

*Suggestions on  
Model GST Law  
& Draft GST  
Rules*



*Indirect Taxes Committee  
The Institute of Chartered Accountants of India  
New Delhi*



## CONTENTS

		<i>Page No.</i>
<b>I.</b>	<b>INTRODUCTION</b>	<b>2</b>
<b>II.</b>	<b>SUGGESTIONS ON POLICY MATTERS</b>	<b>3-12</b>
<b>III.</b>	<b>SUGGESTIONS ON CGST / SGST LAW (section-wise analysis)</b>	<b>13-78</b>
<b>IV.</b>	<b>SUGGESTIONS ON IGST LAW</b>	<b>79-81</b>
<b>V.</b>	<b>SUGGESTIONS ON DRAFT GST RULES</b>	<b>82-106</b>
<b>VI.</b>	<b>INITIATIVES TAKEN BY ICAI IN RESPECT OF GST</b>	<b>107-108</b>



## I. INTRODUCTION

1. The Institute of Chartered Accountants of India considers it a privilege to submit its suggestions on Model GST Law & Draft GST Rules.
2. We appreciate the steps taken by the Government of India and its commitment for an early introduction of the GST.
3. We acknowledge the Government's recognition of the role of professional bodies like ICAI and the other stake holders, in the policy discussions.
4. We look forward to contributing in the drafting of simple, transparent, & fair IDT laws in India.
5. We have examined the Model GST law & Draft GST Rules under the following parameters:
  - Seamless Credit
  - Ease of Doing Business
  - Recommendation for modification of provision
  - Recommendation for deletion of provision
  - Recommendation for addition to provisions
6. 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	<a href="mailto:madhukar@hiregange.com">madhukar@hiregange.com</a>
CA. Sharad Singhal, Secretary, Indirect Taxes Committee	09310542608 0120-3045954	<a href="mailto:idtc@icai.in">idtc@icai.in</a> ; <a href="mailto:s.singhal@icai.in">s.singhal@icai.in</a>



## **II. Suggestions on Model GST Law – Policy Matters**

### **Issue 1 - Rate of taxes**

Fixing the rate(s) of tax is one of the key issues for a successful implementation of GST. While it may have political overtones, the report of the Chief Economic Advisor on the tax rates and the debate on the tax rates in the Rajya Sabha are indications of the way forward. We believe that the following factors must be considered:

- 1) The **number of rates of tax** must not exceed 4 – viz.,
  - a) Exempt rate: *Goods and / or services which would be exempt from payment of GST. To the extent possible, the list of exemptions should be uniform across India;*
  - b) Lower rate: *Mostly for jewellery, bullion and specie, life-saving drugs, products and services relating to education and healthcare, essentials for a common man – say food and food products such as pulses, cereals, ready-made garments etc.;*
  - c) Standard rate: *For all other goods and/ or services;*
  - d) Demerit rate: *The higher rate for SIN goods;*
- 2) **Parity in rate/s of tax:** It is suggested that there should be clear parity in the rate/s of IGST on one side and the CGST + SGST on the other, viz., the rate of tax applicable for an inter-State and intra-State supplies of goods or services should be equal and comparable.

Initially, it was indicated that the aggregate of CGST and SGST (on intra-State supplies) would be equal to the IGST (on inter-State supplies). However, we understand that there is a school of thought that IGST should be marginally lower than the aggregate of CGST and SGST, viz., intra-State supplies would be charged with a marginally higher rate of tax when compared to inter-State supplies. E.g.: CGST + SGST would be say at, 20% while IGST would be say at, 18%.

In our view, this difference should be done away with in order to avoid flight of trade and trade wars between States.

- 3) **Equality in the rates of CGST and SGST:** Further to our comments in para (2) supra, we submit that the rate of CGST and SGST should also be equal / uniform. *E.g.: if the GST rate is fixed at 20%, then CGST and SGST must be at 10% each across India.* Any differences in these rates coupled with issues like State specific exemptions and lower rate of tax could result in inverted tax structures and an unfriendly GST atmosphere.

### **Issue 2 – Exemptions**

The basic principle is that while taxation is a rule, exemption is an exception. In many cases, at the State levels, tax exemptions are doled out to those who create a hue and cry. There has been no scientific study carried out as to whether exemptions have been granted based on need, nature of goods, area in which such exemptions are required or for how long it is required. In many cases, the States are neither aware of the revenue loss nor the revenue gain. Further they are also not aware of quantum of flight of trade while granting these exemptions. It is just that exemptions are granted based on the support system that a particular trade can generate while seeking exemptions. Thus, exemptions across



States are not and are never uniform while this was one of the key issues in the implementation of VAT.

Granting exemption under one Statute and denial under another will most certainly distort trade while leading to trade wars or flight of trade. Exemptions will also affect the claim of seamless input tax credits in the supply / value chain resulting in trade distortions. It is now the need of the hour that while granting exemptions on goods and / or services the following factors be borne in mind:

- ✓ Minimum number of exemptions may be granted after conducting a careful study;
- ✓ The exemptions need not be State specific;
- ✓ Exemptions, if at all granted, be worded clearly and unambiguously and cannot be left open for implications or interpretations; many a times exemption notifications are rather unclear and lead to litigations;
- ✓ The exemption so granted must be under all laws and cannot be restricted to CGST or SGST or IGST or in any of those combinations.

### **Issue 3 – Incentives and concessions**

#### **1. Industrial units currently enjoying incentives and concessions**

Fiscal incentives are currently enjoyed by several industrial units under the current or existing laws. Such incentives are:

- i. Area / Location based;
- ii. Investment based (quantum of investments), time based (say for 5 years);
- iii. Product or project based;
- iv. Turnover based;

In such cases:

- i. Exemptions could only be related to procurement of capital goods or on raw materials and inputs;
- ii. Exemptions may have been granted on the outputs manufactured in such locations / units;
- iii. Incentives are granted by way of tax deferrals;
- iv. Exemption from payment of purchase tax or entry taxes; or
- v. Any other mode or method.

The Model GST law has apparently not dealt with any of the above. In a GST regime, it is important that a clear policy must be announced which will address all these issues without leading to litigation on the premise of withdrawal of promissory estoppel.

#### **2. SEZs / EOUs**

Currently, within the framework of a value added tax system, SEZs and EOUs enjoy various tax concessions and incentives under the current tax laws. However, as we move into the GST regime, there are no provisions in the Model GST Law on the continuance or changes to these incentives or concessions to SEZs / EOUs. The Government must spell out the policy framework on the same. There is a substantive amount of investment at stake by developers of SEZs, units in SEZs and EOUs.



## **Issue 4 – Threshold Limits for registration**

It appears that the threshold limits fixed for registration under the GST laws at Rs. 5 Lakhs for tax payers in north-eastern States and at Rs.10 Lakhs for other tax payers in other States is too low. This threshold must be doubled. We believe this will actually keep away very small dealers from the system and several administrative hassles can be addressed better.

## **Issue 5 – CENVAT Credit**

### **1. Matching concept**

The Brazilian experience of matching concept is a point to be noted and learnt from. The burden of matching the transactions has now been shifted on to the tax payers to settle their scores inter-se, and the Government just wants to wait and watch without granting legitimate tax credits to a genuine or bonafide tax payer. This is one provision which will most certainly lead to innumerable amount of litigations on account of a few unscrupulous dealers. It appears that this provision if framed keeping in mind a few dealers who are not compliant with law rather than the majority who are tax compliant.

The concept of granting input tax credits (on the inward supplies made by the taxable person) **based on the matching concept of uploading data and filing of valid returns** by the supplier of such taxable person **must be done away with at least for one year** at the time of introduction of GST and a study must be conducted (keeping in mind leakage of revenue) if at all it needs to be introduced at any point in time.

It is important to note that such a provision was initially introduced in the CENVAT mechanism (*Rule 9(3) of the CENVAT Credit Rules, 2004*). The input service tax credit was allowed to the recipient subject to the condition that the recipient was required to prove that the provider of services has infact remitted the taxes to the Government. This was introduced in the year 2004. Subsequently, in the year 2006, the condition of proving that the provider of services has remitted the tax was diluted by imposing a condition that the recipient should undertake some document related checks. In the year 2007, this provision was finally omitted from the Rules.

We believe that the Government learnt that having such conditions in a credit mechanism was regressive and unfriendly – where the recipient is penalised for a non-compliance by the provider of services. While introducing GST, it is inferred that the Government is moving backwards, viz., by introducing provisions which were existing in the year 2004, but which have been omitted subsequently.

It is submitted that the learnings of the Government on the above mentioned CENVAT provisions should be refreshed. Accordingly, this condition of matching should be omitted.

### **2. Credits without registration and prior period demands**

Section 16(2) of the Model GST Law provides for availment of input tax credit by a person who applies for registration within 30 days from the date on which he becomes liable to registration subject to the condition that such inputs are held in stock on the date on which he becomes liable to pay taxes.

There could be instances where a person may not apply for registration within the said time frame of 30 days on the ground that he is not liable to pay taxes under the Statute. In such a scenario, **the credit**



**must be allowed to flow freely to such a person on the ground that as and when output tax is payable, eligibility to input taxes are automatic irrespective of the fact whether he has filed returns or not.**

Similarly, it is possible that a registered taxable person may not have claimed input tax credits on the ground that output tax is not payable on his supplies. Eventually in a situation where output tax becomes payable on such supplies, **the credit must be allowed to flow freely to such a person on the ground that as and when output tax is payable eligibility to input taxes are automatic irrespective of the fact whether he has filed returns or not.**

### **3. Input tax restrictions on personal or private use**

A plain reading of the relevant provision relating to restriction on personal or private use of goods and / or services, appears that there is a dual taxation issue. In the first place while the input taxes are restricted; the transaction is considered as a supply for the purpose of levy of output taxes. Therefore, it is unfair on the part of the legislature to levy output tax on such supplies and restrict the input tax on inward supplies.

It is time that when a new law such as GST is ushered in, India adopts the international best practices. The world over, there is no question of restriction of input tax credits when inputs are put to private or personal use. A study, if conducted, may actually reveal that revenue loss in such cases, would be negligible and restriction of credits in such cases, would actually result in incorrect or inaccurate reporting of transactions. Without prejudice to the above, this once again is an element of trust that the Government has to repose in the tax payer.

### **Issue 6 – Matching, reversal and reclaim of input tax credit**

#### **Facts**

On an analysis of Section 29 of the Model GST Law relating to matching, reversal and reclaim of input tax credit the following facts emerge:

- a. Every inward supply of a Recipient for a given tax period shall be matched:
  - ✓ With the corresponding outward supply of the Supplier;
  - ✓ With the additional duty of customs; and
  - ✓ For duplication of input tax credit claims.
- b. The claim of input tax credit in respect of invoice and / or debit note relating to inward supplies when duly matched with outward supplies shall be communicated to the Recipient.
- c. When the claim of input tax credit claimed by the Recipient is either in excess of the tax declared by the Supplier or the corresponding outward supply is not declared by the Supplier the discrepancy should be communicated to both the parties. If the discrepancy so communicated is not rectified by the Supplier in his valid return for that month, the corresponding tax amount shall be added to the output tax liability of the Recipient in the month succeeding the month in which the discrepancy is so communicated. If the Supplier declares



the said details in his valid return the Recipient should be permitted to reduce his output tax liability.

- d. Duplication of input tax credit claims by a Recipient shall be communicated and added back to the output tax of the Recipient for that month.
- e. Section 27(3) stipulates that a Supplier who does not remit full taxes due as per his return will disentitle the Recipient from claiming input tax credits in respect of supplies effected by the Supplier.
- f. The following scenarios among others must be considered, where delays in payment of taxes by the Supplier can occur for no fault of the Recipient:
  - i) The Supplier does not remit any taxes;
  - ii) The Supplier remits part of the taxes;
  - iii) The Supplier does not remit taxes in respect of a particular supply on account of strained relationship with the Recipient;
  - iv) The Supplier is a BIFR entity with no cash flows to pay taxes;
  - v) The Supplier – Sick Company does not have monies to remit taxes;
  - vi) The Government – Municipal Corporations delay remittance of TDS / TCS on contracts for want of funds.

### ***Suggestions***

In each of the above scenarios it becomes extremely difficult for the Recipient to keep track of Supplier and ensure that he pays his taxes correctly. In this scenario the following suggestions are made for your kind consideration in the order of priority:

#### **Option 1**

- Keep this provision relating to matching in abeyance for a period of 2 years until the GST Laws settle down and such issues are addressed over time thereby build mutual trust; or
- If the above suggestion is not acceptable at least for the first year, the question of denying input tax credits must be resorted to after a period of – say 30 days from the end of the financial year;



### **Justification**

The time period of two years is justified bearing in mind that the GST regime would take at least two years to settle down. It will also be fair to argue that every taxable person would take at least two years to understand the nuances of the GST taxation which has subsumed several legislations. The difficulty in matching principle would arise considering the fact that the Supplier / Recipient could be spread geographically across and the value and volume of supplies between taxable persons. It will also be fair to state that if the Supplier / Recipient becomes aware of the existence of such a provision in the initial years of the GST regime, sufficient amount of trust can be built up inter-se provided of course the Government does its bit by educating the stakeholders in the interim period of two years. It is therefore felt that, if this provision is kept in abeyance for a period of two years the GST laws will most certainly achieve widespread approval from the State and industry; the compliance level would be automatic.

### **Option 2**

In respect of matched transactions, input taxes must not be denied since the output tax liability would have been accepted by the Supplier, in which case it will be the duty of Government to recover such taxes from the Supplier.

#### **Justification**

Once the transactions are duly matched in terms of Section 29, it is plain and simple understanding that the Supplier and Recipient have properly accounted the supplies. In such a scenario, the Supplier may not have paid the taxes due to the following reasons, among others:

- a. Issues relating to cash flow constraints;
- b. Awaiting infusion of funds by banks or funding agencies by a sick / BIFR entity;
- c. Awaiting bail out packages by an entity under liquidation;
- d. Delayed payments on account of payment of taxes under other statutes.

For instance, huge payment of advance tax in a particular quarter or say payment of customs duty on imports etc – in which case the entity will remit the taxes with interest for the period of delay.

In each of the situations cited supra, neither the Supplier nor the Recipient would have contested the legality or truthfulness of the transaction, it is a simple case of delay in payment of taxes in these situations. It will be unfair to deny input tax credits in respect of matched supplies.

Without prejudice to Option 1 cited supra, if for whatever reason option 1 is not acceptable a suitable proviso must be introduced in the Statute permitting input tax credits in respect of matched supplies.

### **Option 3**

Display such mismatched supplies on a quarterly basis on the dashboard of the Recipient and provide adequate time for the Supplier / Recipient to sort out issues amongst themselves – say within a period of 6 months;

#### **Justification:**



Practically reconciliation between Supplier and Recipient cannot take place on a day to day basis for several reasons some of which as highlighted under:

- a. Short / Excess supplies are normally reconciled quarterly;
- b. Rates are finalised in many instances after supplies are effected considering the quality and timeliness of such supplies;
- c. Negotiations often take place on pricing considering their offtake. In most of these cases, the Recipients / Suppliers reconcile their accounts quarterly. It would be unfair to expect matching of transactions on a month on month basis. It is for this reason that it would be just and proper to provide atleast six months' time before additional output tax liabilities could be created.

#### **Option 4**

Cap the limit of input tax credits – for instance input tax credits claimed exceeding Rs.10000 alone will be matched.

#### **Justification**

The trade and industry strongly believes that if none of the above suggestions are acceptable to atleast introduce matching concepts only in cases where the output tax liabilities in respect of outward supplies exceeding 10,000. It is justified to introduce such caps as the small dealers would be outside the purview of matching principles. Once the compliance level picks up then the Government can suitably amend this provision to bring all dealers under the matching principle.

#### **Option 5**

While the demand can be created and listed out in the liability register of the taxable person and displayed on the dashboard, the recovery of such taxes must be kept in abeyance for a period of at least 12 months

#### **Justification**

This is only an option put forth when none of the above suggestions / requests are ceded to. In this scenario, the only factor would be that cash flows would be augmented and differences if any between the Supplier and Recipient would be resolved mutually.

### **Issue 7 – Inspection of goods while in movement**

The trade and industry believed that at least when the GST regime is ushered in, the check posts or trade barriers will be abolished. As the Board would have noted, check posts hamper smooth movement of goods and is regressive in nature. It now appears that these regulations (Section 61 in the Model GST law) still continues. It is our submission that while the Country moves into GST, it should be appreciated that the purpose of having such provisions no longer exists. Accordingly taking cognizance of the new ways of doing business, these retrograde and archaic provisions ought to be deleted / omitted from the statute.



