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A STUDY ON GST – AN OVERVIEW

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Abstract

GST is an Indirect Tax which has replaced many Indirect Taxes in India. The Goods and Service Tax Act was passed in the Parliament on 29th March 2017. The Act came into effect on 1st July 2017; Goods & Services Tax Law in India is a comprehensive, multi-stage, destination-based tax that is levied on every value addition. Under the GST regime, the tax is levied at every point of sale. In the case of intra-state sales, Central GST and State GST are charged. Inter-state sales are chargeable to Integrated GST. This paper explores few fundamental concepts in GST such as Registration, Exemption, Time of supply, GST returns etc., practiced by tax payers for the payment of GST.

INTRODUCTION

A tax (from the Latin *taxo*) is a compulsory financial charge or some other type of levy imposed upon a taxpayer (an individual or other legal entity) by a governmental organization in order to fund various public expenditures. A failure to pay, along with evasion of or resistance to taxation, is punishable by law. Taxes consist of direct or indirect taxes and may be paid in money or as its labour equivalent.

According to Prof.E.A.R.Seligman, A Tax ia a compulsory contribution from the person to the state to defray the expenses incurred in the common interest of all without any reference to the special benefits conferred.

Taxation in India

Tax is a mandatory liability for every citizen of the country. There are two types of tax in India i.e. direct and indirect. Taxation in India is rooted from the period of *Manu Smriti and Arthashastra*. Present Indian tax system is based on this ancient tax system which was based on the theory of maximum social welfare.

Members of primitive communities used to render voluntary services for the support of government. Later on revenues such as “Tributes” earnings on mines and other enterprises were earmarked for maintenance of state, as was the practice in Athens. Ancient state considered taxation as a minor source of revenue, levied mainly on property, inheritance and commodities. “the small size of expenditure of ancient states did not require extensive systems of taxation”.

According to Prof. Plehn, the origin of tax system of modern states is found in “feudal practices”. After the fall of Rome, rulers were supported by their own lands and compulsory dues from their subject. Before the advent of money, feudal market dues, tolls for production and use of roads, bridges and ferries, land rent and other payments were in goods or kind. With the rise of money economy, all such payments were gradually commuted into money payments or taxes. Kings started preferring payments in money and the subject also preferred to pay money rather than goods or services.

With the industrial revolution, new forms of wealth arose. New industries were started. Land tax, excise, custom duties, market tax, toll taxes on personal goods and other taxes were imposed by the states. Thus, the old feudal revenue system gradually changed to give way to taxation.

The growing needs of modern states and increasing public expenditure have made new sources of revenues essential. They were found in imposing taxes upon new business activities, articles of consumption and properties. In the 19th and 20th centuries, Income tax and inheritance tax have gained prominence. With the World War I which imposed heavy financial burden on most of the states, new general sales Taxes and capital levies were devised for additional revenues.

Changing economic, political and social condition have led to the process of reconstruction in ‘Fiscal systems’. In the second half of 20th century, governmental outlay on social sector like public health, education, water supply support to weaker section and other infrastructural needs have made all governments to look for various sources of revenues. Naturally, taxation has become the biggest and the principal source of revenue to raise the colossal sums needed by the modern governments. Various types of taxes like direct and indirect taxes on individuals, goods and services are levied to raise the needed resources. In fact every citizen of a country, rich or poor, pays taxes in some form or the other.

INDIRECT TAXATION

An **indirect tax** (such as sales tax, per unit tax, value added tax (VAT), or goods and services tax (GST), excise, tariff) is a tax collected by an intermediary (such as a retail store) from the person who bears the ultimate economic burden of the tax (such as the consumer).

GOODS AND SERVICES TAX - GST

GST is a destination based tax and levied at a single point at the time of consumption of goods or services by the ultimate consumer. GST is based on the principle of value added tax. GST law emphasizes on voluntary compliance and on accounts based reporting and monitoring system. It is a comprehensive levy and envisages tax collection on both goods and services at the same rate.

