

# *SEMINAR ON GST*

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## **A. Basic Concept of GST**

The incidence of excise duty, Service Tax and VAT is on manufacture, provision of services and transfer of movable property respectively but in case of GST the incidence of tax will be on supply of goods or services.

- The definition of GST as per Article 366(12A) of constitution of India is as follows:

*“any tax on supply of goods or services or both except taxes on supply of the alcoholic liquor for human consumption”*

- **Major consequences of this would be as follows:**
  - a) There is no need to determine whether the process amounts to the process of manufacture. Therefore, all traders who are registered as importer, first stage dealer, second stage dealer or non-registered trader will be required to pay GST.
  - b) In many cases if the goods are cleared to depots, excise registration is not taken if the credit is not required to be passed on. Such depots will have to obtain registration as supply of goods will be made from such depot.
  - c) There will be no need to bifurcate the value of goods and services when in a transaction both goods and services are supplied like works contract, outdoor catering, tax will be levied on entire value.
  - d) Credit on IGST will be available. Presently, there is no credit available for Central Sales Tax which is levied on inter-state sale of goods.

- **The levy of GST will be operationalise by enacting following Acts:**

A. CGST Act and IGST Act by Central Government.

B. Each state government will pass SGST Act.(in all 29 Acts)

Thus they will be 31 Acts for levy and collection of taxes.

## **B. Concept of Destination Based Tax**

Services constitute heterogeneous spectrum of economic activities. Today services cover wide range of activities such as management, banking, insurance, hospitality, consultancy, communication, administration, entertainment, research and development activities forming part of retailing sector.

Service sector is today occupying the center stage of the Indian economy. It has become an Industry by itself. In the contemporary world, development of service sector has become synonymous with the advancement of the economy.

In late seventies, Government of India initiated an exercise to explore alternative revenue sources due to resource constraints. The primary sources of revenue are direct and indirect taxes.

Central excise duty is a tax on the goods produced in India whereas customs duty is the tax on imports. The word goods have to be understood in contradistinction to the word services. Customs and excise duty constitute two major sources of indirect taxes in India.

Both are consumption specific in the sense that they do not constitute a charge on the business but on the client.

Value Added Tax (VAT) is a general tax that applies, in principle, to all commercial activities involving production of goods and provision of services. VAT is a consumption tax as it is borne by the consumer.

GST in which Excise Duty, Service Tax and VAT is subsumed is also destination based consumption tax in the sense that it is on commercial activities and is not a charge on the business but on the consumer and it would, logically, be leviable on supply of goods and/or services provided within the country.

## C. Taxes Subsumed

Currently, Central & State Governments levies different type of taxes/duties like Excise duty, Service Tax, Additional duty, Central surcharge, VAT, Entertainment tax, Octroi duty, Luxury tax etc. Following different type of taxes/duties will subsume into GST.

Central Indirect Taxes	State Indirect Taxes
Central Excise duty under Central Excise Act, 1994	State Value Added Tax/Sales Tax
Additional Excise duty	Entertainment tax (other than tax levied by local bodies)
Excise duty levied under Medicinal and Toilet Preparations (Excise Duty) Act, 1955	Central Sales Tax (levied by Centre and collected by State)
Service Tax under Finance Act, 1994	Octroi duty
CVD (Additional Customs Duty)	Entry Tax
Special Additional Duty of Customs	Purchase tax. State Surcharges, State Cesses
Central Surcharge	Luxury Tax
Central Cesses	Lottery tax, Betting and Gambling tax



## Power to impose such taxes

Schedule VII of Constitution of India consists of 3 list. Central and State Governments are empowered to make laws for imposition of duty or taxes in respect of subject enumerated in List I and

Sr. No.	Nature of tax	Levied by	Levied on	List No.	Entry No.
1	Excise duty	Central Government	Manufacture	I	84
2	Service tax	Central Government	Rendering of service	I	97
3	Sales tax	State Governments	Sale of goods	II	52

The powers are provided in Schedule VII for levy of other taxes also. The Central Government do not have power to levy tax on sale of goods and the State Governments do not have power to levy excise duty on manufacture of goods except goods containing alcohol.

In order to provide powers to both Central and State Governments, amendment in the constitution is essential. Therefore, Constitution amendment bill has been proposed in the parliament. After the amendment in the constitution as proposed is passed, both the Central and State Governments will have power to levy tax on manufacture, sale and on rendering of service.

## **D. Levy and collection of tax**

(1) 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 at the rate specified in the Schedule . . . to this Act and collected in such manner as may be prescribed.