Based on the data made available from the Board at different points in time and different occasions, it is noted that more than 90% of the taxes collected is out of voluntary compliance. This also supports the demand that check posts should be abolished.

### **Issue 8 – Interest on delayed refund**

On the aspect of refunds, it is important to understand the sentiments of the trade and industry. It is a nerve wracking and gut wrenching experience. The rate of interest on delay in payment of refunds by the Government should be kept at par with the provisions relating to interest payable on delay in payment of taxes by the tax payer. This would provide the much needed push to complete assessments or any other proceedings on a timely basis and imbibe a sense of accountability in the field formations. Such a move, will most certainly bring in a great deal of mutual trust.

### **Issue 9 – Frauds**

The motivation for committing a fraud under the new GST era appears to be higher than in the past. In the past, most people suffered just one leg of tax (for example, just VAT - when buying from a distributor / stockist), and even others saw only a small percentage of tax than what they will see with GST (no matter what final rate is applied). When this motivation meets 'convenience for fraud' - fraud goes up dramatically. When fraud is 'more inconvenient' than its possible benefits, and in contrast - 'compliance' is 'more convenient' - compliance goes up dramatically.

CENVAT / VAT legislations proved that enough loopholes existed - and the current provisions of the Model GST Law is an attempt to over-correct those problems. Technology, Enabling Laws, and Enabling Processes can actually give a dramatically improved compliance environment - while nothing will ever be perfect.

#### **Types of Fraud:**

Possible frauds - and how they can be mitigated. It includes things which are in practice today, and therefore, some of them we will immediately discount as 'not possible in the new regime', but we would like to keep the list exhaustive and then review for full mitigation. In general, two 'types' of cases will exist:

- a. Those done unilaterally – that is, an individual / assessee does things by himself; and
  - b. Those done bi- or multi-laterally – that is, where two or more parties collude.
1. **Transaction spread to remain below threshold or other beneficial boundary:** This is a kind of 'semi legal' fraud, where it is possible for an individual to have 'more than one business entity' across which transactions are spread, such that each one remains below the 'tax threshold'. While this is also an important 'fraud' – in the sense, that it is done with mal-intent, it has the shelter of legality.
  2. **Undisclosed Transactions:** where a commercial transaction is fully executed 'outside the books of accounts'. This is easily the most difficult problem to solve for – particularly when done in collusion. For B2C transactions, no collusion is needed, since the 'consumer buyer' does not generally expose their transactions. For B2B, if both legs hide the transaction, it can be difficult to resolve.
  3. **Transactions not offered to Tax (neither is tax collected thereon):** Where the transaction DOES appear in the books, but does not appear in the 'turnover' of the books, but only in the form of monies exchanged. In general, this tends to happen when a transaction was 'expected



to be hidden', but unfortunately got paid for by a traceable instrument (for example, through a bank account). This typically requires a study of total monies moving in various bank accounts, and triangulating with the sales in order to discover such hidden transactions. If 'cash' was used to settle - it generally goes into the bucket of undisclosed transactions.

4. **Transactions not offered to Tax even though tax is collected:** Typically, found at the retail front, since the invoice is settled by a consumer in cash, and will probably never be 'disclosed' by the consumer - and it is possible to 'hide the transaction' by not disclosing it (again, a difficult problem). This dramatically lifts the profit margin of the retailer due to retention of the tax amount as additional margin, and easily the biggest motivation to do so.
5. **Under invoicing:** Typically done at the 'last leg of sale' - so as to apply tax on a lower taxable value, while collecting the difference in cash. Sometimes done in earlier legs (two or more parties collude) with an intent to have this cascade down to the last leg. This basically avoids tax on the profit margin at each leg.
6. **Over invoicing:** Typically done when the 'next leg' is an exempted sale (for example, an export), so as to inflate the input credit which can be claimed. This requires collusion to succeed.
7. **Invoice altered to show lower than actual sale price:** While the buyer continues to use the original invoice to claim input credit, the seller pays lower tax on the lowered value. This is the 'unilateral' fraud contrasted with the 'under invoicing' which is a bi-lateral fraud.
8. **Invoice altered to show higher than actual purchase price:** The reverse of the above, where the seller continues to show the correct invoice, but buyer alters the invoice to show it as inflated. This is a 'unilateral' fraud contrasted with the 'over invoicing' which is a bi-lateral fraud.
9. **False exempt sale invoicing:** This includes fraudulent export (exempt) invoices to 'substitute' for local invoices - allowing for input credit to be taken 'legitimately'. This allows inventory to get 'reconciled' and reduce risk of getting caught.
10. **False purchase invoicing:** This has multiple sub-types, which include showing the same invoice more than once with minor change in invoice number (example, with a different prefix / suffix), same invoice shown by different companies, completely false invoice using the TIN number of a legitimate supplier. A MAJOR variation of this is covered in the next point.
11. **Phantom companies:** Here, 'legitimate' and 'traceable' invoices are generated, with intent never to pay the corresponding output tax, and disappear all traces of the company. The 'buyer' can claim complete ignorance and claim 'legitimate' purchase – as it is difficult to prove that the buyer was indeed involved in the fraud.

#### **Mitigation of frauds:**

A combination of Technology, Law and Processes can dramatically help in these areas.



## **Issue 10 – Amnesty Scheme**

A suitable amnesty scheme must be thought of for all Central Laws and State Laws which have been merged in GST in ‘one go’ to reduce existing litigation. The scheme must be well thought out since most schemes have failed for the following key reasons, among others:

- a. The procedure is cumbersome;
- b. There is no clarity on many issues at the drafting stage itself;
- c. The dealers are not certain that similar or same issues will be raked up for subsequent / past years;
- d. The payment terms are not addressed to the liking of a bonafide tax payer;
- e. The payment or taxes, interest and penalties fixed under the scheme are not worthwhile to consider and may be pursuing litigation is a better option.

Keeping the above factors in mind if a uniform amnesty scheme can be drawn up across laws and across all States and Union territories with a view to minimising existing litigations. Other issues should be borne in mind while drafting such a scheme:

- a. It must be simple to understand;
- b. All types / classes of litigations must be covered;
- c. All types / classes of taxes under the Union / State Laws must be covered;
- d. All appeals filed by the State / Centre must be unilaterally withdrawn as a one-time measure of building trust;
- e. Any person who has opted to pay taxes under the scheme must not be subjected to any further revision, review, reference or any other proceedings in future, for the same year;
- f. Tax credits, if any, in the hands of the dealer (under the respective existing statutes) must be permitted to set off against the taxes, interest and penalties under the scheme;
- g. Taxes, interest, penalties paid under protest by an assessee in excess of what is payable under the scheme must be refunded within 30 days of filing the relevant applications together with appropriate orders;
- h. Penalties levied must be fully waived off if the disputed taxes are remitted within 3 months from the date of introduction of the scheme;
- i. Interest must not exceed 10% of the taxes payable;
- j. Litigations relating to input tax credits must be fully allowed and refunded within 30 days from the date of filing any such application;
- k. Withdrawal of applications / orders must not be insisted, upon filing of any such application under the scheme. However, such person must file the relevant withdrawal application within a period of 30 days from the date of filing such applications.
- l. An order accepting the application must be passed in every case not later than 30 days from the date of filing any such applications.



## **II. SUGGESTIONS ON MODEL GST LAW**

### **1. Aggregate Threshold limit for Registration under GST**

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

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

#### **Issue**

- The aggregate turnover includes exempt supplies on all India basis. Since the threshold for GST registration is Rs. 9 lacs excluding NE states, clubbing of exempt supply will oblige most of the assesseees to get registered which may prove as a challenge from the administrative control point of view. Also, the Income Tax Act clearly states that any income would be included in total income only if it is taxable as per the provisions of the Act. Moreover, exempt income shall not form part of the total income.
- GST intent to resolving the problem of cascading effect if any, exist in the current tax regime. But, only excluding taxes charged under CGST Act, SGST Act and the IGST Act will limit the scope to GST. What about cess or taxed which not sub summed in GST (such as Entertainment Tax, Octroi, Municipal taxes etc.) will still be covered. Imply emergence of cascading effect, hence defeating the very purpose of GST.
- As inferred from the phrase “and excludes taxes, if any, charged under the CGST Act, SGST Act and the IGST Act”, all other taxes and plain reimbursements are not excluded.
- This will create a genuine problem in the industry as any amounts received by the supplier towards statutory liabilities of the receiver for e.g. MCA fees etc. wherein there is no profit element or other taxes paid like municipal taxes etc. will form part of aggregate turnover rather it should be kept outside the purview of aggregate turnover. Therefore, all sorts of other taxes paid & plain reimbursements be excluded while calculating the value of aggregate turnover and not only CGST, SGST, IGST
- Further, the proposed definition nowhere mentions about the nature of transaction whether it should be related to business or not.

#### **Suggestion**

- *It is suggested that the definition of aggregate turnover be suitably amended so as to **exclude** the value of exempt & non-taxable supplies from aggregate turnover.*
- *All taxes, cess, levies including taxes not covered under GST also be excluded from aggregate turnover.*
- *All sorts of other taxes paid & plain reimbursements be explicitly excluded while calculating the value of aggregate turnover and not only CGST, SGST and IGST.*
- *Definition proposed be amended to the extent that it covers only business related transactions.*



## 2. Exclusions from definition of aggregate turnover

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

### *Suggestion*

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

## 3. Definition of Business Vertical

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

### **Issue**

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

### *Suggestion*

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

## 4. Definition of “export of goods”

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

### *Suggestion*

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

## 5. Taxation of Electricity be clarified

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

### **Issue**

Taking into consideration definition of ‘goods’ as per section 2(48) “electricity” which is goods will be covered under GST laws because new article 246A overrides articles 246 and 254. Considering taxation of electricity is mentioned under entry-53, List-II (State list) of the seventh schedule of Constitution, The Central and State Government may keep ‘electricity’ outside the purview of GST.

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



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

**Suggestion**

*It is suggested that the aspect of taxation of electricity be suitably clarified under GST regime.*

**6. Definition of Inputs & Input Services**

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

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

**Issue**

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

**Suggestion**

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

**7. Correction of definition of “Input Tax Credit”**

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

**Suggestion**

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

**8. Definition of term “Manufacturer”**

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

Further, Section 140 of the Model GST Law provides that from the date of commencement of the Act, the (State) General Sales Tax/Value Added Tax Act, the Central Excise Act 1944, and the Central Excise Tariff Act 1985 shall apply only in respect of goods included in the entry 84



and entry 54 of the Union List and the State List respectively, of the Schedule VII to the Constitution of India.

**Issue**

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

**Suggestion**

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

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

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

**Issue**

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

**Suggestion**

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

**10. Definition of Term “Service”**

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

**Issue**

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

**Suggestion**

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



## 11. Definition of “Works Contract”

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

Further clause 5(f) of Schedule II of Section 3 deems ‘works contract including transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract; as supply of service’.

### Issue

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

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

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

### Suggestion

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

## 12. Definition of “Inter-state Taxable Supply”

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

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

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

Under GST laws the term "Captive use" has been used in relation to capital goods defined in



section 2(20)(a)(viii)(2) used for generation of electricity outside a place of business but related provisions for claiming Input Tax Credit have not been provided for.

#### **Suggestions**

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

#### **14. Definition of “Supply”**

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

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

#### **Suggestion**

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

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

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

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

#### **Suggestions**

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

#### **16. Taxability of Importation of Services for personal use**



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

#### **Issue**

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

#### **Suggestions**

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

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

As per section 3 of the Model GST Law supply includes all forms of supply of goods and/or services such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business.

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

#### **Issue**

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

#### **Suggestion**

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

### **18. Taxability of Supply without Consideration**

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

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



person in the course or furtherance of business.

### **Suggestions**

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

## **19. Reversal of Credit for Inputs used for Personal use**

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

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

### **Issue**

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

### **Suggestion**

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

## **20. Nexus of the term “Taxable Threshold”**



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

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

#### **Issue**

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

#### **Suggestion**

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

### **21. Levy and Collection of Central/State Goods and Services Tax**

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

#### **Issue**

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

#### **Suggestions**

*It is suggested that GST Rates be determined by the Government with a maximum cap.*

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

### **22. Definition of terms “Intra-state Supply” & “Inter-state Supply”**

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

#### **Issue**

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

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

#### **Suggestion**

- *It is therefore suggested to define the terms "intra-State Supply" & “inter-State Supply” under CGST/ SGST Acts too.*



- *Alternatively, reference of the definition under the IGST Laws be given in Section 7 of the Model GST Law.*
- *Section 7(1) could be redrafted as follows:*  
*“Subject to the provisions of section 12 or 13 and 14 as the case may be, there shall be levied a tax called the Central / State Goods and Services Tax (CGST / SGST) on all intra-State supplies of goods and/or services as determined under section 3A of the IGST Act at the rate specified in the Schedule ..... to this Act and collected in such manner as may be prescribed.”*

### **23. Levy & Collection under Reverse Charge**

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

#### ***Suggestion***

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

### **24. Scope & Collection of Taxes under Composition Levy**

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

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

#### **Issue**

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



services which will deny him of the benefit of composition scheme.

As we move into GST, the threshold of turnover is pegged at Rs. 50 Lakhs for opting to pay tax under the Composition scheme. As the Board may have noted, there will be higher number of tax payers in the GST who would be within this threshold and hence may opt for payment of tax under the Composition scheme. This makes it imperative that the compliances under the Composition scheme must be simple and transparent.

### **Suggestions**

- *It is suggested that in section 8(1) the words “under this Act” be added after the words “in lieu of tax payable by him” to restrict the taxes to CGST/ SGST paid under this Act.*
- *A Proviso be added in section 8(2) that “collection of tax will not vacate the order under sub-section (1) and such tax shall be payable in accordance with section 52” i.e. if a person collects tax despite availing composition levy he shall be liable to pay such tax in accordance with section 52 and such collection will not negate the availment of composition levy as proper officer may then take this violation into consideration while issuing such an order by following procedure for the next year. In fact, a suitable provision be added to protect the small dealer from the painful process of forfeiture of tax collected whereas the same collection can be appropriated to the taxes payable at the time of cancellation of the composition scheme. A person who is purged out of the composition scheme for the mere act of collection of taxes ought to be permitted to stay in the scheme until he is so intimated in writing. This is because – say a dealer has unknowingly collected taxes in the year 2017-18 and he continues to do so thereafter, and if it comes to the knowledge of the Proper Officer say during May 2019 – in this scenario cancellation of composition registration from 2017-18 would throw the entire business of the small dealer out of gear. Alternatively, in such cases his composition registration could be cancelled from June 2019 and he could be barred to enter the scheme for a period of one year thereafter.*
- *Further, it be explicitly provided in section 8(3) that once the person eligible for composition levy scheme pays the tax in accordance with the scheme there be no further tax liability on him under this Act. Words “Where any taxable person was granted permission under sub-section (1)” be added at the beginning of provision of section 8(3).*
- *The scheme must permit a registered taxable person to either enter or exit the scheme voluntarily at any time during the year.*
- *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*
- *Section 8 of the Model GST Law stipulates that the rate of tax in respect of a composition dealer shall not be lower than 1%. It is suggested that the legislation should instead provide for a cap on the rate, viz., rather than providing that it shall not be less than 1%, it should instead provide that it should not be greater than say, 4%. This would go a long way in imbuing confidence into the minds of the tax payers.*
- *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.*

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

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

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

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

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

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

## **25. Basic Exemption Limit for Small Suppliers**

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

### **Issue(s)**

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

### **Suggestions**

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



## 26. Agriculturist not considered as Taxable Person

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

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

### Issue

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

### Suggestion

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

## 27. Exclusion from scope of taxable persons

Section 9(3) of the Model GST Law provides that any person engaged in the business of exclusively supplying goods and/or services that are not liable to tax under this Act shall not be considered as taxable persons.

### Issue

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

### Suggestion

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

## 28. Power to grant exemption from Tax

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

Further section 10(3) provides that the Central or a State Government may, if it considers necessary or expedient so to do for the purpose of clarifying the scope or applicability of any notification issued under sub-section (1) or order issued under sub-section (2), insert an explanation in such notification or order, as the case may be, by notification at any time within



one year of issue of the notification under sub-section (1) or order under sub-section (2), and every such explanation shall have effect as if it had always been the part of the first such notification or order, as the case may be.

