is to send goods to Consignment Sales Agents (CSA) and customers on a "sale or return" basis. The norm in such industries is that the CSAs / customers return the goods after the season is over. However, casting time-limit on return of goods would have negative impact on such sectors. Therefore, it is suggested to remove this provision and continue with the present practice of paying GST only once actual supply takes place.

6) Tax on Advances

Advances received against supply of goods and/or services are taxable in GST regime. Collection of GST on advances would be cumbersome and requires high compliance and tracking other than the additional cash flow of taxes which the advance recipient has to be paid if specifically taxes are not collected on the advances element. Moreover, it is possible that advance may have been received for intra-state as well as inter-state supplies of goods and services and attracting multiple rates therefore possibility of paying incorrect tax or determining incorrect place of supply or incorrect rate of tax is also an area of concern. Further, in certain business, advances would be received for multiple supplies, in such circumstances individual identification of advances and matching of the same with the corresponding supply for determining rate and place of supply shall be an additional burden. Therefore, with the limited technological advent and resources in a MSME sector, compliance with the provision of GST on advances would be difficult and lead to unnecessary non-compliances. Therefore, it is suggested if GST for MSME sector can be paid only on invoice basis as presently in case of VAT laws or if GST can be made only on receipt basis as prevalent in service tax for small individuals and partnership firms. This shall ease the compliance and cash flow burden.

7) Availability of Composition Levy

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 or if any inter-state supply is made seems to be harsh on such person. Small services suppliers 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.

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 anywhere in India. Alternatively, Sector specific composition schemes may be designed to cater to need of different sectors.

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.

8) Condition for payment and filing of return for availing input tax credit:

Once invoice is issued by a supplier under section 31 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 assesses.

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 and the same must be reconsidered and liberalized to enable the small sector to avail input tax credit of tax paid by them as currently prevailing in case of CENVAT credit rules wherein credit can be taken immediately on receipt of goods/ receipt of invoice.

Alternatively, if a supplier has accepted the liability of such taxes and has also disclosed the same in his statement of outward supply, the credit must be made eligible to the recipient irrespective the payment by the supplier to the credit of government.

Or else, 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 instead of denying/ delaying the credit based on the non-compliance by other party to the contract.

9) Power to Arrest & Prosecution:

A Commissioner of CGST or SGST can authorize an arrest of a person if “has reason to believe” that the person has committed any offence punishable under the GST law. The person can be arrested even if such a person has not been issued a show cause notice intimating the alleged violation and even if the investigations are yet to be concluded. It also does not make a difference whether the alleged tax-liability is on account of deliberate tax-evasion or is simply a differential tax liability in a genuine and bonafide dispute. The Service Tax law carried a simple provision for almost two decades prohibiting imposition for penalty in cases with a reasonable cause for default. Even such a simple provision does not find place in the GST law.

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.

10) Determination of Place of Supply/ type of tax

Since, GST is a destination based consumption tax, wherein taxes would accrue to the destination state. Government has provided provisions for determining the place of supply in various situations. Currently, requirement of determining place of supply was not there and taxes were simply needed to be paid to the origin state. However, in GST, small businesses have to identify place of supply for each of their transactions and accordingly GST needs to be paid to the credit of respective state government which shall be a cumbersome task as the same needs to be identified for every transaction. Further, in case the place of supply is not correctly determined then tax needs to be again paid to correct government and the taxes paid earlier needs to be claimed as refund. We suggest that law be amended so that in case tax is wrongly paid to incorrect government, then instead of again paying the tax and applying for refund, such government can itself do an inter-governmental settlement which shall ease the taxation law.

Conclusion:

It shall be imperative that the sector through its associations or various representation bodies highlight these issues to the law makers so that the same can be resolved at the earliest. In fact, recently government has also formed a special committee to look after the issues faced by MSME sector in GST. It is urged to the industry that they proactively highlight the above issues and obtain the relief prior to advent of GST as once GST is implemented, the chances of respite would be very minimal for the sector.

XX

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- Indirect Taxes Committee