

**BUSINESS PROCESS TO BE FOLLOWED IN GST
REGIME (REGISTRATION AND RELATED
PROVISIONS)**

By
Pradeep K Mittal*

The Government of India has come out with the proposed law relating to the levy and collection of Goods and Service Tax (hereinafter called GST) which is expected to be implemented in 2017. The Lok Sabha and Rajya Sabha have already approved and now State Assemblies are in the process of approving the Constitutional Amendment Bill. The proposed GST law would replace all the Indirect Taxes levied on Goods and Services by the Centre and States. In order to be with the GST regime and for its smooth working, the Government of India has released the draft business report inviting suggestions from all the stake holders. The Empowered Committee of Finance Ministers has hearing on 30.08.2016 during which, the Hon'ble Committee has heard all the Institutes including the Institute of Company Secretaries of India. The model GST Law- Goods and Service Tax Act 2016-has also been released by the Government.

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- Past Central Council Member, The Institute of Company Secretaries of India.
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2: Every person, who is liable to be registered under Schedule III, shall apply for registration within a period of thirty days in every state in which he is liable to be registered. If a person is registered under the existing law, such person need not apply afresh.

3: If a person/assessee after the commencement or start up of his business activities, apply for fresh registration at the time of expiry of thirty days and the Department takes time to grant in granting such registration, if such person had either received supply of goods or services and wishes to take Input Tax Credit (hereinafter called ITC), the Department may disallow such ITC on the grounds that such person/assessee has not obtained registration. The Larger Bench of the Tribunal in the case of Balmer & Lawrie & Co Ltd Vs. CCE MANU/CE/00230/2000 has held that in case Dealer is not registered, then Cenvat Credit shall not be permissible on the invoices so issued by such unregistered dealer. The above judgment has been followed in the case of CCE Vs. Precision Pipes Industries Vs. CCE MANU/CK/7001/2006. The dealer will not be able to avail ITC and at the same time, if the invoices have been issued (during the time he remained unregistered), the buyer of such dealer shall also not be entitled to avail ITC. In addition to the dis-allowance of ITC, such person shall also be saddled with penalty for non-obtaining registration.

**THE FOLLOWING CATEGORIES OF PERSONS ARE
COMPULSAORILY REQUIRED TO BE REGISTERED
AS PER SCHEDULE-III TO GST ACT, 2016**

4: Notwithstanding the provisions of paragraph 1 and 2 of Schedule-III attached to the GST Act, 2016, the following categories of persons are required to be compulsorily

registered irrespective of their turn over and minimum conditions laid down for seeking registration

- i) Persons making any inter-state taxable supply, irrespective of the threshold specified under paragraph 1;
- ii) Casual taxable persons, irrespective of the threshold specified under paragraph 1;
- iii) Persons who are required to pay tax under reverse charge, irrespective of the threshold specified under paragraph 1;
- iv) Non-resident taxable persons, irrespective of the threshold specified under paragraph 1; NRI could be granted registration even without PAN No.
- v) Persons who are required to deduct tax under section 37;
- vi) Persons who supply goods and/or services on behalf of other registered taxable persons whether as an agent or otherwise, irrespective of the threshold specified under paragraph 1;
- vii) Input service distributor;
- viii) Persons who supply goods and/or services, other than branded services, through electronic commerce operator, irrespective of the threshold specified in paragraph 1;
- ix) Every electronic commerce operator, irrespective of the threshold specified in paragraph 1;
- x) An aggregator who supplies services under his brand name or his trade name, irrespective of the threshold specified in paragraph 1; and
- xi) Such other person or class or persons as may be notified by the Central Government or a State Government on the recommendation of the Council.

4.1: Any specialized agencies of UNO or any Multilateral Financial Institutions and Organization notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate, or Embassy of Foreign Countries and any other person or class of persons as may be notified by the Board/Commissioner, shall obtain a Unique Identity Number, in the manner prescribed, for the purpose(s) notified, including refund of taxes on the notified supplies of goods/services received by them. In other words, for the purpose of seeking refund of taxes paid, the above said class of tax payer shall have to obtain Unique Identity Number.

REGISTRATION:

5: The proposed GST law intends to grant registration through automatic route, with least interaction with the tax authorities. The process also provides for grant of automatic registration in the event of no query or question from tax authorities within the stipulated time. The following are the proposed provisions relating to registration.