#### **Issue**

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

#### **Suggestion**

*It is suggested that a proviso be added to sub-section 3 to provide that "every such insertion / amendment / modification that has the effect of increasing the tax payable be effective from the date of such insertion".*

### **29. Remission of tax for deterioration in quality due to natural causes**

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

#### **Issue**

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

#### **Suggestion**

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

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

### **30. Taxation of Advance Payments received for goods/ services**

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

#### **Suggestions**



- *It may be suitably clarified that for determining the time of supply of goods and / or services only the date of receipt of payment (final consideration) would be taken into account and not the date of receipt of advance payment.*
- *It must be clarified as to whether the input tax credit of tax paid on such advances received by the supplier, is available to the recipient.*

### **31. Deferment of levy till Time of Supply**

Section 12(1) & 13(1) of 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 7 appears to be suspended until time of supply under sections 12 & 13.

#### **Suggestion**

- *It is suggested to clarify that the levy under section 7 would be final but the payment of the levy would be deferred under time of supply under section 12. Alternatively, it may be clarified that the levy under section 7 is complete only at the time of supply under sections 12 & 13.*
- *Thus, section 12(1) & 13(1) may be reworded as “Tax levied under section 7 is payable at the time of supply as determined in terms of the provisions of this section.”*

### **32. Time of Supply of Goods not to include receipt of payment**

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

- (i) the date on which the goods are removed by the supplier for supply/to the recipient, in a case where the goods are required to be removed; or
  - (ii) the date on which the goods are made available to the recipient, in a case where the goods are not required to be removed; or
- (b) the date on which the supplier issues the invoice with respect to the supply; or
  - (c) the date on which the supplier receives the payment with respect to the supply; or
  - (d) the date on which the recipient shows the receipt of the goods in his books of account.

#### **Issue**

It may not be possible for a person to make out as to when the recipient records the receipt of goods in his books of accounts. Supplier will have no knowledge or control over the recording of Entries in books by Recipient. It may also lead to unwarranted litigation where the recipient records the date of receipt on an earlier date.

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

When there is no malafide intention on the part of the taxable person, the date of supply should be based on the date on which he issues the invoice, receives the payment or makes the supply



whichever is earlier. This will remove the complication of determining the date of receipt recorded by the recipient in every case.

**Suggestion**

- *It is suggested that section 12(2)(d) of Model GST Law be deleted*
- *Alternatively, the section may be suitably worded to indicate that “this be taken into consideration only when the date of invoice, payment and supply is not available”.*

**33. Reverse Charge on Goods**

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

- (a) the date of the receipt of goods, or
- (b) the date on which the payment is made, or
- (c) the date of receipt of invoice, or
- (d) the date of debit in the books of accounts.

**Suggestions**

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

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

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

**Issue**

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

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

**Suggestion**

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

**35. Cessation of services before completion of contract**



Section 13(6) of the Model GST law provides that in a case where the supply of services ceases under a contract before the completion of the supply, such services shall be deemed to have been provided at the time when the supply ceases.

**Suggestion**

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

**36. Change in Rate of tax w.r.t Supply of Services**

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

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

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

**Suggestions**

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

**37. Value of Taxable Supply**

Section 15 of Model GST law provides that the value of a supply of goods and/or services shall be the transaction value, that is the price actually paid or payable for the said supply of goods and/or services where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

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

**Suggestions**

- *It is suggested that the words “for the purpose of this Act and notwithstanding anything contrary to any other law for the time being in force” be added before the words “value of supply.....” so as to enable section 15 application to CGST, SGST & IGST.*
- *A proviso be added to state that the transaction value shall be determined in accordance with the GST Valuation Rules.*
- *The words “Notwithstanding anything in sub-section (1),” be added at the beginning of*



*sub-section (4) as certain cases covered by section 15(1) may also need to be examined by the Rules. Hence, this sub-section needs to override sub-section (1) but be made applicable in the cases specified.*

### **38. Value of taxable supply read with GST Valuation (Determination Of The Value Of Supply Of Goods And Services) Rules, 2016**

Section 15(4) of the Model GST Law *inter alia* provides that the value of the supply of goods and/or services in case of business transactions undertaken by a pure agent, money changer, insurer, air travel agent and distributor or selling agent of lottery cannot be valued under Section 15(1), shall be determined in such manner as may be prescribed in the rules.

Further, GST Valuation (Determination of the Value of Supply of Goods and Services) Rules, 2016 are provided to determine the value of the supply of goods and/or services under IGST/CGST/SGST Law

#### **Issue**

Although prescribed in Section 15(4), no valuation mechanism is provided in **GST** Valuation (Determination of the Value of Supply of Goods and Services) Rules, 2016 for insurer, air travel agent, lottery distributor.

#### **Suggestion**

*It is suggested to provide valuation mechanism for business transactions undertaken by an insurer, air travel agent, and lottery distributor.*

### **39. Method of determination of Value**

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

#### **Issue**

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

#### **Suggestion**

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

### **40. Authority of proper officer to reject declared value**

Rule 7 of GST Valuation (Determination of the Value of Supply of Goods and Services) Rules, 2016 provides that if a proper officer has a reason to believe that the declared value does not represent the transaction value he may call for further information and if doubt persists it shall be deemed that the transaction value of such goods and/or services cannot be determined under the provisions of sub-rule (1) of rule 3.

#### **Issue**

The rule provides an inclusive list of the reasons to doubt the truth or accuracy of the value of



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

**Suggestion**

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

**41. Eligibility for Availing Input Tax Credit**

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

**Issue**

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

**Suggestion**

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

**42. Eligibility for Availing Credit of Tax paid before registration by unregistered dealer**

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

Further, proviso to Section 27A(1) thereof provides that a registered taxable person paying tax under the provisions of section 8 shall furnish the first return for the period starting from the date on which he becomes a registered taxable person till the end of the quarter in which the registration has been granted.

**Issue**

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.

**Suggestion**



- 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 27A 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 relating to the output which is not rendered liable to GST cannot be denied.
- The relevant portion of the sections may be reworded as follows:

“16. (1) .....

.....  
**(3A) Where any person becomes liable to pay tax under this Act, he shall, subject to such conditions and restrictions as may be prescribed, be entitled to take input tax credit in respect of inward supplies relating to be outward supplies in respect of which he has become so liable to tax shall be determined in accordance with sub-section (4) and the tax so payable shall be deemed to be an outward supply in the month in which it is determined under section 51 and the relating input tax credit shall be deemed to be an inward supply in the same month and shall be credited to his electronic credit ledger.**

**Provided that the provisions of section 25, 26, 27 and 36 shall apply mutatis mutandis to the said person paying tax so determined.**

27A. (1) every registered taxable person .....

(a) .....

(b) inward supplies under section 26 from the **effective date of first purchase** till the end of the month in which the registration has been granted:

Provided that .....

**Provided further that the effective date of first purchase shall, subject to section 16(4), be relating to the first supply liable to tax under this Act**

(2) .....

47. Where a taxable person fails to ....., the proper officer may proceed to assess, **subject to the provisions of section 16(3A)**, to the best of his judgement .....

#### 43. Availment of pre-registration Credit

Section 16(2) of the Model GST Law provides that a person who has applied for registration under the Act within thirty days from the date on which he becomes liable to registration and has been granted such registration shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of this Act.



### Issue

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

### Suggestion

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

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

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

- (a) motor vehicles, except when they are supplied in the usual course of business or are used for providing the following taxable services—
  - (i) transportation of passengers, or
  - (ii) transportation of goods, or
  - (iii) imparting training on motor driving skills;
- (b) goods and / or services provided in relation to food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as leave or home travel concession, when such goods and/or services are used primarily for personal use or consumption of any employee;
- (c) goods and/or services acquired by the principal in the execution of works contract when such contract results in construction of immovable property, other than plant and machinery;
- (d) goods acquired by a principal, the property in which is not transferred (whether as goods or in some other form) to any other person, which are used in the construction of immovable property, other than plant and machinery;
- (e) goods and/or services on which tax has been paid under section 8; and
- (f) goods and/or services used for private or personal consumption, to the extent they are so consumed

### Issue

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

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

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



the work contract would qualify as 'supply of taxable services'.

### **Suggestions**

- *It is suggested that disallowance of input tax credit for these 6 cases be reconsidered and allowed so as to reduce the impact of cascading of taxes.*
- *Supplies for personal or private consumption also qualify as taxable supply as per Schedule I and thus Input Tax Credit be allowed on such usage.*
- *It may be suitably clarified that list of services specified for personal use or consumption of any employee are illustrative in nature and not exhaustive. The words “or similar supplies” be added after the words “home travel concession” to imply that any other supplies which are for personal consumption of the employee would be restricted for the purposes of ITC.*
- *The restriction of ITC in respect of all works contracts resulting in immovable property at large be removed since in large number of contracts which qualify as works contracts, the end result would be immovable property'.*

### **45. Condition for payment and filing of return for availing input tax credit**

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

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

### **Issue**

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

### **Suggestion**

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

### **46. Tax to be paid to the credit of Government for utilizing input tax credit**

Section 16(11)(c) of Model GST Law provides that no registered taxable person shall be entitled to the credit of any input tax in respect of any supply of goods and/or services to him unless the tax charged in respect of such supply has been actually paid to the credit of the appropriate Government, either in cash or through utilization of input tax credit admissible in respect of the



said supply.

#### **Issue**

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

#### **Suggestions**

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

#### **47. Setting up Procedure for availing Input Tax Credit**

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

#### **Suggestions**

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

#### **48. Input Tax Credit of inputs sent for job work**

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

#### **Issues**

There may arise a situation wherein inputs/ capital goods are to be kept with the job workers beyond the specified time limits and prolonged jobs are a requirement of manufacturing process.



Further levying of interest in addition to reversal of credit may harm the liquidity position and it also involves an opportunity cost as high value of material is sent for job work by many industries.

### **Suggestion**

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

## **49. Time Limit for availing CENVAT Credit**

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

Further, section 16(15) provides that a taxable person shall not be entitled to take input tax credit in respect of any invoice for supply of goods and/or services, after the filing of the return under section 27 for the month of September following the end of financial year to which such invoice pertains or filing of the relevant annual return (31<sup>st</sup> December), whichever is earlier.

### **Issue**

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

### **Suggestions**

- *It is suggested that provisions of sections 16(3A) & 16(15) be reconsidered and redrafted to avoid litigation as well as interpretational issues.*
- *Further, it is suggested that filing of return not be linked to entitlement to credit.*

## **50. Recovery of excess input credit distributed by Input Service Distributor**

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

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

### **Suggestions**

- *As the sub-sections are overlapping in nature it is suggested to clarify which of the sub-section prevails in case of overlap.*
- *Further, in section 18(2) the words 'will be recovered from such supplier(s)' be replaced with 'will be recovered from such input service distributor' since in case of any incorrect*



*distribution of credit by the ISD, it should be the person who has committed the error from whom it should be recovered and not the recipient of the credit from such ISD. Also, practically, it is from the books of the ISD that it can be established that it is incorrectly distributed. After identifying this, if an officer of some other jurisdiction has to enforce recovery, it would be an administrative menace.*

#### **51. Time limit to fix effective date of Registration**

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

##### ***Suggestion***

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

#### **52. Deemed Registration**

Section 19(9) of the Model GST law provides that a registration or an Unique Identity Number shall be deemed to have been granted after the period prescribed under Section 19(7), 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 Section 19 (9) of the Model GST Law*

#### **53. Deemed Cancellation of Registration**

Section 19(11) of the Model GST law provides that the grant of registration or the Unique Identity Number under the CGST Act / SGST Act shall be deemed to be a grant of registration or the Unique Identity Number under the SGST/CGST Act provided that the application for registration or the Unique Identity Number has not been rejected under SGST/CGST Act within the time specified in Section 19(7).

Further, Section 21(6) provides that cancellation of registration under the CGST Act/SGST Act shall be deemed to be a cancellation of registration under the SGST Act/CGST Act.

##### **Issue**

There seems to be dichotomy between provisions of grant of registration and cancellation of registration.



**Suggestion**

*It is suggested to that if registration under CGST is granted then registration under SGST be deemed to have been granted in tune with provision for cancellation of registration.*

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

Section 19A(2) of the Model GST law provides that: Notwithstanding anything to the contrary contained GST Model Law, a casual taxable person or a non-resident taxable person shall, at the time of submission of application for registration under Section 19(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.*

**55. Compulsory Registration for person making Inter-state taxable supply**

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

**Issue**

If a taxable person effects an inter-state supply then he would be required to get registered since inception of the law. This might put a burden on small assesseees who in course of business/ providing services make a small amount of inter-state supply owing to which they need to seek registration immediately.

**Suggestion**

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

**56. Provision of Centralized Registration**

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

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

**Issue**

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



### **Suggestions**

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

### **57. Mandatory registration for Casual Taxable Person & Non-resident Taxable person**

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

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

#### **Issue**

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

#### **Suggestion**

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

### **58. Cancellation of Registration**

Section 21(2) of the Model GST law *interalia* provides that the proper officer may 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 8 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 19 has not commenced business within six months from the date of registration..

#### **Issue**

1. 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.
2. 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*

## **59. Explicit contents of a Tax Invoice**

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

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

### **Issue**

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

### **Suggestion**

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

## **60. Amount of tax to be indicated in tax invoice and other documents**

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

### **Issue**

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

### **Suggestion**

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

## **61. Clarification regarding furnishing details of outward supplies**

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



### **Suggestion**

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

### **62. Furnishing details of outward / inward supplies**

Section 25(2) /26(3) of the Model GST Law provides that any registered taxable person, who has furnished the details under Section 25(1)/26(2) for any tax period and which have remained unmatched under section 29, shall, upon discovery of any error or omission therein, rectify such error or omission in the tax period during which such error or omission is noticed in such manner as may be prescribed, and shall pay the tax and interest, if any, in case there is a short payment of tax on account of such error or omission, in the return to be furnished for such tax period.

Provided that no rectification of error or omission in respect of the details furnished under Section 25(1)/26(2) shall be allowed after filing of the return under section 27 for the month of September following the end of the financial year to which such details pertain, or filing of the relevant annual return, whichever is earlier

### **Issue**

Supplier shall be allowed to rectify the said mistake/ revise the statement of outward/inward supplies as such errors are not unusual. Moreover, denying rectification of mistake is against the basic tenet of law. For example: Presently under MVAT Act, 2002, a dealer can rectify the mistake till the due date of filing of VAT Audit report.

### **Suggestions**

- *It is suggested that between the word “furnished the details under Section 25(1)/26(2) for any tax period” and “which have remained unmatched under section 29” word “and” be replaced by the word “or”.*
- *It is suggested that *Suo motto* rectification of return as well as details of outward /inward supplies be permitted for tax period upto due date of filing annual return or actual filling of return of that period, whichever is earlier.*

### **63. Rectification of Returns by Input Service Distributors (ISD)**

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

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

Section 27(7) permits rectification of return owing to omission or incorrect particulars subject to payment of interest as specified.



### **Issue**

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

### **Suggestion**

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

## **64. First Return**

Section 27A of the Model GST provides that every registered taxable person paying tax under the provisions of section 7, shall furnish the first return containing the details of:

- (a) outward supplies under section 25 from the date on which he became liable to registration till the end of the month in which the registration has been granted;
- (b) inward supplies under section 26 from the effective date of registration till the end of the month in which the registration has been granted:

Provided that a registered taxable person paying tax under the provisions of section 8 shall furnish the first return for the period starting from the date on which he becomes a registered taxable person till the end of the quarter in which the registration has been granted.

### **Issue**

1. 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.
2. If the first return contain 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.*

## **65. Interest on delayed payment of tax**

Section 36(3) of the Model GST Law provides that in case a taxable person makes an undue or excess claim of input tax credit under sub-section (10) of section 29, he shall be liable to pay



interest on such undue or excess claim at the prescribed rate for the period computed in the manner prescribed.

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

**Suggestion**

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

**66. Payment of refundable amount to applicant**

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

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

**Suggestion**

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

**67. Refund of Tax**

In terms of Section 38(2) of the Model GST law, subject to Section 38(8), a taxable person may claim refund of any unutilized input tax credit at the end of any tax period except in cases other than exports or where the exported goods are subjected to export duty or where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on outputs:

**Issue**

The model of GST is based tax on value addition, thus refund of excess tax paid against recovered, be extended to all the transactions, such as:

- a. Excess credit lying at the time of closure of business;
- b. Taxes paid on supplies and Input credit available on later date, resulting in unutilized credit;



- c. Taxes paid on estimate basis by casual dealer or non-resident as advance, if paid in excess of actual should also be eligible for refund, immediately on furnishing of returns;
- d. Tax wrongly paid, being not a supply or exempted activity.