(2) The CGST/SGST shall be paid by every taxable person in accordance with the provisions of this

## E. Taxable Person

Section 9 of Model GST Law defines 'taxable person' as follows:

(I) Taxable Person means a person who carries on any business at any place in India /State of \_\_\_\_\_ and who is registered or required to be registered under Schedule III of this Act:

Provided that an agriculturist shall not be considered as a taxable person.

Provided further that a person who is required to be registered under paragraph 1 of Schedule III of this Act shall not be considered as<sup>12</sup> a taxable

- **‘Agriculturist’ is defined in Section 2(8) as follows:**

(8) “**agriculturist**” means a person who cultivates land personally, for the purpose of agriculture;

- **‘Agriculture’ is defined in Section 2(7) as follows:**

(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;

- **‘To Cultivate Personally’ is defined in Section 2(103) as follows:**

(103) **“to cultivate personally”** means to carry on any agricultural operation on one’s own account-

(a) by one’s own labour, or

(b) by the labour of one’s family, or

(c) by servants on wages payable in cash or kind (but not in crop share) or by hired labour under one’s personal supervision or the personal supervision of any member of one’s family;

Explanation 1. - A widow or a minor or a person who is subject to any physical or mental disability or is a serving member of the armed forces of the Union, shall be deemed to cultivate land personally if it is cultivated by her or his servants or by hired labour.

Explanation 2. - In the case of a Hindu Undivided Family, land shall be deemed to be cultivated personally, if it is cultivated by any member of such family.

- **‘Aggregate Turnover’ is defined in Section 2(6) as follows:**

(6) “**aggregate turnover**” means 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, if any, charged under the CGST Act, SGST Act and the IGST Act, as the case may be;

Explanation.- Aggregate turnover does not include the value of supplies on which tax is levied on reverse charge basis and the value of inward supplies.

- The following shall be noted while computing the aggregate turnover:
  - a) Turnover of all products namely non-taxable supplies, exempted supplies and export product shall be aggregated for computing Rs. 10 Lacs.
  - b) Turnover of person with same PAN No. and all location shall aggregate.
  - c) Value of turnover will not include the CGST, SGST and IGST charged on such supply

#### d) Reverse Charge –

The aggregate turnover will not include the value of supply on which tax is paid on reverse charge basis.

e) The turnover include supply own account and behalf of principal.

#### f) It will exclude –

- i. if the supplier is supplying only the goods or services which are not liable to tax.<sup>16</sup>



(II) The Central Government, a State Government or any local authority shall be regarded as a taxable person in respect of activities or transactions in which they are engaged as public authorities other than the activities or transactions as specified in Schedule IV to this Act.

## **SCHEDULE IV**

**Activities or transactions in respect of which the Central Government, a State Government or any Local Authority shall not be regarded as a taxable person**

2. Services provided by a Government or local authority to individuals in discharge of its statutory powers or functions such as-

- (i) issuance of passport, visa, driving licence, birth certificate or death certificate; and
- (ii) assignment of right to use natural resources to an individual farmer for the
- (iii) purpose of agriculture.

3. Services provided by a Government or local authority or a governmental authority by way of:

#### 4. Services provided by Government towards-

- (i) diplomatic or consular activities;
- (ii) citizenship, naturalization and aliens;
- (iii) admission into , and emigration and expulsion from India;
- (iv) currency , coinage and legal tender , foreign exchange;
- (v) trade and commerce with foreign countries , import and export across customs frontiers , interstate trade and commerce; or
- (vi) maintenance of public order.

6. Services provided by a Government or a local authority by way of -

- (i) tolerating non-performance of a contract for which consideration in the form of fines or liquidated damages is payable to the Government or the local authority under such contract; or
- (ii) assignment of right to use any natural resource where such right to use was assigned by the Government or the local authority before the 1st April, 2016:

Provided that the exemption shall apply only to

## 8. Services provided by Government or a local authority by way of-

- (i) registration required under any law for the time being in force; or
- (ii) testing, calibration, safety check or certification relating to protection or safety of workers, consumers or public at large, required under any law for the time being in force.

### **Definitions:**

1. Governmental Authority means a board, or an authority or any other body established with 90% or more participation by way of equity or control by Government and set up by an Act of the Parliament or a State Legislature to carry out any function entrusted to a municipality under article 243W or a Panchayat under article 243G of the Constitution.
2. Health care services means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India and includes

### 3. Education services means services by way of —

- i) pre-school education and education up to higher secondary school or equivalent;
- ii) education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force; or
- iii) education as a part of an approved vocational education course.

