

Service Tax to GST- Some Important Issues  
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# Synopsis

- Rates of Tax
- Registration
- Threshold Exemption
- Concession to Small Service Providers
- Returns/ Payments
- TDS Provisions Introduced
- Deemed Sales treated as “Supply of Service”
- Place of Supply of Services
- Time of Supply of Services
- Value of Supply of Services
- Input Tax Credit
- Changes in Definitions
- Other Transitional Provisions

# Rates of Tax

- Service Tax Rate =  $14\% + 0.5\% \text{ SBC} + 0.5\% \text{ KKC}$   
i.e. Effective Rate is 15%

- GST Rate = 18% (Expected)

Effect :-

- Services will become Costly ?
- Additional liquidity burden on Service Providers ?

# Registration

## ➤ **No Centralised Registration**

- State wise registration has to be taken.
- Multiple Registrations; Difficulties to Banks, Insurance Companies etc.
- Business Reorganisation – State wise consolidation of accounts ?

## ➤ **Non utilisation of ITC of some Branches**

- Some branches may have excess input credit while others have liability.
- Effect on liquidity position.

## ➤ **Taxability & Chargeability of HO & Admin cost to Branches**

- If inter state stock transfers of goods treated as 'Supply', whether such apportionments shall be treated as 'Supply' of services ?

# Registration

## ➤ **Cancellation of Registration by Proper Officer**

- Proper Officer can cancel GST Registration if Returns not filed for three consecutive tax periods for composition dealers and for continuous period of six months for others.

## ➤ **Temporary Registration for Casual Taxable Persons/ Non Residents**

- Section 2 (20) Casual Taxable Person – Person who occasionally undertakes transactions involving supply of goods and/or services in the course or furtherance of business, in a taxable territory **where he has no fixed place of business.**
- Non-resident Taxable Person – Person who occasionally, undertakes transactions involving supply of goods and services, **and who has no fixed place of business in India.**
- Certificate of Registration issued to such persons shall be valid only for a period of 90 Days. [ such period can be extended by a further period of 90 days ]
- They shall be required to make advance deposit of estimated tax liability at the time of application for registration. ( Additional Deposit to be made if extension of time is sought)

# Threshold Exemption

- 20 Lacs instead of 10 Lacs ( NE States still 10 Lacs)
- No threshold exemption in following cases –
  - Persons making any inter-State taxable supply
  - Casual taxable persons
  - Electronic commerce operator
  - Persons required to deduct TDS
  - Non-resident taxable persons
  - Persons who supply goods and/or services on behalf of other taxable persons whether as an agent or otherwise
  - Persons who are required to pay tax under reverse charge

## Concession to small Service Providers withdrawn

- Third Provisio to Rule 6(1) of Service Tax Rules- “Provided also that in case of individuals and partnership firms whose aggregate value of taxable services provided from one or more premises is fifty lakh rupees or less in the previous financial year, the service provider shall have the option to pay tax on taxable services provided or agreed to be provided by him up to a total of rupees fifty lakhs in the current financial year, by the dates specified in this sub-rule with respect to the month or quarter, as the case may be, in which payment is received.”
- There is no such Provision in new GST Act or Rules.
- Liquidity problems for small Professionals ?

# Returns and Payments

- Requirement in New GST Model Law-

Section	Return Type	For	Periodicity	Due Date
32	GSTR-1	Outward Supplies Made by Tax payer. (other than Composition dealer, ISD, and TDS u/s 46)	Monthly	10 <sup>th</sup> of Next Month
33	GSTR-2	Inward Supplies Made by Tax payer. (other than Composition dealer, ISD, and TDS u/s 46)	Monthly	15 <sup>th</sup> of Next Month
34(1)	GSTR-3	Tax Return (other than Composition dealer, ISD, and TDS u/s 46)	Monthly	20 <sup>th</sup> of Next Month
39	GSTR- 8	Annual Return	Annually	31 <sup>st</sup> Dec. of Next FY.



# Returns and Payments

- Total Number of Returns to be filed = 3 Returns per month + 1 Annual Return = 37 as against Two Returns of Service Tax.
- Periodicity of Return as per constitution of the Assessee dispensed with. All Assesseees will have to file monthly Returns. Only Composition Dealers, irrespective of their constitution, are allowed to file Quarterly Returns.
- Revised Returns can be filed each month. Due date of filing Revised Returns shall be date of filing returns for September/second quarter of Next FY to which rectification pertains (ie. 20<sup>th</sup> October of next year) or date of filing Annual Return; whichever is early.
- Reconciliation Statement (supplies as per returns vis-à-vis supplies as per audited financial statements) to be furnished along with the Annual return.
- GST Audit Report with Annual Return if Turnover exceeds prescribed limits.
- Due date of payment is linked to due date of return u/s 34 unlike current dates (ie. 5<sup>th</sup>)
- If tax due as per return is not paid in full, return shall not be regarded as Valid Return for allowing input tax credit to counter party.
- Filing of Nil Return is also mandatory – No confusion.
- One consolidated Challan for GST payment for each month – No need of Service wise challans.