**Suggestion**

*It is suggested to delete first proviso to Section 38(8) of Model GST Law*

**68. Interest on delayed refunds**

Section 39 of the Model GST Law provides that if any tax refundable under Section 38 to any applicant is not refunded within three months from the date of receipt of application under Section 38(1), interest on delayed refund at a rate specified by way of notification shall be payable from the date immediately after the expiry of the due date for sanction of refund under section 38 till the date of refund

*Interalia*, in terms Section 38(4) read with Section 38(5) of the Model GST Law, on receipt of refund application, if the proper officer is satisfied that the whole or part of the amount claimed is refundable, he may make an order within ninety days from the date of receipt of application

**Suggestion**

*The period “within three months” specified in Section 39 may be aligned with the period of “within ninety days” as per Section 38(5). Either this be made 90 days or the one under section 38(5) be changed to 3 months.*

**69. Definition of Books of Accounts for the purpose of GST**

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

**Suggested**

*It is suggested to 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.*

**70. Removal of goods for job work**

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

**Issue**

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



- No time limit for issuance of special order has been prescribed under the provision which may lead to uncertainty.

**Suggestion**

- *It is suggested that at the end of sub Section (1), the words 'and may, after completion of job work' be omitted.*
- *It is suggested that time limit for issue of special order by the Commissioner be prescribed as 'within 7 days' or shall be 'deemed to be granted' after expiry of 7 days.*

**71. Definition of “Brand Name” referring only to a service**

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

**Issue**

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

**Suggestion**

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

**72. Electronic Commerce**

**Issue 1:**

The provisions relating to tax collection at source and thereby depositing the same with Government, by electronic commerce operator are provided in the Section 43C of the 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 Model GST Law and the Forms to be notified by way of Rules.*

**Issue 2:**

Definition of ‘branded services’ in Section 43B(c) states “.....services which are supplied by electronic commerce operator.....” But, section 3(4) states “.....supply of branded service by aggregator .....” This leads to an inference that the aggregator and electronic commerce operator can be used interchangeably.

**Suggestion**

*It is Suggested to replace reference to electronic commerce operator in section 43B(c) with*



aggregator.

### 73. Collection of Tax at Source by e-Commerce operators

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

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

#### Issue

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

#### Suggestion

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

### 74. Tax to be deposited in case of discrepancy found in Section 43C

Section 43C (8) of the Model Law provides that the value of a supply relating to any payment in respect of which any discrepancy found between details of outward supply, on which the tax has been collected, as declared by the operator under Section 43C(4) do not match with the corresponding details declared by the supplier under Section 25, is communicated under section 43C(7) and which is not rectified by the supplier in his valid return for the month in which discrepancy is communicated shall be added to the output liability of the said supplier, in the manner as may be prescribed, for the calendar month succeeding the calendar month in which the discrepancy is communicated.

#### Issue

Section 43C(8) does not consist of words 'tax' on value of supply and accordingly one may conclude that in case of discrepancy, entire value of supply shall be added to the output tax liability of the said supplier.

#### Suggestion

*It is suggested that in order to avoid an unwarranted interpretation, the words 'tax on value of such supply' be inserted prior to "shall be added to the output liability" in Section 43C(8) of the Model GST Law.*

### 75. Return of goods received in pursuance of an inward supply

Explanation to Section 44 of Model GST Law provides that where goods received in pursuance



of an inward supply are returned by the recipient to the supplier within a period of six months from the date of the relevant invoice, the tax payable on such return supply shall be equal to the input tax credit availed of earlier in respect of such inward supply.

**Suggestion**

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

**76. Section and Explanation are unlinked/ unrelated**

Section 44 of the Model GST Law states that every registered taxable person shall himself assess the taxes payable under GST Law and furnish a return for each tax period as specified under section 27.

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

**Suggestion**

*It is suggested that explanation to Section 44 be introduced as a separate section in itself, as Section 44 and explanation to Section 44 do not have any link with each other.*

**77. Scrutiny of Returns**

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

**Issue**

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

**Suggestion**

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



#### 78. Filing of return to revoke best judgement assessment

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

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

##### Issue

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

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

##### Suggestion

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

*Further, it is suggested that in the explanation the words “liability for” be inserted before the words “payment of interest.....”*

#### 79. Audit by Tax authorities of business transactions

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

##### Issue

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

##### Suggestions

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

#### 80. Time Limit for issuing Notice to be prescribed.

Section 51-A & B provide that where any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilized for any reason, other than the reason of fraud etc. or by reasons of fraud etc. the proper officer shall serve notice on



the person chargeable with tax requiring him to show cause why he should not pay the amount specified in the notice along with interest payable penalty leviable under the provisions of this Act or the rules made thereunder.

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

### **Issue**

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

### **Suggestion**

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

## **81. General provision related to demand**

Section 51C(10) of the 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 51A(7) or Section 51B(7), as the case may be, where proceedings are initiated by way of issue of a show cause notice under Section 51:

- 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 51C(10) 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 51C(10) be qua assessee and qua state.*

**82. Double tax payment for tax wrongfully collected and deposited**

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

**Issue**

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

**Suggestion**

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

**83. Reasons to believe Suppression to undertake a search**

Section 60(1) of the Model GST law provides that where the CGST/SGST officer, not below the rank of Joint Commissioner, has reasons to believe that a taxable person has suppressed any transaction relating to supply of goods and/or services or the stock of goods in hand, or has claimed input tax credit in excess of his entitlement under the Act or has indulged in contravention of any of the provisions of this Act or rules made thereunder to evade tax under this Act, he may authorize in writing any other officer of CGST/SGST to inspect any places of business of the taxable person.

**Suggestion**

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

**84. Summoning taxable persons to give evidence and produce documents**

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

**Suggestion**

*It is suggested that a proviso be added to the said section to provide that summons are restricted*



*only to the information contemporaneously available and no new information or format of information would be called for.*

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

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

**Issue**

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

**Suggestion**

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

**86. All offences put in one class and penalty imposed thereupon**

Section 66 of the Model GST law provides a list of 20 offences liable to penalty under the GST Act. 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 73, whoever commits any offences mentioned in Section 73(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 66 of the 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 66(1)(iii) and Section 73 (1) (c) of the 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 assessee it may not be considered as an offence.

### **Suggestion**

- It is suggested that penalty and prosecution provisions provided under Section 66 of the Model GST Law and Section 73 thereof be bifurcated 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 offence 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 73 may also be categorized on the 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 66(1)(iii) and Section 73 (1)(c) of the Model GST Law.
- It is suggested that the word “appropriate” be deleted before the word “Government” in Section 66(1)(iv).

### **87. General disciplines related to penalty**

Section 68 of the GST Model Law *inter alia* 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 68(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 68(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 68.*

## **88. Detention of goods and conveyances and confiscation of goods**

Section 69 of the GST Model Law deals with detention of goods and conveyances, and levy of penalty. It states that where any person transports any goods or stores such goods while they are in transit in violation of the provisions of this Act or stores or keeps in stock goods or supplies goods which have not been accounted for in the books or records maintained by him under the Act; all such goods and the conveyance used as a means of transport for carrying the said goods shall be liable to detention by the proper officer and shall be released only after payment of applicable tax, interest and penalty leviable thereon or upon furnishing a security, provided show cause notice and reasonable opportunity of being heard are given.

Further, Section 70 *interalia* provides that, if any person supplies any goods in contravention of any of the provisions of this Act or rules made thereunder leading to evasion of tax or does not account for or supplies any goods liable to tax under this Act without having registration or contravenes any provision of this Act or rules made thereunder with intent to evade payment of tax, then, all such goods shall be liable to confiscation and the person shall be liable to penalty under section 66 after giving show cause notice and a reasonable opportunity of being heard.

### **Issue**

- The section does not specify the person to whom the show cause notice will be issued for demanding the tax, interest and penalty.
- No time limit has been prescribed for issuance of show cause notice in case of detention of goods and conveyances and confiscation of goods which may unnecessarily cause inconvenience to assessee. Further, a provision of release of goods, if no Show cause notice is issued within the prescribed time be inserted.
- Currently, under Central Excise Act, 1944, confiscation may be made from buyer of the goods even if he is not aware of duty evasion on such goods. However, no such provisions of confiscation are present under State VAT Laws. Though in such cases, duty evasion is done by Seller, the goods which are owned by bona fide purchaser are liable for confiscation.

### **Suggestion**

- *The section should clearly provide that the show cause notice and demand will be made on the person liable to pay GST.*
- *Time limit of 3 months be provided for issuance of show cause notice as a measure of ease of doing business. Further, the goods be released if no show cause notice is issued within such time.*
- *It is suggested to add one Proviso in order to secure interest of bona fide purchasers in such cases.*



Accordingly, Section 69(2) and Section 70 (4) be reworded as under:

**Section 69(2)**

*“No tax, interest or penalty shall be determined under sub-section (1) without giving a notice to show cause **within three months from the date of such detention** and without giving the person a reasonable opportunity of being heard.*

*Provided further that the goods and conveyance will be liable to be released if no show cause notice is issued within the time prescribed under sub-section (2)”.*

**Section 70(4)**

*“(4) No order of confiscation of goods and/or imposition of penalty 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 goods and conveyance will be liable to be released if no show cause notice is issued within the time prescribed under sub-section (2).*

*Provided further that if the goods are under ownership of a bona fide purchaser, the goods under confiscation shall be released and fine of an amount not exceeding hundred percent of the tax amount evaded, shall be levied on seller of such goods who has evaded the tax.”*

**89. Confiscation of conveyances**

Section 71 of the GST Model Law provides that any conveyance used as a means of transport for carriage of taxable goods without the cover of documents as may be prescribed in this behalf shall be liable to confiscation, 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:

Provided that where any such conveyance is used for the carriage of the goods or passengers for hire, the owner of the conveyance shall be given an option to pay in lieu of the confiscation of the conveyance a fine equal to the tax payable on the goods being transported thereon.

**Issue**

This Section does not provide for opportunity of being heard to the owner of conveyance / goods before confiscation. Further, no time limit is prescribed within show cause notice will be issued in case of such confiscation

**Suggestion**

- *It is suggested to provide an opportunity of being heard to the owner of conveyance / goods before confiscation*
- *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 71:  
“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.”***



## 90. Imprisonment for 5 years for repeated offences

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

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

### **Issue**

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

### **Suggestion**

*It is suggested that imprisonment provisions be liberalized and list of offences liable to imprisonment be reconsidered.*

## 91. Cognizable and Non-bailable Offences

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

### **Issue**

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

### **Suggestion**

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

## 92. Compounding of offences

Section 78(2) of the GST Model Law *inter alia* 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**

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 78(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.**”*

### **93. Criteria for determining range of compounding amount**

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

#### **Issue**

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

### **94. Appeals to First Appellate Authority & Appellate Tribunal**

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

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

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

#### **Issues**

- If an order served on an entity does not reach the concerned entity in time to file an appeal (or within such extended time), then the remedy is lost permanently. Anyway under the law



of jurisprudence an appellant must justify every day of delay.

- The requirement of making a pre-deposit will further add to the litigations considering the amount and interest involved thereon

#### **Suggestions**

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

### **95. Common First Appellate Authority**

The Model GST law provides for separate provisions for appeal to First Appellate Authority for CGST as well as SGST under Section 79

#### **Issue**

Separate provisions on appeal to First Appellate Authority will lead to duplication of proceedings as well as contradictory appellate proceedings and will thus create confusion in the minds of the assessee.

For instance, if a dispute is raised about the classification of the product then the assessment orders deciding about the classification will be issued by the CGST as well as SGST authorities. Thus two demand orders will be issued to the assessee. As per the model law provisions, the assessee would have to prefer two separate appeals to two separate First Appellate Authorities.

It is possible that First Appellate Authority under CGST accept the classification of the assessee and set aside the demand whereas the First Appellate Authority under SGST may not accept the assessee's contention and reject the appeal filed by him.

Further, the CGST Department may accept the order of the First Appellate Authority and may not file appeal against the said order to the Appellate Tribunal whereas the SGST Department may prefer an appeal before the Appellate Tribunal. This will lead to dispute with respect to the binding nature of the orders accepted by the department as well as the finality of the proceedings.

#### **Suggestion**

*It is suggested that Common First Appellate authority to be established for hearing of appeal against the assessment order under CGST and SGST law and the provisions should be common for the appeals under both the laws.*

### **96. Revisionary powers of Commissioner**

In terms Section 80 (SGST) of the 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 80(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).”*

#### **Issue**

1. Revisionary powers of Commissioner prejudicial to the interest of the revenue though provided only under SGST but not in CGST. While, in CGST the Department is also required to file appeal to the First Appellate Authority. To attain consistency and clarity such Revisionary powers of Commissioner be provided under CGST also.  
Further, the revisionary power given in Section 80 of the 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 assessee while no such provision exists in GST regime
2. Another issue is that Section 80(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 assessee'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 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.

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 revisionary proceedings can be initiated even after the period of 8-10 years by the revisionary 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. Under the GST regime the provisions of CGST and SGST should be *pari materia*. Further, the power of revision of orders is mis-used and thus increases litigation. Therefore no power of revision be available under SGST law also.

#### **Suggestion**

*It is suggested that Section 80 under SGST law be deleted.*

#### **97. Appeal to the Appellate Tribunal ( CGST + SGST law)**

Section 82(2) of the 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 model 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*

## **98. 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 79(4) and Section 82(7) (a) of the Model GST law respectively. The pre- deposit amount under both the aforesaid section is:

In terms of Section 79(4) and Section 82(7) (a) of the 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.

Further “amount in dispute” shall include –

- (i) amount determined under section 46 or 47 or 48 or 51;
- (ii) amount payable under rule-----of the GST Credit Rules 201...; and
- (iii) amount of fee levied or penalty imposed

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 50 % 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 involving a disputed tax liability of not less than Rupees Twenty Five Crores and where the Commissioner of GST is of the opinion (for reasons to be recorded in writing) that the department has a very good case against the taxpayer.

### **Suggestions**

- *It is suggested that to replicate pre-deposit provisions of CGST in SGST.*
- *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:*
  - 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*

#### **99. Appeals to the Appellate Tribunal under SGST law**

Section 82 of the Model GST Law *inter alia* provides that, pre-deposit has to be made by the appellant before filing an appeal to the Appellate Tribunal. Further, in terms of Section 82(7)(b) thereof, the provision of pre deposit given under Section 82(7)(a) shall apply *mutatis mutandis* to cross objections filed under Section 82(4)

Further, Section 82(4) *inter alia* 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 82(7)(b).*

#### **100. Orders of Appellate Tribunal ( CGST law + SGST)**

In terms of Section 83(3) of the Model GST law, the Appellate Tribunal may amend any order passed by it under Section 83(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 Appellate Tribunal be increased from 3 months to 6 months.*

**101. Procedure of Appellate Tribunal**

Section 84(3) of the GST Model 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.*

**102. Calling of records for admitting application for Advance Ruling**

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

(2) The Authority may, after examining the application and the records called for and after hearing the applicant or authorized representative of the applicant as well as the authorized representative of the prescribed officers, by order, either admit or reject the application.

**Issue**

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

**Suggestion**

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

**103. Test purchases of goods and / or services**

Section 121 of the Model GST laws provide for test purchase of goods and / or services.

**Suggestion**

*It is suggested that this provision be done away with. This will go a long way in demonstrating that GST is a transparent and a simple law.*

**104. Definition of “Manufacturer”**



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

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

### Issue

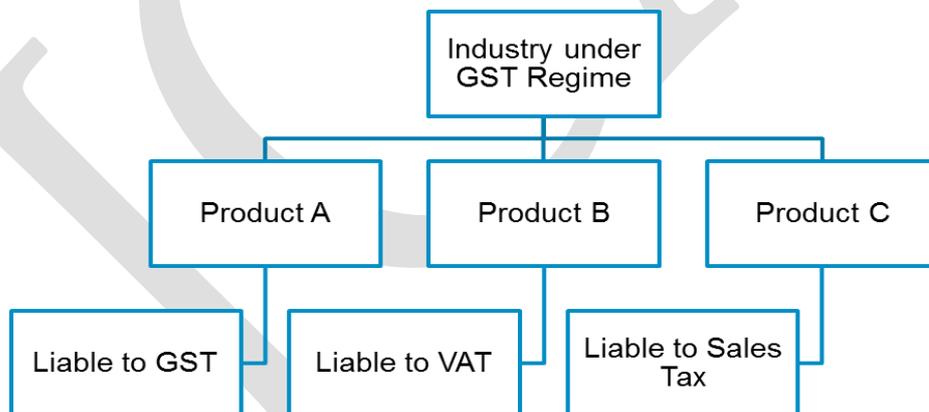
There exists a contradiction here as clause 140 talks about repealing the Central Excise Act 1944 and clause 2(66) refers to the definition given in the Central Excise Act 1944.

