

GOODS AND SERVICE TAX – AN OVERVIEW

By

Pradeep K Mittal¹
Advocate

Goods and Service Tax (GST) is commonly described as indirect, comprehensive, broad based consumption Tax. The Dual GST which would be implemented in India will subsume many consumption taxes. The objective is to remove the multiplicity of tax levies thereby reducing the complexity and remove the cascading effect of Taxes. The purpose and objective is to subsume all those taxes that are currently levied on the sale of goods or provision of services by either Central Government or State Government.

TREATMENT OF SPECIFIC GOODS

2. The Central Government tabled the 122nd Constitution Amendment Bill, 2014 ('Bill') on the introduction of Goods and Services Tax ('GST') before the lower house of Parliament on December 19, 2014. On analysis of the Bill, the Bill contains the following treatment for the following specific goods.

¹Past Central Council Member, the Institute of Company Secretaries of India.

E-mail id: pkmittal171@gmail.com

3: As per the proposed amendment to Constitution (122nd Amendment) Bill, 2014, supply of the alcoholic liquor for human consumption has been excluded from the definition of Goods and Service Tax. New clause 12A has been inserted in Article 366 which defines goods and service tax as follows:

“Goods and service tax” means any tax on supply of goods or services or both except taxes on the supply of the alcoholic liquor for human consumption

(A) PRINCIPLES OF TAX SUBSUMATION

4. The various Central, State and Local levies were examined and identified for being subsumed under GST. At the same time, while identifying, the following broad principles were kept in mind:

- Taxes or levies to be subsumed primarily be in the nature of indirect taxes, either on the manufacture and supply of goods or on the supply of services.
- Taxes or levies to be subsumed should be part of the transaction chain which commences with import/manufacture/production of goods or provision of services at one end and the consumption of goods and services at the other.
- The subsumation should result in free flow of tax credit Inter-State levels and Intra-State Level.

- The taxes, levies and fees that are not specifically related to supply of goods and services should not be subsumed under GST.
- Revenue fairness for both the Union and the States.

(B) CENTRAL TAXES TO BE SUBSUMED IN GST

5: The following Central Taxes should be, to begin with, subsumed under the Goods and Services Tax.

- Central Excise Duty (CENVAT)
- Additional Excise Duties
- The Excise Duty levied under the Medicinal and Toiletries Preparations (Excise Duties) Act 1955
- Service Tax
- Additional Customs Duty, commonly known as Countervailing Duty (CVD)
- Special Additional Duty of Customs – 4% (SAD)
- Surcharges and Cesses levied by Centre are also likely to be subsumed wherever they are in the nature of taxes on goods or services. This may include cess on rubber, tea, coffee, national calamity contingent duty etc.
- Central Sales Tax to be phased out.

(C) STATE TAXES TO BE SUBSUMED IN GST

6: The following State taxes and levies would be, to begin with, subsumed under GST:

- VAT/Sales tax
- Entertainment tax (unless it is levied by the local bodies)
- Luxury Tax
- Taxes on lottery, betting and gambling
- State Cesses and Surcharges in so far as they relate to supply of goods
- Octroi and Entry Tax
- Purchase Tax

(D): **TAXES WHICH ARE NOT TO BE SUBSUMED**

7: GST may not subsume the following taxes within its ambit:

- Basic Customs Duty: These are protective duties levied at the time of Import of goods into India.
- Exports Duty: This duty is imposed at the time of export of certain goods which are not available in India in abundance.
- Road & Passenger Tax. These are in the nature of fees and not in the nature of taxes on goods and services.
- Toll Tax: These are in the nature of user fees and in the nature of taxes on goods and services.
- Property Tax
- Stamp Duty
- Electricity Duty

(E):INTER STATE TRANSACTIONS – TREATMENT UNDER GST

8: In the year 1956, Parliament enacted a law authorizing the Central Government to levy a tax on Inter-State sales called the Central Sales Tax (CST). However, the power to administer the tax was delegated by the Centre to the States of origin of the sales who were also allowed to retain the revenue. Initially, the tax was levied at the rate of only 1 per cent which was raised from time to time to 4 per cent. In 2006-07, the Central Government and the State Governments came to an understanding to reduce CST in a gradual and phased manner and completely eliminate it by April 1, 2010. Accordingly, the CST was reduced to 3 per cent in 2007-08 and subsequently to 2 per cent in 2008-09. However, due to finance constraints, it has now been decided to continue with the CST 2 per cent until GST is introduced.