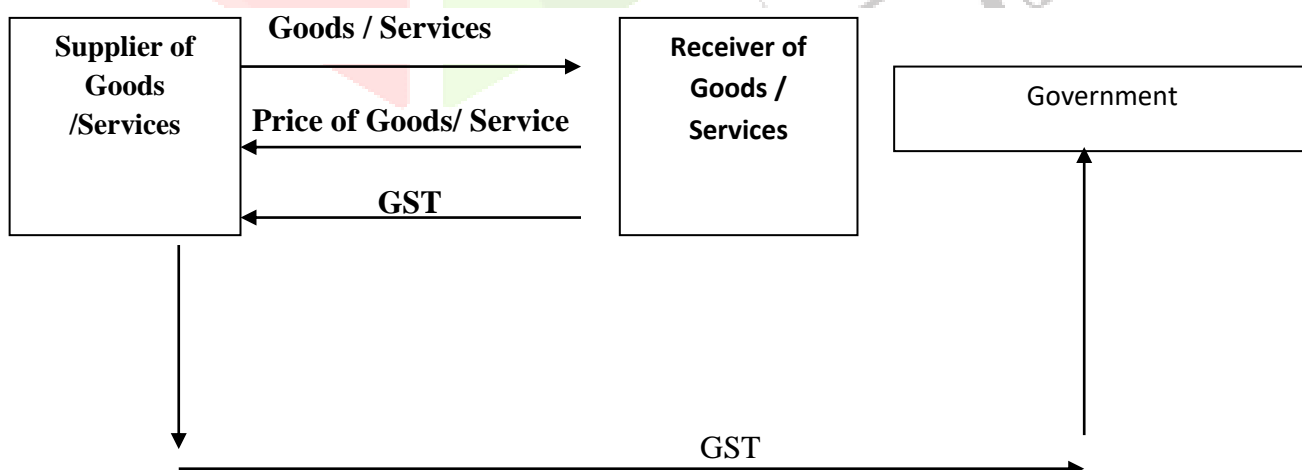
Internationally, GST was first introduced in France and now more than 160 countries have introduced GST. Most of the countries, depending on their own socio-economic formation, have introduced National level GST or Dual GST.

Definition of Good and Service Tax (GST) - The term GST is defined in Article 366 (12A) to mean “any tax on supply of goods or services or both except taxes on supply of the alcoholic liquor for human consumption”.

In terms of Section 2 (52) of the CGST Act “Goods” means every kind of movable property other than money and securities but includes actionable claims, growing crops, grass and other things attached to or forming part of land which are agreed to be severed before supply or under a contract of supply.

In terms of Section 2(102) of the CGST Act “Services” means anything other than goods, money and securities but includes activity relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.

Thus, all supply of goods or services or both would attract CGST (to be levied by Centre) and SGST (to be levied by State) unless kept out of the purview of GST.



Benefits of GST

With the introduction of GST, there are various benefits globally. The main motive is to maintain a uniform tax and develop the country's products and introduce it globally. Some of the benefits of GST are listed below.

- GST creates common market nationally.
- Attracts foreign investment.
- Helps to have uniform taxation.
- Helps improve production and encourage to enter international market.
- Small retailers have nil tax or low tax.
- Consumers are benefited by purchasing from the small retailers

Features of GST

- GST will subsume central indirect taxes like excise duty, services tax etc and also state levies like VAT, Octroi, entry tax, luxury tax etc.
- It will have two components, central GST levied by Centre and State GST levied by the States.
- Only Centre may levy and collect GST on supplies in case of inter-state trade and collection of tax will be divided between centre and state.
- A two-rate structure will be adopted. It means lower rate for necessary items and goods of basic importance and a standard rate for goods in general. There will also be a special rate for precious metals and a list of exempted items.
- Over-lapping of tax, tax on tax will be eliminated with GST.
- Both Goods and Services are taxed in same manner in chain of supply till they are reached to consumer. They are not distinguished under GST.