### Suggestion

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

## 105. Goods covered under erstwhile sales tax / VAT laws

There are certain commodities covered under erstwhile sales tax / VAT laws. For instance, a motor spirit 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 140 be amended as follows:*

**Goods covered under the erstwhile laws (SGST laws)**

**140(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.*

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

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

##### **Issue**

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

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

There may also be cases where an invoice duly made as per the provisions of earlier law is received after the appointed date. In such cases, taxable person may not be able to claim input tax credit of such invoices as these were not shown in the last return as per earlier law. So, the invoice made under the earlier law should be allowable as input tax credit under the GST law in the period in which it is received even if it was not claimed in the last return subject of course to the criteria of one year from the date of invoice.

##### **Suggestion**

- *It is suggested that Input Tax Credit be provided to the assesseees in seamless manner i.e. Credit once validly taken should not be denied by change of law. There be made transitional provisions to allow duty or taxes contained in invoices made under the earlier law as input tax credit under the GST law in the period in which it is received.*
- *Alternatively, the words "and is also admissible as input tax credit under this Act." be deleted from the said provision and the words "such credit taken is not in respect of items specified in clauses a to f of Section 16(9)" may be added in its place*

#### **107. Transitional provisions pertaining to CENVAT credit**

In terms of Section 143(1) of the 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 144(1) of the 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 143(1) and Section 144(1) states that such credit shall not be allowed unless the credit is admissible under the earlier law and is also admissible as input tax credit under GST regime.

Besides above, Section 145(1) and Section 146(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 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**

CENVAT credit pertaining to earlier law should be governed by the earlier law and its eligibility should not be determined based on the provisions of the GST Model Law. It would be unfair to apply the provisions of GST Model Law to the CENVAT credit of prior period as the same is infeasible, as evident from the following:

- A situation where certain goods/ services might be exempt under present law and taxable under GST regime or vice versa.
- Instances where CENVAT credit had been taken by the assessee under earlier law and remained unutilized till the appointed day. But he won't be able to carry forward the unutilized credit if such credit is not admissible as input tax credit under GST.
- Cases where CENVAT credit/ set-off is available on happening of specific event after appointed day or available in staggered manner and accordingly situation may arise that credits/ set-off in such cases may not be reflected in last period's return. e.g.,
  - In terms of second proviso to Rule 4(7) of CENVAT Credit Rules, 2004, CENVAT credit is disallowed if payment for invoice is not made within 3 months to the service provider. However, credit is again admissible when the payment for invoice is made.
  - As per Rule 6(3), CENVAT credit is to be reduced proportionately based on preceding year's ratio. However, subsequently (before June 30 of F.Y.), credit as per actual figures has to be determined and adjustments regarding excess/ short reversal has to be given effect to on or before 30<sup>th</sup> June.
  - In respect of CENVAT credit on capital goods, 50% of the amount is to be claimed in next year.
  - Invoices of March month received in April or May and accordingly credit not claimed in March month
  - In case of service tax paid on Natural resources, CENVAT credit is available in staggered manner.



- Set-off (Maharashtra Value Added Tax) - Rule 52B of MVAT Rules provides for availment of set-off on certain goods (such as mobile phones, cellular handsets, etc.) to be available in staggered manner i.e. set-off is available as and when the goods are sold locally or inter-state. A situation may arise in case of purchases of mobile phones in the month of January, whose set-off would be available in month of April, May, etc. when actual Sale takes place.
- 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

No transitional provision has been provided in the 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 that the words 'and is also admissible as input tax credit under this Act' from the proviso to Section 143(1) and Section 144(1) be removed/deleted.*
- *It is suggested that the condition of "taxable person is eligible for input tax credit under this Act" stated in Section 145(1)(iii) and Section 146(1)(iv) be deleted*
- *It is suggested that a provision to allow CENVAT Credit on the stock held on the day immediately preceding the appointed day by the importers, First Stage Dealers and Second Stage Dealers be inserted*
- *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*

#### **108. Omission to show tax credit in return furnished**

Section 143(1) of the 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.*



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

As per Section 144 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 144(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 144(1) & (2) of model 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'.*

**110. Credit of eligible duties and taxes in respect of inputs held in stock**

Section 145 of the Model GST Law does not cover the case of traders or those processing goods not amounting to manufacture 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.

For example: A is a manufacturer having stock of finished goods worth Rs. 2 crores. Inputs in these finished goods have suffered Excise Duty of Rs. 15 lakhs and VAT Rs. 20 lakhs. Now if he makes supply of final goods under GST regime and tax payable by him is say Rs. 40 lakhs (assuming 20% rate) he would be eligible to claim credit of the duty paid on inputs in stock as per section 145 of the Model GST law (being eligible credit under the earlier law) and thus would be required to pay Rs. 5 lakhs as tax under GST.

On the other hand B is a trader having stock of finished goods worth Rs. 2 crores. Inputs in these finished goods have suffered Excise Duty of Rs. 15 lakhs and VAT Rs. 20 lakhs. Now if he makes supply of final goods under GST regime and tax payable by him is say Rs. 40 lakhs



(assuming 20% rate), he will be able to claim credit of VAT paid on stock held but will not be eligible to claim credit of the excise duty element contained in stock as per section 145 of the Model GST law (being ineligible credit under the earlier law) and thus would be required to pay Rs. 20 lakhs as tax under GST even though goods have already suffered excise duty under earlier law. This would be unfair to the traders and will lead to cascading of taxes. Further it is challengeable under Article 14 of the Constitution of India, 1949 which provides for the fundamental right of Equality before Law and that no state shall deny to any person equality before the law or the equal protection of the laws within the territory of India. Discrimination between manufacturers and traders might work against this principle.

### **Suggestion**

- *It is suggested that Section 145 be redrafted as follows:*

*“(1) A registered taxable person, who was not liable to tax under the earlier laws in any of the circumstances specified in sub-section (1A) but 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:*

- Such inputs and/ or goods used or intended to be used for making taxable supplies under this Act;*
  - .....;*
  - 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 not liable to tax under the said law in the circumstances specified in sub-section (1A)*
  - .....;*
  - in respect of inputs, such invoices and / or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed date;*
  - 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 any of the following in respect of a taxable person who:*
- was not liable to be registered under the earlier law; or*
  - was engaged in the manufacture of goods exempt from the whole of the duty or chargeable to Nil rate of duty; or*
  - was not liable for payment of duty on any part of the turnover under the earlier law; or*
  - was undertaking any process not amounting to manufacture under the earlier laws; or*
  - was engaged in provision of services involving inputs or capital goods”*

- *Alternatively, deemed credit of 75% value of the output duties paid on inputs be allowed to traders. This notional credit would ensure no disparity between the traders and manufacturers (CGST Act)*
- *Corresponding provisions to be inserted mutatis mutandis in the SGST laws also. (SGST laws)*



**111. 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 145(1) and Section 146(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 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 145(1)(v) and 146(1)(vi) be deleted as many industries carry some stock for a longer period and these provisions might work against their interest.*

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

Section 146(1) of the 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 Act.*’

**Issue**

- The 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 *Notification 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.*
- *It is suggested to allow the Input Tax Credit on the inputs/capital goods/input services used in/for supply of long-term works contract activities such as lift installation, building construction contracts, EPC Contracts.*

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

Section 146(1), (2) & (3) of Model 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 amounting to manufacture 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)

#### **114. Section 147: Amount payable in the event of a taxable person switching over to composition scheme**

The requirement to reverse input credits on stock at the time of switching over to Composition Scheme has been addressed by section 147 of the Model GST Law. However, the input credit balance remaining after the reversal might have been there for some other reasons, such as, not utilising the available input credit for set off of output liability before switch over, etc. There is no further requirement to force that credit balance to lapse and it must be refunded.

##### ***Suggestion***

*It is suggested that the excess balance of input tax credit after payment be refunded to the registered taxable person instead of it being lapsed.*

#### **115. Provisos to Section 148 & Section 149: Tax payable by receiver if goods returned after 6 months**

##### **Issue**

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.

#### **116. Transitional Provisions for Taxability on Return of goods from Job workers**

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

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

#### **Issue**

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

#### **Suggestion**

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

#### **117. Section 150 & 162D: 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 145.

#### **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.*

#### **118. Section 152: FG removed without payment of duty / tax**

Current 2nd proviso requires payment of tax by 'person returning the FG' but there is no provision for payment of tax if FG is not returned within 6 months

##### ***Suggestion***

*It is suggested that proviso be inserted in between 2nd and 3rd proviso as follows:*

*“**Provided** also that tax shall be payable by the person despatching the goods if such goods are not returned to him within a period of six months or the extended period, as the case may be, from the appointed day.”*

#### **119. Downward revision of price of goods after implementation of GST**

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

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

##### **Issue**

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

##### ***Suggestion***

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

#### **120. Refund claim filed after the date of applicability of GST**

Section 154 of the Model GST Law provides that every claim for refund of any duty/tax and interest, if any, paid on such duty/tax or any other amount, filed by any person before the appointed day, shall be disposed of in accordance with the provisions of earlier law and any



amount eventually accruing to him shall be paid in cash. Where any claim for refund is fully or partially rejected, the amount so rejected shall lapse.

**Issue**

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

**Suggestion**

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

*Provided that the order of disposal under this section shall be deemed to be an application for refund of the amount determined therein.*

**121. 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 160 be rephrased as follows:**

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

**(SGST Law)**

**122. Section 156: Finalization of proceedings relating to output duty liability**

This section does not talk about initiation of proceedings under GST regime about output tax liability of earlier period when old law was applicable. The refund or recovery of tax will be made in cash based on the decision of these proceedings. However, proceedings instituted in respect of output tax liability under earlier law after the date of applicability of GST have not been specified within this section. There might be disputes as to how such proceedings once initiated will be disposed of. So, clarity in this respect is of utmost importance.

**Suggestion**



*There be made a clear provision for disposal of proceedings related to prior period, which has been initiated after the applicability of GST, otherwise this may lead to litigations/disputes*

***Provided** that this section shall apply to appeal, revision, review or reference under the earlier law whether commenced before or after the appointed date.*

### 123. Section 155 to 158: Recovered Amount

Any amount recovered in any proceeding under the earlier law is excluded from credit of GST  
*“the amount so recovered shall not be admissible as input tax credit under this Act.”*

#### **Suggestion**

- *What is the situation envisaged where tax recovered is otherwise eligible as credit? If it refers to tax payable on reverse charge method, then there is no rationale in denying credit to such tax payments*
- *Delete the words “the amount so recovered shall not be admissible as input tax credit under this Act.”*

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

### 124. Section 158: 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 23 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.*

### 125. Credit distribution of service tax by ISD



In terms of Section 162 of the Model 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.*

**126. Tax Treatment of Stock in Transit under GST**

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

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

**Suggestion**

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

*Section may read as follows:*

**“Section XXX: Goods / services in transit**

*Goods and / or services supplied under the earlier law but are received by the recipient after the appointed date shall be deemed to be a supply under this Act and the invoice issued will be deemed to be an invoice under this Act.”*

**127. Supplies billed during earlier law and delivery after appointed date**

There is no provision traceable relating to this factual position. A suitable provision needs to be inserted under CGST / SGST laws

**Suggestion**

*A new section be introduced as follows:*

**“Section XXX: Supplies after appointed date but invoice issued before the appointed date**

*Invoice issued under the earlier law but supplied after the appointed date shall be deemed an invoice issued under this Act.”*

**128. Tax Paid on Inter-State purchases under the earlier law**



Taxes would have been paid by dealers on inter-State purchases lying in stock. A suitable transition provision needs to be inserted to enable availment of credit of CST/Entry Tax paid on such goods lying in stock on the appointed date.

**Suggestion**

*A new section be introduced as follows:*

**“Section XXX: Supplies under CST Act**

*Provisions of section 145 and 146 shall mutatis mutandis apply to inputs contained in semi-finished or finished goods held in stock and on capital goods on the appointed date in respect of which tax under the Central Sales Tax Act, 1956 have been paid.”*

**129. 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.*

**130. Industrial Incentives**

There are several industries enjoying incentives under the earlier law by virtue of being located in backward area or new unit or having invested in an industry identified by Centre / State. Such units must be permitted to avail the unexpired portion of such schemes under the GST regime. A suitable provision needs to be inserted under CGST / SGST laws

**Suggestion**

*A new section be introduced as follows:*

**“Section XXX: Industrial Incentives under earlier laws**

*(1) Where any taxable person has availed incentive under the provisions of the earlier laws for any purpose as specified in sub-section (2) and tax is payable on all supplies after the appointed date then, subject to conditions as may be prescribed, avail any one of the following alternatives:*

*a) in the case of output tax deferment, determine:*

- i) the unutilized value of the tax involved in the incentive had the provisions of the earlier law continued even after the appointed date and claim input tax credit of the net present value of the tax applicable under this Act by applying the discount rate for the unutilized tenure and*
- ii) the accumulated output tax remaining unpaid due to the deferment shall be paid by applying the discount rate for unutilized tenure for output tax payable in respect of each year to which the output tax relates or continue to pay the output tax remaining unpaid in accordance with the earlier laws even after the appointed date without applying the discount rate*



b) in the case of output tax exemption or input tax exemption, increase the claim of input tax credit under section 143, 144, 145 and 146 by a further 25 per cent in each case.

**Provided** that discount rate shall be 10 per cent per year or part thereof in excess of six months.

(2) All provisions related to the incentive will be repealed on the appointed date.”

### 131. 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.”

### 132. Unaddressed transition related issues

- **Inter-State purchases currently effected at a concessional rate against the declaration in Form C under the CST Act, 1956:** The registered taxable person must be permitted to carry forward the amount of CST paid and contained in raw materials, component parts, semi-finished goods and sub-assemblies, finished goods etc. This is because such goods, will be subjected to GST on supplies effected, on and from the appointed date. This would most certainly mean a tax on tax.
- **Input Tax Credits currently restricted by States in respect of ‘stock transfers’ lying in stock with agents or at warehouses, branches or depots:** In respect of the above goods, the input taxes which are already restricted under the current level VAT laws must be permitted to be availed as a transitional credit by the recipient units, where such goods are lying in stock. It must be noted and appreciated that the very same goods will be subjected to GST on and from the appointed date. As indicated supra, this would again mean, a tax on tax.
- **Supplies effected under the current tax regime, but which are delivered or received after the date of implementation of GST, normally referred to as goods-in-transit:** The Model GST law does not provide for transitional credit for such transactions. In a given business situation, it is fair to expect the following scenarios:



- Supplies in a VAT regime but billing and payment in a GST regime; or
- Billing in a VAT regime but supplies and payment in a GST regime; or
- Payment in a VAT regime but billing and supplies in a GST regime.

*The transitional provisions should suitably provide for credit of taxes / duties paid under the current law.*

- **Some commodities - ATF / Liquor etc.,**  
*Even after introduction of GST, there would be several States where certain goods will be subjected to either Sales Tax or VAT. For example - ATF or liquor – while some States subject it to VAT some others subject it to Sales tax. It must be ensured that one of the two laws – Sales Tax or VAT law is fully repealed and all such goods would be taxed only under a single law.*  
*If not, there would be situations where a particular tax payer may have to pay taxes and ensure consequential compliances under three different statutes (Sales Tax, VAT and GST).*

#### **IV: Suggestion on Integrated Goods & Services Tax (IGST)**

##### **133. Place of Supply of Goods And / Or Services (IGST)**

Section 5(2) of the Model IGST law, provides that: Where the supply involves movement of goods, whether by the supplier or the recipient or by any other person, the place of supply of goods shall be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient.