## **TDS Provisions introduced : Section 46**

- Deductor can be a department or establishment of the Central or State Government, or Local authority, or Governmental agencies, or such persons or category of persons as may be notified, by the Central or a State Government on the recommendations of GST Council.
- Deduction of tax at the rate of one percent from the payment made or credited to the supplier [the deductee] of taxable goods and/or services, notified by the Central or a State Govt. on recommendations of GST Council
- Deduction to be made where the total value of such supply, under a contract, exceeds Rupees Five Lacs (excluding tax).
- Tax Deducted to be paid to the credit of the appropriate Govt. by the deductor within Ten days from end of the month in which tax is deducted.
- The deductor shall, furnish to the deductee a certificate of such deduction.
- Failure to issue the Certificate in Five days- late fee Rs. 100 per day- Max 5000.
- The deductee shall claim credit, in his electronic cash ledger, of the tax deducted and reflected in the return of the deductor filed u/s 34(5).
- Failure to make payment of TDS to Govt. – Interest as prescribed.
- Refund of TDS excess/erroneously made – Deductor or Deductee. No refund to Deductor , if TDS credited to Electronic Cash ledger of Deductee.

## **Certain deemed sales treated as “supply of service” – Schedule-II**

- In service tax as per section 66E, ‘Declared Services’ included service portion of certain deemed sales such as service portion of works contract, service portion of an activity involving supply of food items, construction, Software etc.
- As per Schedule-II Para 5, all these activities are completely treated as ‘supply of services’.
- There will be no abatement or any reduction in value.
- Confusion as regards double taxation and jurisdiction of assessment removed.

### **Place of Supply of Services**

- GST being destination based consumption tax; in most of the cases the place of supply of service has been taken as ‘place of recipient’.

# Time of Supply of Services- Certain Issues

## A. Taxability of On Account Payments

### Point of Taxation Rules 2011 :-

- **RULE 3. Determination of point of taxation.** - For the purposes of these rules, unless otherwise provided, point of taxation shall be,-
- the time when the invoice for the service provided or agreed to be provided is issued :
- **Provided** that where the invoice is not issued within the time period specified in rule 4A of the Service Tax Rules, 1994, the point of taxation shall be the date of completion of provision of the service.
- (b) in a case, where the person providing the service, receives a payment before the time specified in clause (a), the time, when he receives such payment, to the extent of such payment :
- **Explanation** - For the purpose of this rule, wherever any advance by whatever name known, is received by the service provider towards the provision of taxable service, the point of taxation shall be the date of receipt of each such advance.

# Time of Supply of Services- Certain Issues

## A. Taxability of On Account Payments (contd.)

### Section 13 of Revised GST Law- Time of Supply of Services

- (2) The time of supply of services shall be the earlier of the following dates, namely:-
  - (a) the date of issue of invoice by the supplier or the last date on which he is required, under section 28, to issue the invoice with respect to the supply; or
  - (b) the date on which the supplier receives the payment with respect to the supply:
- **Issue :**
  - Whether the words in section “with respect to the supply” leads to exclusion of taxability of On Account Payments received?

## Time of Supply of Services- Certain Issues

### B. Time when Reverse Charge is payable

#### Point of Taxation Rules 2011 :-

#### **Rule 7. Determination of point of taxation in case of specified services or persons.-**

Notwithstanding anything contained in rules 3, 4, or 8, the point of taxation in respect of the persons required to pay tax as recipients of service under the rules made in this regard in respect of services notified under sub-section (2) of section 68 of the Act, shall be the date on which payment is made :

- **Provided** that, where the payment is not made within a period of three months of the date of invoice, the point of taxation shall be determined the date immediately following the said period of three months :

#### **Section 13 of Revised GST Law- Time of Supply of Services**

- (3) 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 earlier of the following dates, namely- (a) the date on which the payment is made, or (b) the date immediately following sixty days from the date of issue of invoice by the supplier:
- **If Payment is not made – Now the Tax is payable after 60 days of receipt of payment instead of 3 Months.**

## **Value of Supply of Services- Certain Issues**

**Section 15 (2)** The value of supply shall include:

- (b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods and/or services;
- (c) incidental expenses, such as, commission and packing, charged by the supplier to the recipient of a supply, including any amount charged for anything done by the supplier in respect of the supply of goods and/or services at the time of, or before delivery of the goods or, as the case may be, supply of the services;
- (d) interest or late fee or penalty for delayed payment of any consideration for any supply; and