REVIEW OF LITERATURE

SANKAR R (2017) found that the GST is very crucial tax reform since independence of India, so it must be better handled with utmost care and analysed well before implementing it. And, the governments both central and state have to conduct awareness programmes and various literacy programmes about GST to its various stakeholders.

Monika Sehrawat and Dhanda (2015) have studied about the various features and the challenges associated with Goods and Service Tax well known as GST. They have found out that the legal procedures in implementing, consent from all the states, proper literacy on the concept of GST are the challenges associated with the implementation of GST.

Akanksha Kurana and Sharma (2016) have made a research work about the impact of GST on Indian economy. They have found out that the GST will improve the input tax credit to the manufacturers

which would result in reduced cost of goods. They have suggested that the government must provide awareness about the concepts of GST to the public.

The Indirect Taxes Committee of Institute of Chartered Accountants of India (ICAI) (2015) has said that the Goods and Service Tax have positive impact on Indian Tax System.

IMPORTANT CONCEPTS IN GST

TAXABLE PERSON IN GST

A person is registered or is liable to be registered under the law would be a taxable person in GST. A person would be liable to be registered under the law under two categories:

- a) Person liable to be registered mandatorily.
- b) Person liable to be registered provided aggregate turnover of supply of goods or services or both exceeds threshold limit.

I. EXEMPTIONS UNDER GST (SECTION 11)

Exemption in Public Interest by Notification – Section 11(1)

The Central Government may exempt goods and/or services of any specified description from the tax leviable thereon. However, following cumulative conditions need to be satisfied:

- (a) Exemption is to be granted in public interest only;
- (b) Exemption is to be granted on the recommendation of the GST Council;
- (c) Exemption is to be granted by a Notification in the Official Gazette;
- (d) Exemption to be granted either absolutely [i.e. without any condition] or subject to specified conditions;
- (e) Exemption can be from the whole or any part of the tax leviable thereon; and

The effective date of exemption may either be from the date of issue of Notification or any date subsequent thereto as may be specified in the relevant Notification time to time

Exemption in Public Interest by Special Order under Circumstances of an Exceptional Nature – Section 11(2)

The Central Government may exempt from payment of tax any goods and/or services on which tax is leviable. However, following cumulative conditions need to be satisfied:

- (a) Exemption is to be granted in public interest only;
- (b) Exemption is to be granted on the recommendation of the GST Council;
- (c) Exemption is to be granted by a special order in each case; and
- (d) Exemption is to be granted under circumstances of an exceptional nature to be specified in the

aforesaid special order.

II. MEANING OF INTER-STATE AND INTRA-STATE SUPPLY [SECTION 7 AND 8 OF THE IGST ACT]

In terms of Section 7(1) & (3) of the IGST Act supply of goods or services in the course of inter-State trade or commerce means any supply where the location of the supplier and the place of supply are in-

- Two different States;
- Two different union territories;
- A State and a Union territory

On the other hand, in terms of Section 8(1) and (2), intra-State supply of goods or services means any supply of goods where the location of the supplier and place of supply are in the same State or same Union territory. However, the intra-State supply of goods shall not include:

- (i) Supply of goods to or by a SEZ developer or a SEZ unit;
- (ii) Supply of goods brought into India in the course of import till they cross the customs frontiers of India.
- (iii) Supplies made to a tourist leaving India on any supply of goods taken out of India by him.