Section 5(6) of the Model IGST law, provides that: Where the place of supply of goods cannot be determined in terms of sub-section (2), (3), (4) and (5), the same shall be determined by law made by the Parliament in accordance with the recommendation of the Council

##### ***Suggestion***

- *It is suggested that in section 5(2) the words "occasions movement" be used in place of "involves movement" as it is currently used in the CST Act and has stood the test of law for over 4 decades now.*
- *It is suggested in section 5(6) that after the word "sub- section (2)" the word "(2A)" be inserted to provide the reference of Section 15(2A)*

##### **134. Location of the recipient where the address on record exists**

Section 6 of Model IGST Law makes reference 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.*

***Provided*** that 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



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

Section 6(4) of the Model GST Law provides that Place of supply of service in relation 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:*

- *Rule 6(4)(a) to exclude 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. In such case words “in relation to immovable property” be suitably modified as “directly in relation to immovable property...”*
- *Explanation to Section 6(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 6(4), as Vessel being movable, it cannot be termed as Immovable Property.*

**136. Section 6(4) & (8): Place of supply where immovable property or boat or vessel are located in multiple states**

Explanation to section 6(4) of 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.*



*Provided that where the basis of allocation is not forthcoming, the distance in each State as a proportion to the total distance of the travel shall be applied.*

**137. Place of Supply of Service ( IGST)**

Section 6(5) of Model 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 6 (5) 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.*
- *Section 6(5) be rephrased as follows:*

*“(5) 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.”*

**138. Section 6(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.**

**Issue**

Section 6(7) 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. The words “or where the park or such other place is located” are superfluous and will lead to litigation. The purpose is served without these words without any ambiguity. Furthermore if services mentioned in section 6(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. **Provided** that 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.

**139. Section 6(14): Insurance of Immovable Properties**

Section 6(14) of 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.*

**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.

**140. Section 30: Tax wrongfully collected and deposited**

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 be discharged accordingly. In such a scenario, Section 30 envisages payment of the correct tax under the correct State 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.

**Suggestions**

- Section 30 be rephrased as follows:

**30. Tax wrongfully collected and deposited with the Central or a State Government**

*A taxable person who has paid IGST on a transaction considered by him to be an interstate supply, but which is subsequently held to be an intra-state supply, shall:*

- a) revise his return of outward supplies and return of inward supplies in case of payment of tax on reverse charge basis or*
- b) claim credit of the IGST so paid by him in his input credit ledger and pay the tax applicable in respect of intra-State supply subject to the provisions of section 36 of the CGST Act, 2016 and such other conditions as may be prescribed.*

- This suggestion be further replicated under section 53 of CGST Act.



## **V: Suggestions on Draft GST Rules**

### **Registration Rules**

#### **1. Application for Registration**

Rule 1 sub-rule (1) of the draft GST registration rules provides that every person, other than a non-resident taxable person, a person required to deduct tax at source under section 37 and a person required to collect tax at source under section 43C, who is liable to be registered under sub-section (1) of section 19 and every person seeking registration under sub-section (3) of section 19 (hereinafter referred to in this Chapter as “the applicant”) shall, before applying for registration, declare his Permanent Account Number (PAN), mobile number and e-mail address in Part A of FORM GST REG-01 on the Common Portal either directly or through a Facilitation Centre, notified by the Board or Commissioner.

#### ***Suggestion***

*It is suggested that along with PAN, email id & mobile no. Date of Birth/ Incorporation also be requested for in Application of Registration in Part A of FORM GST REG-01 as this would help in curbing the chances of entering a wrong PAN, even if remotely possible.*

#### **2. Refund of Advance Tax on rejection of registration for a Casual Taxable Person/ Non-resident taxable person**

Under Rule 1(6) read with Rule 2(5) of draft GST Registration rules it has been provided that a casual taxable person/ non-resident taxable person is given a temporary identification number by the Common Portal for making advance deposit of tax under Section 19A. However, the application for registration may be rejected under Rule 2(5). Thus, in case of any rejection of application of such taxable person, in absence of any suitable provision, his payment against the provisional number may get stuck in system and the credit of such payment may not be available to such person.

#### ***Suggestion***

*It is suggested that there be provided a procedure for appropriation/refund of tax in case of rejection of application for registration by a casual taxable person.*

#### **3. Application for Registration by Casual taxable persons**

Rule (1) sub-rule (7) of GST Registration Rules provides for the person applying for registration under sub-rule (6) shall make an advance deposit of tax in an amount equivalent to the estimated tax liability during the period for which registration is sought, as specified in section 19A.



### **Suggestion**

It is suggested that the phrase “applying for registration under sub-rule (6)” should be substituted with the phrase “applying for registration as referred to in sub-rule (6) read with sub-rule(1)”. It is to be noted that even casual taxable persons applying for registration is covered in sub-rule (1) and there is no such person applying for registration under sub-rule (6). This sub-rule may accordingly be revised.

## **4. Verification of Application of Registration**

Rule 2 sub-rule 3 of draft GST Registration rules provides that where a clarification under sub-rule (2) of the GST Rules of the concerned State has been sought prior to any clarification, information or document being sought under sub-rule (2), the clarification, information or document furnished by the applicant shall be forwarded to the proper officer under said Rules for appropriate action.

### **Suggestion**

It is suggested that the sub-rule 3(CGST/ SGST) be rephrased as follows:

“(3) Where a clarification, information or document under sub-rule (2) of the GST Rules of the State concerned has been sought prior to any clarification, information or document being sought under sub-rule (2), the clarification, information or document furnished by the applicant shall be forwarded to the proper officer under said Rules for appropriate action, by such proper officer under these rules.

(CGST Rules)

(3) Where a clarification, information or document under sub-rule (2) of the CGST Rules has been sought prior to any clarification, information or document being sought under the sub-rule (2), the clarification, information or document furnished by the applicant shall be forwarded to the proper officer under the CGST Rules for appropriate action, by such proper officer under these rules.

(SGST Rules)

## **5. Issue of Registration Certificate**

As per Rule 3 sub-rule 3 of the draft GST Registration Rules where an application for registration has been submitted by the applicant after thirty days from the date of his becoming liable to registration, the effective date registration shall be the date of grant of registration under sub-rules (1), (4) or (6) of rule 2.

### **Suggestion**

- It is suggested that effective date of registration where an application for registration has been submitted by the applicant after 30 days be the date of application of registration and not date of grant of registration.
- It is suggested that the words “**as the case may be**” be added at the end of sub-rule 3 as sub rule (1) or (4) or (6) describe different timeline for grant of registration certificate and insertion of aforesaid words may help avoid ambiguous interpretation.



#### **6. Requirement to pay tax provided vide Rules and not the Act**

Rule 4 sub-rule 1(c) of the draft GST Registration Rules provides that all separately registered business verticals of such person shall pay tax under this Act on supply of goods and/or services made to another registered business vertical of such person and issue a tax invoice for such supply.

##### **Suggestion**

*It is suggested that provisions of levy of GST on all separately registered business verticals be provided by way of Act, not Rules as registration rules cannot provide for levy of tax.*

#### **7. Typographical error of applicability of Rules 1 & 2 in case of Separate Registrations for multiple business verticals within a State**

Rule 4 sub-rule 3 of the draft GST Registration Rules provides that provisions of rule 1 and rule 2 relating to verification and grant of registration shall mutatis mutandis apply to an application made under this rule.

##### **Suggestion**

*It is suggested that in the aforesaid sub-rule the words “provisions of rule 1 and rule 2” be replaced with “provisions of rule 2 and rule 3” which are the rules for to verification and grant of registration.*

#### **8. Effective date of registration where Unique Identity Number is assigned to certain special entities**

Rule 6 of the draft GST Registration Rules provides that every person required to obtain a unique identity number under sub-section (6) of section 19 may submit an application, electronically in FORM GST REG-09. The proper officer may, upon submission of an application in FORM GST REG-9 or after filling up the said form, assign a Unique Identity Number to the said person and issue a certificate in FORM GST REG-06, within 3 common working days from the date of submission of application.

##### **Suggestion**

*It be suitably clarified that what would be the effective date of registration where Unique Identity Number is assigned under sub-section (6) of section 19 as the same has not been provided for in the said rules.*

#### **9. Time-limit for amendment in registration particulars**

Rule 9 sub-rule 1 of the draft GST Registration Rules provides that where there is any change in any of the particulars furnished in the application for registration in FORM GST REG-01, FORM GST REG-07, FORM GST REG-09 or FORM GST-REG-10, as the case may be, either at the time of obtaining registration or as amended from time to time, the registered taxable person shall, within 15 days of such change, submit an application electronically, duly signed, in FORM GST REG-11, electronically, along with documents relating to such change at the Common Portal either directly or through a Facilitation Centre, notified by the Board or Commissioner.



**Suggestion**

*It is suggested that the time limit of 15 days for making an amendment application be extended to 30 days as it will be in lines with time limit of amendment under current laws. For example as per Rule 4(5A) of the Service Tax Rules, 1994 amendments may be requested within 30 days of making the application for registration.*

**10. Time Limit for application of Suo Moto Registration**

Rule 10 sub-rule 3 of the draft GST Registration Rules provides that every person to whom a temporary registration has been granted under sub-rule (1) shall, within thirty days from the date of grant of such registration under the said sub-rule, file an application for registration in the form and manner provided in rule 1 unless the said person has filed an appeal against the grant of temporary registration, in which case application for registration shall be applied for 30 days after the date of issuance of order upholding the liability to register by the Appellate Authority.

**Suggestion**

*It is suggested that the words “applies for 30 days” be replaced with “applied for within 30 days” to provide the correct intent and interpretation.*

**11. Clarification of the term “Rule Return 19”**

Rule 11 sub-rule 2 of the draft GST Registration Rules provides that every taxable person, other than a person paying tax under section 8, seeking cancellation of registration under sub-rule (1) shall furnish a final return under rule Return.19.

**Suggestion**

*It is suggested that the term “rule Return.19” be suitably clarified. There appears to be a typographical error in the absence of Rule 19 to these rules.*

**12. Grounds for Cancellation of Registration**

Rule 12 sub-rule 1 of the draft GST Registration Rules provides that where the proper officer has reasons to believe that the registration of a taxable person is liable to be cancelled under section 21, he may issue a notice to the taxable person in FORM GST REG-15 to show cause within 7 days as to why his registration should not be cancelled. Provided that where a notice for cancellation has been issued under [SGST rules of the State/CGST Rules], no notice shall be issued under sub-rule (1).

**Suggestion**

*It is suggested that grounds of suo moto cancellation of registration by the proper officer be provided in order to ensure transparency and better governance.*



### 13. Revocation of Cancellation of Registration

Proviso to Rule 13 sub-rule 1 provides that no application for revocation shall be filed if the registration has been cancelled for the failure of the taxable person to furnish returns unless such returns are filed and any amount due as tax in terms of such returns has been paid along with any amount payable towards interest, penalties and late fee payable in respect of the said returns.

#### **Suggestion**

*It is suggested that amendment be made in section 27 of Model GST Law because as per Rule 13 application for revocation of cancellation of registration cannot be filed unless the returns are furnished. However, as per section 27, returns can be furnished only by registered taxable person. If registration is cancelled, it indicates that no return can be filed, and accordingly, the process for revocation fails. The anomaly be accordingly rectified.*

### 14. Method of authentication

Rule 15 sub-rule (1) of the draft GST Registration Rules provides that all applications, including reply, if any, to the notices, returns, appeals or any other document required to be submitted under these rules shall be filed electronically at the Common Portal with digital signature certificate or through e-signature as specified under Information Technology Act, 2000 (21 of 2000) or through any other mode of signature notified by the Board/Commissioner in this behalf. Also Rule 15 sub-rule (2) of the draft GST Registration Rules provides that each document including return filed online shall be signed by the concerned person in the respective cases.

#### **Suggestion**

*It is suggested that word “return” appearing in Rule 15 sub-rule (1) and sub-rule (2) be dropped.*

### 15. Typographical/Clerical Error in Rule 15

In Rule 15 sub-rule 2 is appearing twice. The latter of the two be made as sub-rule (3) and clerical error be corrected.

### 16. Physical verification of business premises in certain cases

Rule 17 of draft GST registration Rules provides that where the proper officer is satisfied that the physical verification of the place of business of a taxable person is required after grant of registration, he may get such verification done and upload the verification report along with other documents, including photographs, in Form GST REG-26 on the day following the date of such verification.

#### **Suggestions**

- *It is suggested that a time limit for physical verification be provided (say 30 days), beyond which the details furnished be deemed to be true and thus no physical verification be required.*
- *Circumstances which warrants the necessity for physical verification be provided for.*
- *A need for prior permission to be obtained from the concerned higher authority or to be carried out on the recommendation of the concerned higher authority be inserted.*
- *Mechanism of prior intimation to the taxable person whose premises would be physically verified be provided for.*



## 17. Application for Registration

*Some general suggestions w.r.t application for registration:*

- *It is suggested that there be provided an option to correct/ amend the FORM GST REG-01 as it may so happen that some submission may be omitted inadvertently in the registration form. There should be an option to rectify the same.*
- *In order to save the applicant from repeating the tedious process of filling in the same application form again and again there be provided an option for submission of FORM GST REG-01 to different Central/ State authorities in different States by way of single application and marking states where registration is sought. Alternatively, the date from the application form of one state simply be imported into the other state's application form.*
- *There be provided a mechanism for grant of registration to government departments as Government may also become liable to pay tax in some instances.*
- *There be provided a mechanism for identification of duplicate entries as there might arise a situation where person may make a duplicate entry inadvertently and same might go for re-verification and may result in duplicate registration on same premises. In case, a person wants a separate registration of his different business vertical in the same premises it be specifically provided for in the registration form itself. Filing of complete application form will result in duplication of information and work.*
- *Alternatively, Choice of registration for different business verticals be given in the FORM GST REG-01 itself to avoid duplicate/ multiple applications.*
- *Casual taxable persons not be required to submit his address in the State for which registration is being sought as they have no fixed place of business in the taxable territory in which they occasionally undertakes transactions.*
- 

## 18. Application Form for Registration under GST: Form GST REG 01

*Point 12B: It is suggested that option be provided under nature of business requested in said point for e-commerce and one option be provided for Others Category to specify the nature of business not covered in the provided options.*

*Point 13: Details of Bank Accounts be limited to major operating accounts of an assessee instead of requesting for total no. of Bank accounts maintained by the applicant for conducting business.*

*There be made provision for providing Correspondence Address, alternate email id, mobile no. etc.*



## 19. Form GST REG-09

Form GST REG-09 provides for the application for allotment of Unique ID Number to UN Bodies/ Embassies/ any other person. As per serial no. 2 of the Form GST REG-09, there are three categories of entity required to apply for allotment of Unique ID Number i.e. UN Body, Embassy and Other Person.

### **Suggestion**

*It is suggested that one more category of entity i.e. High Commission be specifically mentioned in the GST REG-09 Form in addition to the given categories who are required to apply for UIN. Since India is a member of commonwealth and all the member of commonwealth countries are represented by High Commission. Other person made applicable in respect of Honorary Counsellor's represented generally by Indian nationals.*

## 20. Application for Enrolment of Existing Taxpayer in Form GST REG-20

Every person who has been granted a provisional registration shall submit an application electronically in FORM GST REG-20, duly signed, along with the information and documents specified in the said application, on the Common Portal either directly or through a Facilitation Centre, notified by the Board or Commissioner.

### **Suggestion**

*It is suggested that in FORM GST REG-20, an option be added to opt for composition scheme, as there might be persons amongst the persons being migrated, who would want to opt for composition from the start of GST.*

## 21. Option for Centralised registration

As per Section 19 of the Model GST Law, every person who is liable to be registered 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. Further, it also provides that a person having multiple business verticals in a State may obtain a separate registration for each of such business vertical.

### **Suggestion**

*It is suggested that option for Centralised Registration be given to the tax payer even when he is operating in multiple states. Otherwise it will be very difficult for Industries / Sectors like Telecom, Insurance etc. in ascertaining tax liability, where area is not constraint. For example, Delhi-NCR covers 3 States namely Delhi, Haryana, and Uttar Pradesh and it will be difficult to segregate user base service in between 3 States. Presently, the option for Centralised registration is available under Service Tax and to some extent in case of LTU's in Central Excise. Hence, it is suggested that **Option for Centralised registration** be allowed for goods as well as Services to facilitate ease of doing business and save taxpayer from multiple registrations, assessments and other compliances.*



## 22. Registration in case of Transfer/ Merger of Business

In case of transfer/ merger of business, the assessee taking over the business will have to apply for fresh registration. However the option of mentioning the old GSTIN is not provided for so as to enable transfer of credits from the old entity.