9: The rate of CST is 2 per cent if the sale is between two registered dealers across States (i.e. inter-state sale) and the transaction is documented through the use of “C Forms”. The latter is issued by the importing state to the importing registered dealers within the State, and is submitted to the exporting dealer in order that the latter can avail himself of the concessional rate of tax. If the goods is sold to unregistered dealers outside the State and is not a declared good, the transaction, by law attracts the rate applicable in the exporting state if the rate applicable in

the exporting state is less than the CST rate, the transaction is not required to be documented through the “C Forms”. Since sale tax applies only when there is a sale, no tax is attracted when goods move from one State to another as a stock transfer between branches of the same entity or on a ‘consignment basis’.

(F): INTEGRATED GOODS AND SERVICE TAX(IGST)

10: The Constitutional (122nd Amendment) Bill, 2014 has proposed Integrated Goods and Service Tax model for taxing Inter-State supply of goods or services or both.

11: Under the proposed scheme of IGST, Centre would levy IGST which would be CGST plus SGST on all Inter-State transactions of taxable goods and services with appropriate provision for consignment or stock transfer of goods and services. Curiously but beneficially, the Inter-State seller will pay IGST on value addition only after adjusting available credit of IGST, CGST, and SGST on his purchases. The Exporting State will transfer to the Centre the credit of SGST used in payment of IGST. The Importing dealer will claim credit of IGST while discharging his output tax liability in his own State. The Centre will transfer to the importing State the credit of IGST used in payment of SGST. The relevant information will also be submitted to the Central Nodal Agency which will act as

a “Clearing House” mechanism, verify the claims and intimate the respective Governments to transfer the funds.

(G): ADDITIONAL TAX 1%

12: As per proposed Constitutional 122nd Amendment Bill, 2014, an Additional tax of 1 percent (for two years from the date of implementation of GST or such period as recommended by GST Council) is also proposed on Inter-State supply of goods to indemnify to some extent manufacturing States (this tax would accrue to the State of Origin). In other words, it will also be levied on the stock/consignment transfers to another State and it is non creditable thereby it will add to the cost of the product.

For Instance:

12.1: A company is having plant in Delhi, Haryana and having Depot in Mumbai from where the goods are sold to whole-seller in Mumbai. This company transfers semi-finished goods from its Delhi plant to its Haryana Plant. The Haryana Plant carries out some processing and transfers the final goods to the Mumbai Depot for sale to ultimate whole-seller/customer. In this case, the Delhi Plant will be liable to pay IGST and additional tax @ 1% while transferring the goods to Haryana Plant. The Haryana plant will not be able to take the input credit for additional tax paid to Delhi plant and it will be added to its cost of production. Further, when the Haryana Plant transfers the finished goods to Mumbai depot, it will also be liable to pay IGST and non-creditable additional tax @ 1%.

13: In accordance with the amendment 122nd Amendment Bill to the Constitution, the supply of the alcoholic liquor for human consumption will be out of the GST. Alcohol products for human consumption would continue to be exclusively taxed by the States. Since the Bill specifically excludes alcohol products from the ambit of GST, bringing it within GST at a future date would require another constitutional amendment. CST on Inter-State sales of alcohol would also continue. It, therefore, appears that the empowerment of States to tax alcohol products is intended to remain unaltered in the near future.

(H):TAX ON TOBACCO PRODUCTS:

14 Tobacco and Tobacco products would be subjected to GST. However, it can be subjected to a separate excise duty by the Centre.

(I):TAX ON PETROLEUM CRUDE/HIGH SPEED DIESEL/MOTOR SPIRIT/NATURAL GAS/AVIATION FUEL.

15: The States would continue as per the current laws to impose Value Added Tax (VAT) on Petroleum Crude/High Speed Diesel/Motor Spirit/Natural Gas/Aviation Turbine Fuel on Intra-state sales while Inter-state sales while Inter-state sales would continue to attract Central Sales Tax (CST). These products would be transitioned into the GST regime from a future date to be notified by the GST Council. It is currently

unclear from the scheme of the Bill whether States would fully discontinue collecting VAT/CST on these products from this notified date, or whether the transition would be gradual. The Bill, however, also states that these products can be subjected to an excise duty imposed by the Centre; this levy would be imposed now and even after GST comes into force. Such duty can be in addition to the applicable VAT or GST imposed.