III. TIME OF SUPPLY (SECTIONS 12 & 13 OF THE CGST ACT)

The liability to pay CGST/SGST on the goods shall arise at the time of supply. The time of supply of goods in case of the registered person who did not opt for the composition levy under section 10, would be earlier of the following dates, namely:

- (a) the date of issue of invoice by the supplier or
- (b) the last date on which he is required to issue the invoice with respect to the supply i.e., Due date of issue of invoice

In case of service, the time of supply shall be earlier of the following dates, namely: -

- (a) the date of issue of invoice by the supplier if the invoice is issued within the prescribed period (i.e. 30 days) or the date of receipt of payment, whichever is earlier; or
- (b) The date of provision of service, if invoice is not issued within the prescribed period or the date of receipt of payment, whichever is earlier; or
- (c) The date on which the recipient shows the receipt of services in his books of account, in the case (a) and (b) do not apply.

IV. REGISTRATION UNDER GST

Under GST Regime, businesses whose turnover exceeds Rs. 40 lakhs* (Rs 10 lakhs for NE and hill states) is required to register as a normal taxable person. This process of registration is called GST registration.

For certain businesses, registration under GST is mandatory. If the organization carries on business without registering under GST, it will be an offence under GST and heavy penalties will apply.

CBIC has notified the increase in threshold turnover from Rs 20 lakhs to Rs 40 lakhs. The notification will come into effect from 1st April 2019.

Documents Required for GST Registration

- PAN of the Applicant
- Aadhaar card
- Proof of business registration or Incorporation certificate
- Identity and Address proof of Promoters/Director with Photographs
- Address proof of the place of business
- Bank Account statement/Cancelled cheque
- Digital Signature
- Letter of Authorization/Board Resolution for Authorized Signatory

Penalty for not registering under GST

An offender not paying tax or making short payments (genuine errors) has to pay a penalty of 10% of the tax amount due subject to a minimum of Rs.10, 000. The penalty will at 100% of the tax amount due when the offender has deliberately evaded paying taxes.

V. ELECTRONIC CASH LEDGER

Under GST, Electronic Cash Ledger is an account of the taxpayer maintained by GST system reflecting the cash deposits in recognized Banks and payments of taxes and other dues made by the taxpayer. The Tax Deducted at Source (TDS) and Tax Collected at Source (TCS) are also accounted for in the Electronic Cash Ledger.

Under GST Regime, a registered taxpayer can make cash deposits in the recognized Banks through the prescribed modes to the Electronic Cash Ledger using any of the Online or Offline modes permitted by the GST Portal. The Cash deposits can be used for making payment(s) like tax liability, interest, penalties, fee, and others.

The Electronic Cash Ledger has four Major Heads **IGST, CGST, SGST,** and **CESS.** Each of these Major Heads has the five following Minor Heads:

- Tax
- Interest
- Penalty
- Fee
- Others.

VI. COMPONENTS OF GST

GST has brought a reform in the taxation in India. Various types of indirect taxes replaced by GST is categorised under four categories. The four types are:

➤ **CGST under GST**

CGST is a Central Goods and services tax. It is applicable on suppliers dealing within the state. Taxes which are collected will be shared with the central authority body.

➤ **SGST under GST**

SGST is a state Goods and services tax. It is applicable to suppliers who dealing within the state. Taxes which are collected will be shared to state authority body.

➤ **IGST under GST**

IGST stands for an Integrated Goods and services tax. It is applicable to suppliers who dealing interstate business and import transaction. Taxes which are collected will be shared to central and state authority body.

➤ **UTGST under GST**

UTGST stands for Union Territory Goods and Services Tax. It is applicable if the transaction is related to any union territory.

VII. INPUT TAX CREDIT

The meaning of ITC can be easily understood when we take the words '**input**' and '**tax credit**'.

- ❖ Inputs are materials or services that a manufacturer purchase in order to manufacture his product or services which is his output.
- ❖ Tax credit means the tax a producer was able to reduce while paying his tax on output.

Input tax credit means that when a manufacturer pays the tax on his output, he can deduct the tax he previously paid on the input he purchased. Here, while paying the tax on his output, he can deduct or take credit for the tax he paid while purchasing inputs.