**Issues :**

- **Whether Free supplies by Recipient will be included in Value of Supply ?**
- **All incidental expenses to be included. Concept of 'Pure Agent' removed ?**
- **Interest for late payment included – Whether it will apply to Banks for Penal Interest on Loan Accounts in Banks?**

# Input Tax Credit

- Service Providers will get input tax credit of GST i.e. erstwhile VAT & SAD
- Traders will get credit of input tax on input services. Hence there will be less resistance to pay tax to service providers.
- **Section 16(2)** 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 :
  - (b) he has received the goods and/or services;
  - (c) the tax charged in respect of such supply has been actually paid to the account 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 34:
- **This is major shift from earlier Cenvat provisions, where output service providers were getting credit only on the basis of Input invoice or payment for input services as the case may be.**



# Input Tax Credit

- If a recipient fails to pay to the supplier of services, the amount towards the value of supply of services along with tax payable thereon within a period of three months from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon.
- **In Service Tax if the payment was not made in Three months, the credit was required to be paid or Reversed and that too Interest was not charged on the same.**
- **Section 17 (4)** Input Tax Credit shall not be available in respect of –
  - (b) supply of goods and services, namely, (i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery except where such inward supply of goods or services of a particular category is used by a Page 34 of 163 registered taxable person for making an outward taxable supply of the same category of goods or services; (ii) membership of a club, health and fitness centre.
  - **Cenvat Credit in respect of the above service was not available when such services are primarily used for personal use or consumption of any employee.**

## Changes in Definitions

- **Agriculture**
- **Service Tax Provisions**
- **Sec. 66D – Negative List** Clause d) services relating to agriculture or agricultural produce by way of—
  - (i) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or testing;
  - (ii) supply of farm labour;
  - (iii) processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market;
  - (iv) renting or leasing of agro machinery or vacant land with or without a structure incidental to its use;
  - (v) loading, unloading, packing, storage or warehousing of agricultural produce;
  - (vi) agricultural extension services;
  - (vii) services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce;

## Changes in Definitions

- **Agriculture (contd.)**
- **Sec. 65B**
- (3) “Agriculture” means the cultivation of plants and rearing of all life-forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products;
- (5) “Agricultural produce” means any produce of agriculture on which either no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market;

## **Changes in Definitions**

### **Agriculture (contd.) : GST Provisions**

- Sec.2(7) “agriculture” with all its grammatical variations and cognate expressions, includes floriculture, horticulture, sericulture, the raising of crops, grass or garden produce and also grazing, but does not include dairy farming, poultry farming, stock breeding, the mere cutting of wood or grass, gathering of fruit, raising of man-made forest or rearing of seedlings or plants;
- Sec. 2 (8) “agriculturist” means a person who cultivates land personally, for the purpose of agriculture;
- Schedule V- Para 2 :- The following persons shall not be liable to registration – ..... (b) an agriculturist, for the purpose of agriculture.

### **Issues :-**

- **Definition of ‘Agriculture’ has become more restrictive.**
- **Agricultural Operations which were specifically listed in the negative list have not been included in exclusions in schedule –V.**
- **The definition of Agriculturist much more restrictive and will exclude all those who provide agriculture ancillary activities.**

## **Changes in Definitions**

### **Construction of Complex Service**

#### **Service Tax Provisions : Declared Service as per section 66E**

- (b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration is received after issuance of completion-certificate by the competent authority.

#### **GST Provisions : Para 5 of Schedule II**

- (b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or before its first occupation, whichever is earlier.
- **In addition to ‘Completion Certificate’, now the actual “Occupation” will also be relevant in determining whether it is taxable supply of service.**

## **Other Transitional Provisions**

### **1. Section 166. Migration of existing taxpayers to GST**

- Provisional Registration to every person registered under any of the earlier laws on the appointed day and having a valid PAN.
- Such certificate of registration shall be valid for a period of six months from the date of its issue: or such further period as may be notified.
- Information to be submitted as may be prescribed in six months. On furnishing of such information, the certificate of registration be granted on a final basis by the Central/State Government. If the information not submitted then the Registration shall be cancelled.

### **2. Section 167. Amount of CENVAT credit carried forward in a return to be allowed as input tax credit.**

- Such carry forward not allowed for composition dealer.
- Such Credit not allowed unless the said amount is admissible as input tax credit under this Act.

### **3. Section 168. Unavailed cenvat credit on capital goods, not carried forward in a return, to be allowed in certain situations**

- Such carry forward not allowed for composition dealer.
- Such Credit not allowed unless the said amount is admissible as input tax credit under this Act.