EXISTING REGISTERED UNITS UNDER CENTRAL EXCISE, SERVICE TAX, VAT LAWS AND OTHER RELATED LAWS.

6: It is proposed that the existing registered units under VAT, Central Excise and Service Tax laws would be automatically registered and the concerned unit would be informed by E-mail/SMS. However, the existing units would be required to provide the additional information whichever is required upon registration. The Registration is On-line without any manual inter-action or inter-face with any individual thus avoiding undesirable practices. Each person is required to obtain separate registration in each of the State, online and the registration is valid for Central Goods

&Service Tax (CGST), Inter-State Goods & Service Tax (IGST), State Goods & Service Tax (SGST) and Additional Tax.

REGISTRATION NUMBER

7: The Registration number would be of 15 digits – State wise PAN based digits CSTIN and the structure is as under:-

(1st and 2nd digit – State Code as per Indian Census 2011 – 3rd to 12th digits – PAN – 13th digit – alpha numeric 1 to 9 and then A to Z – 14th digit – blank for future use and 15th digit – check digit.

GRANTING OF REGISTRATION

8: The registration would be grantable to a person and the person is defined under Section 2(74) of the GST Act. According to Section 2(74), a person includes (i) an individual, (ii) Hindu Undivided Family (HUF), (iii) Company (iv) a firm, (v) LLP (vi) an association of persons (AOP) or a body of individuals, whether incorporated or not, in India or outside India (vii) any corporation established by or under any Central, State or Provincial Act or a Government Company as defined in Section 2(45) of the Companies Act, 2013 (viii) any body corporate incorporated by or under the laws of a country outside India (ix) a cooperative society registered under any law relating to cooperative societies (x) local authority (xi) Government (xii) society as defined under the Societies Registration Act (xiii) a Trust and (xiv) every artificial juridical person not falling within any of the preceding sub-clauses. In substance, any or all the above are entitled to obtain Registration as per procedure laid down.

PROCEDURE FOR REGISTRATION:

9: The following details are required to fill in the application form for registration.

1.	Name of the applicant
2.	Trade name
3.	Address of principal place of business
4.	Address for correspondence (E mail, Mobile, landline etc.)
5.	Constitution of business
6.	Permanent Account No (PAN)
7.	State code
8.	Option for composition
9.	Date of commencement of business
10.	Date of which liability to tax pay arises
11.	Reason for liability to obtain registration (Drop down would be provided)
12.	Details of existing registration if any
13.	Nature of business
14.	Details of bank account
15.	Details of goods / commodities supplied by the business
16.	Details of services supplied by the business
17.	Details of additional place of business
18.	Details of proprietor / all partners / Karta / managing director and whole time director / member of managing committee of associations / board of trustees – name, PAN, passport no. UID no, contact details and residential address
19.	Details of authorized signatories, name, PAN, passport no. UID no, contact details and residential address

20.	Details of authorized representative (TRP / CA / Advocate etc.,)
21.	State specific information
22.	Photograph

Time limit for making application for registration

10: The application for registration is required to be made within 30 days of the liability. However, registration would be granted from the date of application which means that for any transaction prior to the date of application, tax would be payable but at the same time ITC credit might not be allowed. There is also a provision in MVAT in condoning the delay and allowing such credit upon making the application for condoning the delay and seeking grant of credit. The recommendation has been sent by ICSI for making a provision for seeking condonation of delay in registration so that genuine ITC credit is denied by the Adjudicating Authorities.

Online application on GST portal

11: The application for registration could always be made manually and at the same time, on line application on GST portal could be done and the application is required to be signed by using the digital signature. If one does not have the digital signature, there is also a provision to submit the signed copies duly scanned through online.

Processing of application for registration

12: In case the application has been submitted, the same would be processed within 3 working days by both CGST and SCGST Authorities and such authorities may raise any queries within a period of 7 days. If no queries have been raised by the authorities, then the registration is deemed to have been granted. If queries are raised by the authorities, those queries are required to be replied within 7 days' time. Once the registration is granted with queries or no queries, the authorities would inform the GSTN number by sending E-mail or SMS.