### **Suggestion**

*It is suggested that there be provided an option in Form GST REG 01 to provide details of Source GSTIN & Date of transfer/amalgamation/merger etc. This would enable easy transfer of credits in case of merger/ amalgamations/ demergers etc.*

## 23. Migration of Persons registered under Earlier Laws

*It is suggested that in case of assessee liable to deduct/ collect TDS/TCS an option be given for migration of existing dealers as filing of another application for obtaining such registrations might cause unnecessary compliance procedures.*

## **Payment Rules**

### 24. Lack of clarity on impact in case of issue of revised invoice

Rule 1 sub-rule (1) of the draft GST rules provides that the electronic tax liability register under sub-section (7) of section 35 shall be maintained in FORM GST PMT-1 on the Common Portal and all amounts payable by a taxable person shall be debited to the said register.

### **Suggestion**

- *In the proposed rules, there is lack of clarity on impact in case of issue of revised invoice/ supplementary invoices/ debit notes / credit notes on the electronic ledgers.*
- *Rules shall provide clarification on how and when the impact of revised invoice and debit/credit notes shall be considered in electronic ledgers. For example if an assessee issues a supplementary invoice in a month subsequent to a month of issuing original invoice, then how and in which month such change in liability would be accounted in the electronic ledger.*

### 25. Electronic Tax Liability Register

Rule 1 sub-rule (2) sub-section (a) of the draft GST Payment Rules provides that the amount payable towards tax, interest, late fee or any amount payable as per the return filed by the said person.



**Suggestion**

*It is suggested that the word return should be clarified and instead of using the word “return”, the phrase “return filed under section 27(1)” be used as it will help to resolve confusion regarding whether given return is GSTR-3 or details of outward supply under Section 25.*

**26. Mechanism of debits and credits in electronic ledgers**

Rule 1 sub-rule (3) of the draft GST rules provides that the payment of every liability by a registered taxable person as per his return shall be made by debiting the electronic credit ledger maintained as per rule 2 and/or, as the case may be, the electronic cash ledger maintained as per rule 3 and the electronic tax liability register shall be credited accordingly.

**Suggestion**

*Mechanism of debits and credits in electronic ledgers/ register is not clear either in act or in rules. For example who and when shall make the debit/credit entries in respective electronic ledgers is not made clear. Further, department officers shall not be authorised to make entries in Electronic ledgers especially in case of issuing SCNs, audit notes etc as they may create liability irrationally.*

**27. Electronic Tax Liability Register for TDS/ TCS**

Rule 1 sub-rule 4 of draft GST payment Rules provide that the amount deducted under section 37, or the amount collected under section 43C, or the amount payable under sub-section (3) of section 7, or the amount payable under section 8, or any amount payable towards interest, penalty, fee or any other amount shall be paid by debiting the electronic cash ledger maintained as per rule 3 and the electronic tax liability register shall be credited accordingly.

**Issue**

Penalty imposed on supplier will get reflected in electronic liability ledger which may become subject matter of adjudication at an appropriate forum. However, the format of GST PMT-1 provides that in case of closing debit balance in electronic liability ledger, the return for that and subsequent period will be treated as invalid.

**Suggestion**

*It is suggested that penalty be reflected in Electronic liability register, but the restriction imposed for treating return invalid in cases where electronic liability ledger shows debit (payable) be modified to exclude the un-admitted and disputed demand like penalty, tax etc.*



## 28. Rectification of incorrect entries

Rule 2 sub-rule (1) of the draft GST payment rules provides that the electronic credit ledger shall be maintained in FORM GST PMT-2 for each registered taxable person on the Common Portal and every claim of input tax credit under the Act shall be credited to the said Ledger.

### *Suggestion*

- *There is no clarity on whether assessee could rectify the incorrect entries passed in the electronic ledgers. It is recommended that the assessee should have authorization to edit /rectify/ pass correct entries in the electronic ledgers and also to pass credit/debit entries in order to reverse the wrong debits/credits in a limited time.*
- *It is suggested that the phrase “The electronic credit ledger” should be substituted with the phrase “The electronic credit ledger under sub-section (2) of Section 35” since it would assist in co-relating the given provision with the powers conferred under the law.*

## 29. Explanation to Electronic Cash Ledger

**A.** Explanation to Rule 3 of the draft GST Payment Rules provides that for making payment of any amount indicated in the challan, the commission, if any, payable in respect of such payment shall be borne by the taxable person making such payment.

### *Suggestions*

- *It is suggested that the said explanation should be removed in order to provide relaxation to the taxable person from the burden of paying extra cost. Therefore, the given burden should be borne by government or some other way-out should be found (may be national level tie ups with banks) whereby payment to government would be free from such type of commissions.*
- B.** Rule 3 of the draft GST Payment Rules contemplates that the electronic cash ledger under sub-section (1) of section 35 shall be maintained in FORM GST PMT-3 for each registered taxable person on the Common Portal for crediting the amount deposited and debiting the payment therefrom towards tax, interest, penalty, fee or any other amount.

### *Suggestion*

*It is suggested that different columns for tax, interest, penalty, fee or any other amount should be combined into a single column since separate columns for each of the items like tax, interest, penalty, fee, other payments under the Electronic Cash Ledger would defeat the purpose of having a cash ledger, which is merely in the nature of money deposited with the Government for utilization in the prescribed manner for specific purposes. Also, Section 35(3) of the Model GST Law doesn't provide for any restriction on the manner or purpose for deposit of money into the Electronic Cash Ledger that means there is no restriction for cross-utilization of the balance under any column of the Electronic Cash Ledger. In other words, consolidating the payment columns of the Electronic Cash Ledger would facilitate the ease of doing business under the proposed GST regime.*



### **30. Authorization to collect taxes/interest/penalty/any other amounts in cash**

Rule 3 (3) of the said rule provides that the restriction for deposit up to ten thousand rupees per challan in case of an Over the Counter (OTC) payment shall not apply to deposit to be made by the proper officer or any other officer authorized for the amounts collected by way of cash or cheque, demand draft during any investigation or enforcement activity or any ad hoc deposit.

#### ***Suggestion***

*Authorization to collect taxes/interest/penalty/any other amounts in cash could lead to revenue leakage and could promote illegal practices. Hence Suggestion is that the collection in cash must strictly be prohibited unless permission from higher authorities in writing.*

### **31. Electronic Cash Ledger**

Rule (3) sub-rule (5) of the draft GST Payment Rules provides that where the payment is made by way of NEFT or RTGS from any bank, the mandate form shall be generated along with the challan and the same shall be submitted to the bank from where the payment is made.

#### ***Suggestion***

*It is suggested that a standardised format be prescribed for this purpose since nothing has been clarified in this regard in the given rules.*

### **32. Date of deposit**

Section 35 read with GST payment rules provides that the date of credit to the account of the appropriate Government in the authorized bank shall be deemed to be the date of deposit.

#### ***Suggestion***

*Section 35 of the proposed GST act shall be amended to provide date of initiating the payment transaction by assessee shall be deemed to be date of deposit. Rules could specify the same for each nature of transaction.*

### **33. Formats of Electronic Tax Liability Register, Credit Ledger & Cash Ledger**

GST PMT-1, PMT-2 and PMT-3 provides for one single column for providing details of SGST, CGST and IGST. If details are combined then this may create difficulties in identifying/ keeping track of credit utilization as credit of CGST is not available against SGST and vice versa.

#### ***Suggestion***

*It is suggested that separate columns be provided for entering details of SGST, CGST and IGST as it is provided in Form GST PMT-5.*



## **Invoice Rules**

### **34. Rule 1 : Tax Invoice – Consecutive Numbers**

1(b) sets out a consecutive serial number unique for a financial year. In the past the separate serial numbers were specifically allowed by way of a one time declaration. Trading, Manufacturing, services, exports. Now under GST there maybe need of internal invoices for supplies made within the entity (including stock transfer) and external invoice for others.

#### ***Suggestion***

*To enable ease of doing business, the normal method of working of registered assessee should be allowed to be continued. Provision to intimate separate sets of serial numbers with reason therefor within 30 days to be incorporated in the rules.*

### **35. Rule 1 Tax invoice**

Section 23 provides a registered person supplying, taxable goods/service shall issue, at the time of supply, a tax invoice showing the description, quantity and value of goods, the tax charged thereon and such other particulars as may be prescribed further rule 1 provides more detailed should provide in the tax invoice

#### ***Suggestion***

*The contents of the invoice were more it may come to 2 sheets. The contents should be reduced, the amount of information sought in the invoice is enormous, this would be a major hassle for the assessees in terms of time and cost*

### **36. Place of Delivery and Address of delivery**

Rule 1(e) provides the address of delivery and rule 1(n) provides place of delivery further section 2(2) defines “address of delivery” means the address of the recipient of goods and/or services indicated on the tax invoice issued by a taxable person for delivery of such goods and/or services.

#### ***Suggestion***

*Clarity on place of delivery and address of delivery should be provided as the both are given in Rule 1 only there may be chances that the assessee may not understand the same, the rule can provide explanation in this regard.*

### **37. Invoicing by a supplier providing both goods as well as services**

Rule 2 of the draft GST Invoice Rules provides that the invoice shall be prepared in triplicate, in case of supply of goods, in the following manner:–

- a) the original copy being marked as ORIGINAL FOR RECIPIENT;
- b) the duplicate copy being marked as DUPLICATE FOR TRANSPORTER; and
- c) the triplicate copy being marked as TRIPLICATE FOR SUPPLIER.



Provided that the duplicate copy is not required to be carried by the transporter if the supplier has obtained an Invoice Reference Number under sub-rule (4).

The invoice shall be prepared in duplicate, in case of supply of services, in the following manner:-

- a) the original copy being marked as ORIGINAL FOR RECEIPIENT; and
- b) the duplicate copy being marked as DUPLICATE FOR SUPPLIER.

#### **Suggestion**

- *It be suitably clarified that whether a supplier dealing in supply of goods as well as supply of services is required to maintain and issue two different series of invoices for goods & services, respectively.*
- *In case consecutive series is permitted for supplier of both goods & services, it be clarified as to how the number of copies i.e. Duplicates and Triplicates would be managed.*

### **38. Proviso to Rule 3 – Bill of Supply**

Proviso 2 & 3 of Rule 3 provide that:

Provided further 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:

Provided also that a consolidated bill of supply shall be prepared by the registered taxable person at the close of each day in respect of all such supplies where the bill of supply has not been issued in terms of the second proviso.

#### **Suggestion**

- *Whether two separate invoice to be raised when both exempted as well as taxable goods/service provided. The same is not dealt in the draft rules, the clarity should be provided so that the whether two invoice should be raised or in tax invoice only we can remove the exempted goods/services.*
- *It is suggested that these two provisos be deleted as it might get difficult to keep a track of such small amounts.*

### **39. Section 61 inspection of movement of goods**

Sub-section 1 Section 61 of draft model GST law provides that the person in charge of a conveyance carrying any consignment of goods of value exceeding fifty thousand above to carry with him such documents as may be prescribed in this behalf of by state or central government and if any officer requires for verification the said person shall be liable to produce the documents.

#### **Suggestion**

*As per the above section there should other documents along with invoice which should be carried and shown to the proper officer on intercepted. The government is moving towards GST where the state check*



*post will be removed whether the inspection by officer will be required and whether other documents along with invoice is required for movement of goods.*

#### **40. Documents for Export of Goods**

In GST regime the government should relax the documents part as the assessee is still to comply with the custom documents part.

##### ***Suggestion***

- *For Export of Goods they have provided the existing Central excise procedure of executing the Bond whether we should continue to raise ARE-1 separately send along with the export invoice.*
- *The documentation part could be reduced as same is uploaded in online return and ARE-1 formalities shall be getting away with.*

#### **41. Section 24 of Model GST law read to rule 4**

Rule 4 Supplementary tax invoice and credit or debit notes the section 24 provides only credit and debit notes however there is no discussion on supplementary invoice in section 23 or section 24 of model GST law.

##### ***Suggestion***

*There is no specific mention of Supplementary Invoice in the model GST law but in rules it was referred rule 23 (Tax invoice Section), the clarity should be provided in this regard.*

#### **42. Section 43A of Model GST law**

Section 43A provides for special procedure for removal of goods for certain purposes i.e. goods removed for job work with prior permission of commissioner.

##### ***Suggestion***

*The rules not specified the procedure/documents for Job work. the government should come up with the documents for sending the goods for job work without payment of taxes.*

#### **43. 2<sup>nd</sup> proviso to rule 2 and Rule 5(2)**

If supplier of service is a banking sector, the period within which the invoice is to be issued shall be forty-five days from the date of supply of service. shall issue a tax invoice or any other document in lieu thereof, by whatever name called, whether or not serially numbered, and whether or not containing the address of the recipient of taxable service but containing other information as prescribed under rule 1.



**Suggestion**

*The contents should be simple and it should be practically followed by banking sector, as banking transaction is different compare to other business transactions.*

**44. Rule 5(3) read with rule 1**

The supplier of taxable service is a goods transport agency supplying services in relation to transportation of goods by road in a goods carriage, the said supplier shall issue a tax invoice or any other document in lieu thereof, by whatever name called, containing the gross weight of the consignment, name of the consignor and the consignee, registration number of goods carriage in which the goods are transported, details of goods transported, details of place of origin and destination, GSTIN of the person liable for paying tax whether as consignor, consignee or goods transport agency, and also contains other information as prescribed under rule 1

**Suggestion**

*Goods transport agency there is specific contents provided in rule 5(3) which is deviated from the actual rule. The assessee will be not identify if the GTA also raise the tax invoice for providing service therefore, the government should come up simple format for GTA.*

**45. Rule 5: Tax Invoice in special cases**

Rule 5(3) of draft GST Invoice Rules provides that a Goods Transport Agency (GTA) in relation to transportation of goods by road in a goods carriage, the said supplier shall issue a tax invoice or any other document in lieu thereof, by whatever name called, containing the gross weight of the consignment, name of the consignor and the consignee, registration number of goods carriage in which the goods are transported, details of goods transported, details of place of origin and destination, GSTIN of the person liable for paying tax whether as consignor, consignee or goods transport agency, and also contains other information as prescribed under rule 1.

**Suggestion**

*It is suggested that the requirement of providing HS Code be done away with as ascertaining or verifying correct HS Code of goods to be transported by GTA is a tough task and will unnecessarily put an increased the burden on GTA.*

**46. Rule 5: Tax Invoice in special cases**

Rule 5(4) of the draft GST Invoice rules provides that where the supplier of taxable service is supplying passenger transportation service, a tax invoice shall include ticket in any form, by whatever name called, and whether or not containing the address of the recipient of service but containing other information as prescribed under rule 1.



**Suggestion**

*It is suggested that the said provisions may also apply to admission to events or entertainment events like cinema theatre etc.*

**47. Issues in Rule 5**

Rule 5 needs to be changed

**Suggestion**

*Where the supplier is supplying taxable services notified under this rule by the Union Government, it would be sufficient if the details specified in the notification are provided in the taxable invoice by whatever name it is called and for such notified services, the provisions of Rules 1 and 2 of these Rules shall not apply.*

*This is required because in case of tickets issued to bus passengers, railway passengers, receipts issued by postal department for parcels, speed post etc it would be impossible to provide all the details specified in Rule 1. It would be sufficient if the receipt indicates the amount of CGST AND CGST payable. Since there may be several other cases where relaxation from the provisions of Rule 1 is required, it would be better to give the powers to the government to issue the notification.*

**48. General**

*There are procedure/documents were set out for movement of import of goods from port/airport is not coming out anywhere in the rules. The same should be incorporated in the rules.*

**49. Drafts format under Goods and Service Tax Invoice Rules**

Form GST INV -1 (application for electronic reference number of an invoice)

**Issues**

- a) As per format of GST INV-1, it appears that for each and every invoice supplier would be required to get an ERN first and post which he would be able to issue a Tax Invoice. The pre-generation of ERN in each and every case will consume substantial cost and time of every supplier in cases involving volumes.
- b) For generation of ERN, supplier will have to depend upon external factors such as internet accessibility, availability of ERN utility on GST portal etc.
- c) Post generation of ERN, if some changes are required to be made in some of the details or ERN needs to be cancelled, then mechanism/procedure for the same needs to be provided.



### **Suggestions**

- It is suggested that requirement of generation of ERN be completely dispensed with since every supplier will be bound to file GSTR-1 (Details of Outward Supply) wherein invoice-wise details are required to be uploaded for matching.
- Further, instead of making ERN mandatory for each and every invoice, it be made applicable only for invoices where amount exceeds certain monetary limit say, Rs. 10 lakhs.

### **50. Tax Invoice issued on advance – No invoice then for movement of goods**

The assessee would issue an invoice on receipt of advance for goods, then when goods are supplied in full or in part, the issue of another invoice would result in duplication.

