

HIGHLIGHTS OF PROPOSED GST LAW

1. The government has finally put the model GST Act, 2016 in public domain, which will replace the Central Excise Act, Central Sales Act, VAT Acts & Entry Tax Acts etc.
2. The law is aligned more towards Central Excise Act with two basic paradigm shift:
 - a. This is going to be a tax on supply of goods and services, unlike manufacture under central Excise Law or sale under VAT Acts.
 - b. The person who is going to become an assessee is a person who supplies goods and/or services, whether by sale, transfer, barter etc. in the course of furtherance of a business. Thus, unlike manufacturer under excise law or Seller under VAT Law, it is supplier of goods & services for furtherance of business, who has been made assessee.
3. Salient noteworthy features of Model GST law is as under:
 - A. Officers: All the existing officers of central Excise department up to principle Chief Commissioner will be designated as “Principle Chief Commissioner of CGST and IGST” [CGST is referred to as ‘Central Goods and Services Tax’ & IGST is referred to as ‘Integrated Goods and Services Tax’]. Likewise all the existing officers of state VAT department will be designated as officers of SGST, Eg Commissioner of SGST [SGST is referred to as ‘State Goods and Services Tax’].
 - B. **Supply within the State shall attract CGST & SGST and interstate supply shall attract IGST.** Further for a temporary

period of two years non creditable additional tax@1% may continue on interstate sale.

- C. Legal Jurisdiction: Though all the taxes shall be monitored through a single return to be filed online, the legal jurisdiction to monitor CGST & IGST shall be with officers of Central Government and SGST with officers of State Government.
- D. Compounded Levy: The Government may permit to pay a fix percentage of turnover as a compounded tax where turnover of assessee is less than 50 Lacs rupees. However, this compounding shall not be available to assessee making interstate supply. Further, this compounding is available without the facility of credit and this compounding tax cannot be collected from buyer meaning thereby that it should be merged in the basic price itself. Further, for certain services there may be a compounded levy scheme irrespective of the turnover.
- E. Valuation: The valuation of supplies is going to be based on transaction value between the parties.
- F. All taxes Creditable: 100% credit is admissible for CGST, SGST as well as IGST. However, the credit shall be admissible only for those input supplies which are for the purposes of effecting taxable supplies and for effecting 'zero rated' supplies like exports out of India.
- G. IGST credit can be utilized for payment of any of the three taxes, but, it will be first utilized for IGST, balance if any for CGST and further balance if any for SGST.
- H. CGST credit can be utilized only for CGST & IGST, but it will be first utilized for CGST and balance if any for IGST.
- I. SGST credit can be utilized for SGST and IGST, but it will be first utilized for SGST and balance if any for IGST.

- J. CGST credit cannot be utilized SGST and vice versa.
- K. Accumulated tax credit can be refunded also, if accumulation is on account of non-dutiable exports or on account of inverted duty structure.
- L. DEMAND NOTICES:
 - i. In normal cases without suppression of fact the period of limitation is 3 years and in fraud cases it is 5 years. Further, in both the category, for subsequent show cause notice to be issued on the same grounds, the period of limitation is 1 year from the date of service of previous notice.
 - ii. For non-suppression if the tax is paid along with interest before service of Notice, no notice shall be issued. If it is paid within 30 days of the issuance of SCN then no penalty shall be imposed. The cases of this category should be adjudicated within 1 year from the date of issuance of SCN.
 - iii. For fraud categories, for closure of case before issuance of SCN penalty is 15% of the tax evaded; within 30 days of receipt of SCN it is 25%; within 30 days of communication of adjudication order it is 50% of the tax evaded. The adjudication in fraud cases needs to be done within 18 months.
 - iv. **The officer who issues SCN cannot adjudicate the case. [This is the issue being highlighted and represented by Athena Law since long. Mr Pramod Rai has published an article also that the department which issues SCN is actually a party to litigation and thus should not adjudicate the case. Committee has accepted the suggestion of Athena Law to a limited extent]**
 - v. **Further, the SCN cannot be confirmed on grounds other than the grounds specified in the notice.**

- vi. The adjudication shall be deemed to be concluded if the notice is not decided within time limit prescribed.

M. REFUND:

- i. Refund of tax can be claimed within a period of 2 years from the relevant date and Act provides various time limits not exceeding 90 days for deciding the refund case and also prescribes interest on delayed refunds.
- ii. Tax collected but not deposited with the Government can be recovered by serving a notice without time limit u/s 24 and in case there was no liability of such tax then the person who has borne the incidence can also seek refund.

N. RETURNS: A three stage monthly return has been prescribed

- i. By 10th of the next month, details of outward supplies need to be furnished.
- ii. By 15th of the month details of inward supplies on which credit is being claimed needs to be supplied which will be matched with the details of corresponding details of outward supply submitted by corresponding supplier 5 days above.
- iii. Then a final return showing final tax liability in cash needs to be filed by 20th of the month.
- iv. There is a provision for filing late return with late fee as well.

O. Wherever SGST credit is used for payment of IGST the concerned state has to pay to the Central Government, the equivalent amount.

P. There is a provision of seeking up to 12 monthly instalments for paying tax liabilities, other than self assessed tax liabilities in return.

Q. CIVIL PENALTIES

- i. In fraud cases penalty is equivalent to the tax evaded. For abettors the maximum civil penalty is Rs. 25,000/- which is a big relief.

- ii. The Act says that substantial penalties should not be imposed for minor breaches and procedural aberrations and mistakes of rectifiable nature.

R. CRIMINAL PROSECUTION:

- i. Cases involving tax evasion exceeding Rs. 2.5 Crores is punishable with imprisonment for a term which may extend to 5 years.
- ii. Cases involving tax evasion between Rs. 50 Lacs to Rs. 2.5 Crores is punishable with imprisonment for a term which may extend to 3 years.
- iii. Cases involving tax evasion between Rs. 25 Lacs to Rs. 50 Lacs is punishable with imprisonment for a term which may extend to 1 year.
- iv. This is also a departure from existing law as evasion of less than 25 Lacs does not attract Criminal Liability. **[This is another issue being highlighted and represented by Athena Law since long. Mr Pramod Rai has published an article also that the tax laws being civil law, criminal liability should be fastened in rarest of rare cases. In present tax laws criminal liability is fastened in all cases without any thresh hold. Committee has accepted the suggestion of Athena Law to a limited extent in the sense that threshold prescribed is very low]**
- v. **The cases involving tax amount of more than Rs. 2.5 Crores alone are cognizable and non-bailable where arrest can take place without permissions of trial court.**

S. By and large the disputes settlement mode of Central Excise has been retained

- i. Appeal to First Appellate Authority shall be made after deposit of 10 % of the amount in dispute and second appeal to appellate tribunal shall be made after depositing an additional amount of 10%.
- ii. The Appellate Tribunal shall have one bench at every place where High Court has a Bench.
- iii. Orders of the Appellate Tribunal other than the matters of dispute involving interstate transaction shall be filed before High Court within 180 days.
- iv. The dispute involving interstate transactions decided by tribunal and appeal against the order of High Court shall lie before Supreme Court.
- v. The Authority of Advance Ruling is being retained. However, Settlement Commission may or may not be part of GST Law as no consensus is reached as on date.

For any further clarification and specific query, please feel free to contact

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