Amendment of Registration:

13: Section 20 of the Act provides for amendment of registration. Whenever there is any change in information so submitted or otherwise any new information is sought to be furnished for any reason, the assessee may apply for amendment. In case, the authorities wishes to reject the application for amendment, they must issue a Show Cause Notice giving an opportunity to the assessee to file a reply and thereafter an opportunity of personal hearing has to be granted.

Cancellation of registration

14: Section 21 of Act provides for procedure to be followed for cancellation of registration. Before cancelling the registration, the department is duty bound to issue Show

Cause Notice giving the assessee an opportunity of filing its reply to the SCN. In **Sahara India (Firm) v. Commissioner of Income Tax, 2008 (226) E.L.T. 22(SC)**, the Supreme Court observed:-

“Unless statutory provisions specifically or by necessary implications excludes the application of principles of natural justice, hearing has to be provided to the assessee before passing the order. Principles of natural justice evolved to check to check arbitrary exercise of power by the functionaries of the state.”

14.1: After giving an opportunity of personal hearing to the assessee, if the Department is not satisfied with the explanation submitted, the registration could be cancelled by the authorities. Any order passed by the authorities is subject to appeal before the Appellate Tribunal. However, there is no specific provision for an appeal before Customs Excise and Service Appellate Tribunal. However, the CESTAT has exercised jurisdiction and entertained an appeal against any order passed by the Commissioner affecting adversely the assessee. However, the order could also be challenged by way of a Writ Petition under Article 226 of the Constitution of India before the High Court. At the same time, law also calls upon any authority exercising quasi-judicial powers to give reasoned orders as has been held by the Division Bench of the Gujarat High Court in the case of *Shangrila Latex Industries Ltd Vs. Union of India* MANU/GJ/1671/2016.

Login ID / password

15: The Departmental Authorities would also provide the login id and the temporary password upon GST registration to the authorized signatory. The temporary password could then be changed /modified by the authorized signatory.

Requirement of displaying the registration certificate

16: The law requires display of the GST registration certificate at a prominent place at the principal place of business of the taxpayer.

Rejection of registration

17: The rejection of registration application by either by the Central or by the State shall be deemed to be rejection by the other authority (ies) as well.

Definition of Gross Turnover

18: Presently, there is no definition of ‘gross turnover’.It is, however, expected that the definition of gross turnover would be provided in the forthcoming GST Act and it might include the following:-

Sr. No	Details
1.	Intra State branch transfer
2.	Transfers between multiple business verticals registered separately within the state
3.	Intra-State captive consumption
4.	Intra-State job work
5.	Temporary renewal – goods sent for repairs, calibrations, testing etc.

6.	Goods supplied on returnable basis
7.	Free supply of goods and services

Provision relating to Rating of the Tax Payer and black listing

Perhaps, for the first time in the history of Indian tax laws, rating of taxpayer and black listing is being provided. Risk profiling would be done by the tax authorities having regard to the following aspects

Rating of the Tax Payer –

- Promptness in e-return filing
- Discrepancies detected where the dealer had to make corrections
- Making prompt payment in lieu of reversed ITC

Black listing

The tax payer will be black listed and such trigger would be forwarded to all customers to whom supplies are made by such person and black listing would be done on the following eventualities-

- continuous default for 3 months in paying ITC that has been reversed

- continuous default for 3 months in paying or any 3 months period over a period of 12 months in uploading sales details leading to reversal of ITC for others

- defaulters of even a single event would be flagged and put in public domain as being a potential black listed dealer so as to alert the buyers
- continuous short reporting of sales beyond a prescribed limit of 5% of total sales for period of 6 months.

Effective date of black listing and its impact

The effective date of black listing would be prospective only from month next to blacklisting and impact of the black listing would be as under:-

- black listed GSTINs cannot upload-in purchase details
- corresponding denial of ITC to be supported by suitable provisions in the law
- ITC reversal in the hands of the buyer should take place for disowning of any tax invoice with date prior to effect of blacklisting of the seller

Once blacklisting is lifted, buyers could avail unclaimed ITC subject to the dealer uploading sales details along with tax and interest.