(J)TAX ON NEWSPAPER AND ADVERTISEMENT.

16: GST would be capable of being levied on the sale of newspapers and advertisements therein. This would give the Governments the access to substantial incremental revenues since this industry has historically been tax free in its entirety.

(K):MAINTENANCE OF RECORDS

17: A taxpayer or exporter shall be required to maintain separate details in books of account for availment, utilization or refund of Input Tax credit of CGST, SGST and IGST. There is no particular form prescribed for this as yet as presently, no particulars forms set or type of records are prescribed

(L):PERIODICAL RETURNS

18: The taxpayer shall be required to file periodical returns, in common format, as far as possible, to the respective authorities for the Central GST State GST. All returns shall be filed electronically.

(M):REPORTING SYSTEM:

19: The Task Force has recommended that payment of GST and transaction reporting should be done through combined payment and transaction reporting statement in Form No.GST-I. The statement should give details and information of all business transactions concerning sales. The statement should be common for both CGST and SGST. The tax payers are mandatorily required to file this statement electronically on monthly basis. However, for taxable entities opting for compounded levy, the payment of taxes and filing of returns should be on quarterly basis.

(N):ASSESSMENT

20: Keeping in mind the need of tax payer's convenience, functions such as assessment, enforcement,scrutiny and audit would be undertaken by the authority which is collecting the tax, with information sharing between the Centre and the States.

21: The Task Force has recommended that the Central Board of Excise and Customs (CBEC) shall be responsible for implementing the CGST and the State Tax Authorities of respective States shall be separately responsible for implementation of SGST. The various tax administrative functions such as assessment, enforcement, scrutiny and audit should be undertaken by the CBEC in respect of the CGST and

by the State Tax authorities in respect of the SGST. All procedures under the CGST and SGST should be uniform.

(O):ZERO RATING OF EXPORTS

22: It has been suggested that the exports would be zero-rates. Similar benefits may be given to supplies made to Special Economic Zones (SEZs). However, such benefits will only be allowed to the processing zones of the SEZs. No benefit to the sales from an SEZ to Domestic Tariff Areas (DTA) i.e. domestic sales in India will be allowed.

(P):GST ON IMPORTS

23: The imports from outside India within India will be brought under the scope of GST. They will be treated at par with Inter-State Transactions and Integrated Goods and Service Tax (IGST) will be levied on imports. The incidence of tax will follow the destination principle and the tax revenue will accrue to the State where the imported goods and services are consumed. Full and complete set-off will be available on the IGST paid on import on goods and services.

(Q):SPECIAL INDUSTRIAL AREA SCHEME

24: After the introduction of GST, the tax exemptions, remissions etc., as are presently given by way of industrial incentives, should be converted into cash refund schemes after collection of tax, so that the GST scheme on the basis of a continuous chain of set-offs is not broken. However, area based schemes as prevailing in Himachal Pradesh and J & K, it is clarified that such exemptions, remissions etc. would continue till their expiry both for the Centre and the States. Any new exemption, remission etc., would not be allowed. In such cases, the Central and the State Governments could provide reimbursement after collecting GST. The Task Force also recommended doing away with any area based exemptions (at present provided in CENVAT) and to provide direct investment linked cash subsidy if it is considered desirable to provide support to industry for maintaining balanced regional industrial growth and development of some under-developed states.

(R):ADMINISTRATION OF GST

25: The administration of the Central GST to the Centre and for State GST to the respective States would be given. This implies that the Centre and the States will have concurrent jurisdiction on the entire value chain and on all taxpayers on the basis of thresholds limits prescribed for goods and services for the States and the Centre.

26: As per the recommendations of Task Force Report on GST, the Central Board of Excise and Customs (CBEC) shall be

responsible for implementation of CGST and respective authorities of States will be separately responsible for implementation for SGST.

27. The above are some of the salient features of the proposed GST regime. In the subsequent Articles, it is proposed to deal with various issues in a greater details with the help various provisions of various laws and decided cases for the benefit of learned readers..