#### **Suggestion:**

For advances a special invoice called advance invoice maybe generated for only the purpose of credit. This would be adjustable against the invoices for the supply.

### **51. Amendments/ Clarifications in Invoice Format GST-INV-01**

Following amendments be made in GST-INV-01:

- There be made separate invoice format for CGST/SGST, IGST, Composition dealer, Tax under Reverse Charge
- It be specified if transaction is for supply of goods or services and accordingly description be sought in the invoice.
- Instead of requiring only HSN Code it be HSN Code/ Accounting code
- Provision to show Cost of freight/Insurance/Packing and forwarding subsequent to total if such expenses are incurred post to supply of goods and services.
- Place of Supply and Place of delivery be separately specified.

### **52. Rule 3 Bill of sale**

2nd proviso to section 23 provides that the registered taxable person supplying non-taxable goods and/or services or opted for composition scheme shall issue bill of supply

#### **Suggestion**

Whether two separate invoice to be raised when both exempted as well as taxable goods/service provided. The same is not dealt in the draft rules, the clarity should be provided so that the whether two invoice should be raised or in tax invoice only we can remove the exempted goods/services.



## **Refund Rules**

### **53. Issue of export manifest and Export report**

Proviso to Rule 1 of Refund rules, in case of export of goods, application for refund shall be filed only after the export manifest or an export report, as the case may be, in respect of such goods is delivered under section 41 of the Customs Act 1962.

*The application under sub-rule (1) shall be accompanied by documentary evidences to establish that a refund is due to the applicant, a statement containing the number and date of shipping bills or bills of export and the number and date of relevant export invoices, in a case where the refund is on account of export of goods.*

#### ***Suggestion***

*Therefore, it is suggested provide link between ICEGATE of customs administration and the proposed GSTN of GST administration may be established so that online verification of the export can be carried out. This would provide auto population of details of export manifest from customs website with respect to invoice raised under GST and assist in correlating transactions.*

### **54. Refund by SEZ Units, Developers etc.**

Proviso to Rule 1 sub-rule 1 of draft GST refund rules provide that in respect of supplies made to an SEZ unit or a developer, or supplies regarded as deemed exports, the application shall be filed by the said unit or the developer or the recipient of deemed export supplies. This provision leads to loss of ab initio exemption by SEZ developers and units in SEZ.

#### ***Suggestion***

*It is suggested that supplies to SEZ developer and units in SEZ be treated as 'zero rated' supplies as the GST chain will remain unbroken and cost of purchase by such units will be without the incidence of domestic taxes and levies. In case such units effect taxable supplies, they will restart the GST chain.*

### **55. Documents for claim of refund**

Rule 1(2) of draft GST refund rules provide list of documentary evidences to be accompanied with refund application under GST.

#### ***Suggestion***

*It is suggested that a mandatory list be provided which contains documents required in each case, namely:*

- a) In case of export of goods – statement in format enclosed*
- b) In case of export of services – statement in format enclosed*
- c) In any other case – reference number of order granting refund or finalization of provisional assessment and GST-RFD-1 for 38(2) refunds*
- d) All statements to be certified by CA / CWA as regards:*



- *Unjust enrichment (also self-certified by applicant for refund)*
- *Actual payment received in foreign exchange with reference of FIRC*
- *Accounting of export sales in the books of accounts of applicant for refund*
- *Fact regarding debit entry in ITC ledger*

e) *Multiple documents are listed and there is overlap of facts in each of these documents. This creates confusion about purpose of any specific document*

#### **56. Issue in incident of tax and interest passed to other party –**

‘Explanation 2 to Rule 1 sub-rule (2) of draft GST Refund Rules, provide that where the amount of tax has been recovered from the recipient, it shall be deemed that the incidence of tax has been passed on to the ultimate consumer.’

#### **Suggestion**

*This can be interpreted that if supplier has separately collected taxes on the face of invoice from customer, then it would be treated as passing of incidence. However, if in case, where the tax amount was included as part of cost of Goods sold, then there might be an issue. Therefore, it is suggested to provide methodology for the same. Further how does assessee prove incidence of interest is not passed maybe clarified.*

#### **57. Refund of tax, interest, penalty, fees or any other amount for export of goods/ services**

Rule 1 sub-rule 4 of draft GST Refund rules provide that where any taxable goods or services are exported without payment of tax, under bond or letter of undertaking under section \_\_\_ of the IGST Act, 201\_, refund of input tax credit shall be granted as per the following formula:

$$\text{Refund Amount} = \frac{(\text{Export turnover of goods} + \text{Export turnover of services}) \times \text{Net ITC}}{\text{Adjusted Total Turnover}}$$

Where,-

- (A) "Refund amount" means the maximum refund that is admissible;
- (B) "Net ITC" means input tax credit availed on inputs and input services during the relevant period;
- (C) "Export turnover of goods" means the value of goods exported during the relevant period without payment of tax under bond or letter of undertaking;
- (D) "Export turnover of services" means the value of services exported without payment of tax under bond or letter of undertaking, calculated in the following manner, namely:-
- (E) "Adjusted Total turnover" means the value of turnover in a State, as defined under subsection (104) of section 2, excluding the value of exempt supplies, during the relevant period;
- (F) "Relevant period" means the period for which the claim has been filed.

#### **Suggestion**

- *It is suggested that NET ITC to include credit of capital goods too.*
- *Further it be clarified that NET ITC means CGST and IGST availed during the relevant period because as per rules only IGST and CGST can be refunded and there may be*



*separate rule for refund of SGST under SGST rules, the formulae should clearly provide the meaning of Net ITC.*

- *Alternatively, term Net ITC be replaced with ITC as ITC for the relevant period would result in opening balance of ITC not being available as credit. Opening balance credit cannot be left out from refund claims. Credit once allowed cannot have any expiry date. GST does not require one-to-one correlation.*
- *Further, Export turnover of goods not to include “only export under bond”. Section 2(43) does not include such condition to classify the transaction as exports. If refund will be allowed only for goods exported under bond, every person has to obtain the bond and export. It should be made optional. Since taking goods outside India itself is export, why for the refund, it should be under bond?*
- *It be clarified that “export turnover of goods” means export turnover of goods as per section 2(43) on which IGST is not paid.*

## 58. Deficiency & Acknowledgement of Returns

Communication of acknowledgement and deficiency under provisions of Rule 1(7) to (9) of draft GST Refund rules are potentially litigious.

### **Suggestion**

*It is suggested to provide that refund filed will not be barred by limitation pending disposal of all deficiencies communicated as such provision would repose confidence of trade and industry in process of refund.*

## 59. Provisional Refunds

Rule 2(1)(c) of the draft GST Refund Rules provide that no proceeding of any appeal, review or revision is pending on any of the issues which form the basis of the refund and if pending, the same has not been stayed by the appropriate authority or court.

### **Suggestion**

*It is suggested that the aforesaid clause be deleted as there might be past refund claims where appeals are pending which may be finally disposed of after many more years and this may hurt industry due to potential misuse.*

## 60. Order Sanctioning Refund

Proviso to Rule 3(1) of the draft GST Refund Rules provide that in cases where the amount of refund is completely adjusted against any outstanding demand under the Act or under any earlier law, an order giving details of the adjustment may be issued in FORM GST RFD-6.

### **Suggestion**

*It is suggested that this proviso be deleted as such stoppage of refund may render refund process superfluous and add one more layer of verification by the department. Department is welcome to issue garnishee orders in case of such willful defaulters.*



## 61. Interest on Delayed Refunds

*For Rule 5 of the draft GST Refund Rules it be clarified that interest will start from date of GST RFD 2 / 3. The rigour and automatic nature of the interest payable by supplier or recipient be extended to Government also.*

## 62. Grant of refund subject to following conditions

The provisional refund under sub-section (4A) of section 38 shall be granted subject to the following conditions

- a. The person claiming refund has, during any period of five years immediately preceding the tax period to which the claim for refund relates, not been prosecuted for any offence under the Act or under an earlier law where the amount of tax evaded exceeds two hundred and fifty lakh rupees;
- b. The GST compliance rating of the applicant is not less than five on a scale of ten;
- c. No proceeding of any appeal, review or revision is pending on any of the issues which form the basis of the refund and if pending, the same has not been stayed by the appropriate authority or court

### **Suggestion**

*Above clause (c) may not be the right as there might be cases which were running from past period. Therefore, it is suggested to consider each application as separate.*

## 63. Procedure for refund of tax paid on bad debts

No provisions are made for refund of tax paid on bad debts

### **Suggestion**

*Procedure for refund or adjustment of tax paid, shall be clarified in following situation*

- a. *Where assessee has issued invoice & received payment for a service to be provided which is not so provided either wholly or partially or renegotiated due to deficient provision of supply of service.*
- b. *Where assessee has made supply of service or goods, raised invoice & made payment of GST as per time of supply. However, subsequently value of invoice was not received from customer and it became bad debt.*

## 64. Issue in deemed export refund

In respect of supplies made to an SEZ unit or a developer, or supplies regarded as deemed exports, the application shall be filed by the said unit or the developer or the recipient of deemed export supplies

### **Suggestion**

*It is recommended that the deemed export (deemed export for situations listed in Chapter 8 of the Foreign Trade Policy. Supplier of domestically produced duty paid goods when supplied to EOUs / SEZs / Projects*



*under International Competitive Bidding (ICB) / Mega Power Plants / World Bank Funded Projects) need to be treated on equal footing as export and the similar provision as detailed above for actual exports of goods or services would be applicable.*

#### **65. Grounds for refund of 80% provisionally**

Section 38(4A) provides that provision refund 80% of the total amount so claimed, '**excluding the amount of input tax credit provisionally accepted**', on a provisional basis. It is required give explanation for what is provisionally accepted credit. This would also leads to hardship to follow and reconcile and it would not serve the purpose of seamless credit under GST.

##### ***Suggestion***

*It is suggested to provide explanation for what is provisionally accepted credit. Otherwsie this lack of clarity would leads to unnecessary hardship to follow and reconcile and it would not serve the purpose of seamless credit under GST. It is suggested to provide 80% refund on total refund claim without exclusion clause.*

#### **66. Documents to be submitted with refund application**

A statement containing the number and date of invoices and the relevant Bank Realization Certificates or Foreign Inward Remittance Certificates, as the case may be, in a case where the refund is on account of export of services

##### ***Suggestions***

*It is recommended that submission of BRC may not be insisted upon at the time of filing of refund application and post facto verification can be carried out by the tax authorities through e-BRC as recommended by Refund business process.*

#### **67. Comparison to Refund process Vs. Draft Rules, No procedure prescribed on following**

##### ***Suggestion***

*It is suggested to prescribe procedure for the same to avoid confusion.*

- a. Refund on account of year end or volume based incentives provided by the supplier through credit notes:*
- b. Tax refund for international tourists*
- c. Tax credit on inputs used for manufacturing /generation /production /creation of tax free supplies or non-GST supplies*
- d. Refund for tax payment on purchase by UN bodies, supplies to CSD canteens, para military forces canteens, etc.*
- e. Excess payment of tax due to mistake or inadvertence.*



#### 68. Amendments required in Annexure 1 & 2 of GST RFD-1

*Following amendments be made to Annexure 1 of GST RFD -01*

- *A column be provided for specifying wrong payment of taxes to other heads like SGST/CGST in lieu of IGST.*
- *In details of invoice the term “value” be replaced with “total/ taxable value” and words “description of” be added in the column with heading “Goods/ Services”.*

*Following amendments be made to Annexure 2 of GST RFD -01*

- *In the certificate, for the words “tax and interest” the words “tax, interest & penalty” be substituted.*
- *Under the signature of the Chartered Accountant/ Cost Accountant, the next field be made as Membership No. / Firm No. instead of Name.*

#### 69. Amendment in Refund Sanction/ Rejection Order – Form-GST-RFD-05

- *Point v. – Separate Column for demand under earlier law be provided for.*

### **Return Rules**

#### 70. Form GSTR-4: Composition taxpayer Return

Para 10 column no. 7 & 8 of the Quarterly return for compounding taxable person i.e. GSTR-4 of the draft GST Return Rules provides for the TDS-IGST rate as well as amount.

##### ***Suggestion***

*It is suggested that the **column no. 7 & 8 be removed from the given para 10** since the composition taxpayer is restricted from interstate supplies, therefore TDS on IGST couldn't arise. Also filing this column would automatically invalidate the taxpayer's status being composition taxpayer.*

#### 71. Form GSTR-1: Details of outward Supplies

Form GSTR-1 of the draft GST Return Rules provides for the various details required to be given by the taxpayer in respect of outward supply,

##### ***Suggestion***

*It is suggested that some **other fields are required to be added** in the given form as listed below:*

- a. There could be para 9A for reporting any change in Nil Rated/Exempted supply of earlier tax period.*
- b. There should be some para to report outward supply subject to reverse charge*



- c. *Outward supply which is Branch transfer/ Agent transfer if separately flagged will be easy to work while calculation annual turnover, present return has no row/column for these transactions.*
- d. *Deemed Outward supply which may be free of Charge/Self-consumed/Destruction or Loss of goods/service if any, should be reported.*
- e. *Along with the invoices issued during the tax period, a separate row for Debit/Credit note should also be inserted to know about numbers of Debit/Credit notes issued during the tax period since it will also be helpful in audit.*

**Disclaimer: The suggestions we have provided have been contributed by CAs in IDT practice across India. All suggestions could not be vetted fully to our satisfaction, but as the time is a constraint, we are submitting after a cursory verification.**



## **V: Initiatives taken by the ICAI in respect of GST**

- 1. Background Material on Model GST Law:** The Committee has developed “*Background Material on Model GST Law*”. The background material is very comprehensive and contains a clause by clause analysis of the Model GST Law along with comparisons to related provisions of existing law, FAQ’s, MCQ’s, Flowcharts and Illustrations etc. to make the reading and understanding easier. It is an all-inclusive material, which would provide an in-depth analysis to the proposed GST regime.
- 2. Suggestions on Model GST Law:** The Institute has submitted two sets of its suggestions on Model GST Law to the Government.
- 3. Presentation before the Empowered Committee of State Finance Minister:** In response to the invitation received, the Institute presented its suggestions on Transitional Issues and IGST before the Empowered Committee of State Finance Minister.
- 4. Presentation on GST before the CBEC:** Based on the invitation received from CBEC, the Institute presented its suggestions on policy issues of GST, including making Matching Principal workable.
- 5. Identification and Training of new speakers on GST:** 400 new speakers have been identified and trained in Model GST Law making the expert pool of over 500 faculties across India.
- 6. Workshops, Seminars and Conferences:** More than 100 workshops, seminars and conferences on GST have been organised across the country.
- 7. Suggestions on draft Business Processes of GST on Registration, Payment, Refund and Return:** The ICAI submitted suggestions on draft Business Processes of GST issued by the Government on registration, payment, refund and return to the Ministry of Finance in December, 2015. Many of the suggestions have been incorporated in the Model GST Law released by the Government in June, 2016.
- 8. A Study Report to enable smooth Transition from Pre-GST to Post-GST Regime:** With a view to facilitate the Government in smooth transition from Pre-GST to Post-GST Regime, the ICAI submitted a Study Report to Government, which envisages probable transitional issues and provides a solution thereof along-with draft Rules. Many of the suggestions have been incorporated in the Model GST Law released by the Government in June, 2016.
- 9. A Study Report on Impact of GST on Jammu & Kashmir Taxation System:** With a view to facilitate the Government of Jammu & Kashmir in understanding the impact of GST on Jammu & Kashmir Taxation System, the ICAI submitted a Study Report to the Government of Jammu & Kashmir. The report entails the impact of GST implementation on Jammu & Kashmir economy, provides a comparative report on revenues under present and GST regime, analyses impact of GST for J&K based Traders, Industries, Consumers etc.



- 10. Suggestions on GST Constitutional Amendment Bill:** ICAI submitted its suggestions in on GST Constitutional Amendment Bill, 2014. Many of the suggestions like defining the term services, inclusion of petroleum product in GST, subsuming of entry tax into GST etc. have been incorporated in the Bill introduced by the Government in the Parliament.
- 11. Help extended to the GSTN:** Based on the request from GSTN, ICAI would be sharing the details of its members for verification purpose.
- 12. In addition to the above, ICAI is developing the following:**
  - ✓ Video recording on almost entire topics of Model GST Law
  - ✓ Handbook for Trading community;
  - ✓ Handbook for Manufacturing community;
  - ✓ Handbook for service providers;
  - ✓ FAQ on Model GST Law