## **Other Transitional Provisions**

### **4. Section 169. Credit of eligible duties and taxes in respect of inputs held in stock to be allowed in certain situations**

- A registered taxable person, who was not liable to be registered under the earlier law, or who was engaged in provision of exempted services, or who was providing works contract service and was availing of the benefit of notification No. 26/2012-Service Tax, dated 20.06.2012, shall be entitled to take, in his electronic credit ledger, 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 subject to the following conditions:

- (i) such inputs and / or goods are used or intended to be used for making taxable supplies under this Act;
- (ii) the said taxable person passes on the benefit of such credit by way of reduced prices to the recipient;
- (iii) the said taxable person is eligible for input tax credit on such inputs under this Act;
- (iv) the said taxable person is in possession of invoice and/or other prescribed documents evidencing payment of duty under the earlier law in respect of such inputs;
- (v) such invoices and /or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day; and
- (vi) the supplier of services is not eligible for any abatement under the Act:

## **Other Transitional Provisions**

### **5. Section 171. Credit of eligible duties and taxes in respect of inputs or input services during transit**

- (1) A registered taxable person shall be entitled to take, in his electronic credit ledger, credit of eligible duties and taxes in respect of inputs or input services received on or after the appointed day but the duty or tax in respect of which has been paid before the appointed day, subject to the condition that the invoice or any other duty/tax paying document of the same was recorded in the books of accounts of such person within a period of thirty days from the appointed day: PROVIDED that the aforesaid period of thirty days may, on sufficient cause being shown, be extended by the competent authority for a further period not exceeding thirty days.
- (2) The said registered taxable person shall furnish a statement, in prescribed manner, in respect of credit that has been taken under sub-section (1).

### **6. Section 186. Treatment of long term construction / works contracts**

- The goods and/or services supplied on or after the appointed day in pursuance of a contract entered into prior to the appointed day shall be liable to tax under the provisions of this Act.



## Other Transitional Provisions

### **7. Section 178. Issue of supplementary invoices, debit or credit notes where price is revised in pursuance of a contract**

- (1) Where, in pursuance of a contract entered into prior to the appointed day, the price of any goods and/or services is revised upwards on or after the appointed day, the registered taxable person who had removed / provided such goods and/or services may issue to the recipient a supplementary invoice or debit 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 debit note shall be deemed to have been issued in respect of an outward supply made under this Act.
- (2) 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 registered 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 said registered 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.

## **Other Transitional Provisions**

**8. Section 181. Refund claims** filed after the appointed day for payments received and tax deposited before the appointed day in respect of services not provided Every claim for refund of tax deposited under the earlier law in respect of services not provided, filed after 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, notwithstanding anything to the contrary contained under the provisions of earlier law other than the provisions of subsection (2) of section 11B of the Central Excise Act.

### **9. Section 188. Taxability of supply of services in certain cases**

- Notwithstanding anything contained in section 13 or 14, the tax in respect of the taxable services shall be payable under the earlier law to the extent the point of taxation in respect of such services arose before the appointed day. Explanation: Where the portion of the supply of services is not covered by this section, such portion shall be liable to tax under this Act.

### **10. Section 190. Credit distribution of service tax by ISD**

- Notwithstanding anything to the contrary contained in this Act, 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.

## **Other Transitional Provisions**

### **11. Section 191. Provision for transfer of unutilized Cenvat Credit by taxable person having centralized registration under the earlier law**

- Where a taxable person having centralized registration under the earlier law has obtained a registration under this Act, such person shall be allowed to take, in his electronic credit ledger, credit of the amount of cenvat credit carried forward in a return, furnished under the earlier law by him, in respect of the period ending with the day immediately preceding the appointed day in such manner as may be prescribed:
- PROVIDED that if the taxable person files his return for the period ending with the day immediately preceding the appointed day within 3 months of the appointed day, such credit shall be allowed subject to the condition that the said return is either an original return or a revised return where the credit has been reduced from that claimed earlier: PROVIDED FURTHER that the taxable person shall not be allowed to take credit unless the said amount admissible as input tax credit under this Act: PROVIDED ALSO that such credit may be transferred to any of the registered taxable persons having the same PAN for which the centralized registration was obtained under the earlier law.

### **12. Section 197. Transitional provisions for availing Cenvat credit in certain cases**

- Where any Cenvat credit availed for the input services provided under the earlier law has been reversed due to non-payment of the consideration within a period of three months, such credit can be reclaimed provided that the taxable person has made the payment of the consideration for that supply of services within a period of three months from the appointed day.

THANK

YOU