Returns and payment of business process report

The Model law has prescribed various forms of return / payment ledger as reflected in the following Table:

Business Process Report - Returns and Payment

Sr No	Return ledger	Return	Cut off date	Remarks / comments
1.	GSTR-1	Outward supplies made by taxpayer (other than compounding taxpayer & ISD)	10th of the next month	If any supplies are under reported to the extent of 5% then such tax payer will be exposed for black listing. Any amendment thereto not under GSTR-1 but under separate columns provided in GSTR-3
2.	GSTR-2	Inward supplies received by a tax payer (other than a compounding tax payer & ISD)	15th of the next month	It will be auto populated based on the suppliers GSTR-1. However, additional entries also can be uploaded. Any mismatch to be reconciled with 2 days i.e. by 17th or alternatively within 2 months; if not reconciled within 2 months then ITC will have be reversed along with interest and such amount will be credited and interest will be

				refunded after matching the transactions after 2 months but prior to annual return i.e. before filing GSTR-8
3.	GSTR-3	Monthly return (other than a compounding tax payer & ISD)	20th of the next month	TR-3 will be auto populated from details of GSTR-1 and GSTR-2
4.	GSTR-4	Quarterly return for compounding taxpayer	18th of the next month	This return needs to be filed by compounding tax payer till the time such dealer opts for normal tax payer or crosses the specified limit
5.	GSTR-5	Periodic return by nonresident foreign taxpayer	7 days after the date of expiry of registration; if the period is for more than one month, monthly returns	Registration will be granted for specified period and after such specified period is over the return has to be filed within 7 days of such period. However if such specified period is more than

			would be filed and thereafter return for the remaining period would be filed within a period of 7 days	1 month, the return has to be filed on or before 20th of the subsequent month
6.	GSTR-6	Return for input service distributor (ISD)	15th of the next month	This return will be in line with the present ISD return. However GST invoice will be issued for transferring the ITC
7.	GSTR-7	Return for tax deducted at source	10th of the next month	Tax will have to be deducted on works contract and supplies to specified agencies including government agencies
8.	GSTR-8	Annual return	By 31st December of next FY	Annual; also auto populated where the summary of GSTR-3 of all the months will be auto populated and

				necessary corrections will be made after reconciling books of account. This report will be certified by CA/CMA
9.	Ledger-1	ITC ledger of tax payer	Continuous	This register will be maintained by the GSTN on real time basis
10.	Ledger-2	Cash ledger of tax payer	Continuous	This register will be maintained by the GSTN on real time basis
11.	Ledger-3	Tax ledger for tax payer	Continuous	This register will be maintained by the GSTN on real time basis

CONCLUSION

When goods and services tax is introduced and fully implemented, apart from full allowance of credit, there will be many more advantages and benefits such as reduction in prices, increase in Government revenue, less compliance and procedural cost, move towards a unified GST in line with international practice and much more. Let us look forward for the earlier implementation and in the meantime the industry and trade should be ready for a take-off by understanding the proposed laws and regulations.

CATEGORIES OF REGISTRATION

9: The registration could be granted to any of the following categories:

Compounding Registration

10: The person whose turnover is below certain specified limit, but above the threshold limit could opt for compounding registration. Once such specified limit is crossed, such compounding registration dealer would be automatically considered as normal tax payer. Though the limit has not been specified as on date in the business process report, it is expected to be up to Rs. 75 Lacs.

Casual Dealer Registration

If any person who does not have registration in a particular State but likes to obtain temporary registration for limited period, the registration would be granted till the time, it is required and it would be cancelled after seven days of expiry of such validity period. This particular facility would be beneficial to the participants in any exhibition, event etc

Unique Identification Number (ID) for specified organizations

Unique identification number for specified organizations like UN, Government, Public Sector Undertakings (PSUs) are likely to be granted where there would be no incidence of tax or when there are B2B transactions between any dealer and Government authorities.

Input service distribution (for services)

In cases where any person has got multiple units but is availing services at one unit only or in its corporate office the amount of GST would have to be distributed to other units. In such a situation, separate registration will have to be obtained by those units (where GST distribution takes place)

Suo-motu registration for enforcement cases (by Tax Authorities)

In cases when enforcement authorities visit the non-registered dealer and upon visit and investigation, the non-registered dealer deposits the amount with the Government, he would be considered as a registered dealer and the authorities would grant registration suo-motu.

Non-resident supplier

If any non-resident person being the recipient of supply of the goods in India / State and such non-resident person does not have permanent establishment in India / State, the person could be granted registration under this category and such non-resident person needs to fulfil the requirements as in the case of a casual tax payer.