(III) The following persons shall not be considered as taxable persons for the purposes of this Act

—

- (a) any person who provides services as an employee to his employer in the course of, or in relation to his employment, or by any other legal ties creating the relationship of employer and employee as regards working conditions, remunerations and employer's liability.

## **F. Composition Scheme**

(1) Notwithstanding anything to the contrary contained in the Act but subject to subsection (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:



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

(3) If the proper officer has reasons to believe that a taxable person was not eligible to pay tax under sub-section (1), such person shall, in

## **G. Meaning & Scope of Supply**

A. Definition of supply: The section 3 defines scope of supply which is reproduced below:

### 1) Supply includes

(a) 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,

(b) importation of service, whether or not for a

## SCHEDULE I

# MATTERS TO 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 nontaxable person in the course or furtherance of business.

## SCHEDULE II

# MATTERS TO BE TREATED AS SUPPLY OF GOODS OR SERVICES

## 1. Transfer

- i. Any transfer of the title in goods is a supply of goods.
- ii. Any transfer of goods or of right in goods or of undivided share in goods without the transfer of title thereof, is a supply of services.
- iii. Any transfer of title in goods under an agreement which stipulates that property in goods will pass at a future date upon payment

### **3. Treatment or process**

Any treatment or process which is being applied to another person's goods is a supply of services.

### **4. Transfer of business assets**

- i. Where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, whether or not for a consideration, such transfer or disposal is a supply of goods by the person.

iii. Where any goods, forming part of the business assets of a taxable person, are sold by any other person who has the power to do so to recover any debt owed by the taxable person, the goods shall be deemed to be supplied by the taxable person in the course or furtherance of his business.

iv. Where any person ceases to be a taxable person, any goods forming part of the assets of any business carried on by him shall be deemed to be supplied by him in the<sub>30</sub> course or

## **v. The following shall be treated as “supply of service”**

- (a) renting of immovable property;
- (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.

Explanation.- For the purposes of this clause-

**1)** The expression "competent authority" means<sup>31</sup> the

2) The expression "construction" includes additions, alterations, replacements or remodeling of any existing civil structure;

(c) temporary transfer or permitting the use or enjoyment of any intellectual property right;

(d) development, design, programming, customization, adaptation, upgradation, enhancement, implementation of information technology software;

(e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act;

(f) works contract including transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;

‘Works Contract’ is defined in Section 2(107) as follows:

(107) “**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;



(g) transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration; and

(h) supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration.

**vi. The following shall be treated as supply of goods**

(a) supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.

(2A) Where a person acting as an agent who, for an agreed commission or brokerage, either supplies or receives any goods and/or services on behalf of any principal, the transaction between such principal and agent shall be deemed to be a

4) Notwithstanding anything contained in subsection (1), the supply of any branded service by an aggregator, as defined in section 43B, under a brand name or trade name owned by him shall be deemed to be a supply of the said service by the said aggregator.

Section 43B defines various terms in relation to aggregator. These are reproduced below:

(a) **‘aggregator’** means a person, who owns and manages an electronic platform, and by means of the application and a communication device, enables a potential customer to connect with the persons providing service of a particular

(c) **'branded Services'** means services which are supplied by an electronic commerce operator under its own brand name or trade name, whether registered or not;

(d) **'electronic commerce'** shall mean the supply or receipt of goods and / or services, or transmitting of funds or data, over an electronic network, primarily the internet, by using any of the applications that rely on the internet, like but not limited to e-mail, instant messaging, shopping carts, Web services, Universal Description, Discovery and Integration (UDDI),

- The definition of phrases used in definition of service is as follows:

(i) Consideration – Consideration if defined in section 2(28) as follows:

*(28) “**consideration**” in relation to the supply of goods and/or services to any person, includes -*

- (a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods and/or services, whether by the said person or by any other person;

(ii) Business – Business is defined in section 2(17) as follows:

(17) “**business**” includes –

- (a) any trade, commerce, manufacture, profession, vocation or any other similar activity, whether or not it is for a pecuniary benefit;
- (b) any transaction in connection with or incidental or ancillary to (a) above;
- (c) any transaction in the nature of (a) above, whether or not there is volume, frequency, continuity or regularity of such transaction;

(d) supply or acquisition of goods including capital

**BALANCED VIEW** **THANK YOU**

**PRESENTED BY**

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