Example:

An example will make things much clear. Suppose that a readymade garment firm buys polyester (input) from a supplier (of input) at Rs 100 and a CGST of Rs 10 is also has to be paid (CGST rate of 10%). The price of polyester input will be Rs 110.

Now the garment manufacturer sells the product at Rs 200 plus tax (means his value addition is Rs 100). Imagine that the GST rate of readymade shirt is 12%. Here, the manufacturer must pay a tax of Rs 24. But he has previously paid a tax of Rs 10 while purchasing the input of polyester. Hence, he can claim this Rs 10 and has to pay only the remaining Rs 14 (of the total Rs 24). The Rs 10 that the manufacturer claimed is the input tax credit.

(i) When ITC is received from CGST

- First preference is to pay CGST.
- The remaining amount can be used to pay IGST.
- ITC from CGST cannot be used to pay SGST.

(ii) When ITC is received from SGST

- First preference is to pay SGST.
- The remaining amount can be used to pay IGST.
- ITC from SGST cannot be used to pay CGST.

(iii) When ITC is received from IGST

- First preference is for the payment of IGST.
- Second preference is to pay CGST.
- If remaining, it can be used for the the payment of SGST.

Conditions for Claiming Input Tax Credit:

- In the process of claiming ITC one must have noted that there are some goods and services that do not fall under ITC law. That is, in case of these following goods and services no ITC shall be granted.
- First of all ITC can be claimed only on the goods that are used as commercial purpose. Products that are used for personal use will not be fallen under this claim.
- Manufacturers can purchase goods and services to give away them to their employees. This will be for commercial purpose. However if the employees are using those goods for personal purpose then the ITC will not be valid on them.
- If the inputs purchased by the manufacturers are used to construct any immovable good except for the plants or any machineries then also the ITC claim won't work. Similarly if the inputs are used in contraction of such immovable properties then also the ITC claim won't be working for the manufacturer.

- Also if the manufacturer already claimed the depreciation against the capital goods he purchased then the condition for ITC will not work. He further can't claim ITC for the same capital good.
- Cosmetics, catering service, food and beverages, health and beauty service and so on will not fall under the ITC claim. However if the products are purchased for further supply then it may come under the same law. For example if Person A buys a beauty product and supplies to another customer then it will be allowed for ITC claim.
- Renting a cab is also exempted from the ITC claim, whereas if the manufacturer uses the rented cab to send commercial goods to customers then it can be claimed by the manufacturer.
- If there is free sample for the customers or gifts by the manufacturers are stolen, damaged or lost then the ITC cannot be claimed by the manufacturers.
- If the manufacturer has paid the input tax under the GST composition tax law then the manufacturer will not be able to claim the ITC in future.
- If the tax invoice is more than one year old then the ITC claim won't be possible. One year from the date of issue of the tax invoice ITC claim will be valid.

VIII. DEMAND UNDER GST

Demand under GST

The Goods and Service Tax is payable on a self-assessment basis. If the assessee pays the tax on self-assessment correctly then there will not be any problem. If there is any short payment or wrong utilization of input credit, then the GST authorities will initiate demand and recovery provisions against the assessee. Provisions of demand under GST Act and the consequent recovery provisions are similar to the provisions of Service Tax and Central Excise Act.

Notice when there is No Fraud for tax shortfall (Section 73)

This section applies to non-fraud cases when:

- Tax is unpaid/short paid or,
- Refund is wrongly made or,
- Input tax credit has been wrongly availed/utilised for any reason, other than fraud etc. i.e., there is no motive to evade tax.

The proper officer (i.e., GST authorities) will serve a show cause notice on the taxpayer. They will be required to pay the amount due, along with interest and penalty.

Voluntary Tax Payment

A person can pay tax along with interest, based on his own calculations (or the officer's calculations), **before the notice/statement** is issued and inform the officer in writing of the same. The officer will not issue any notice in this case.

No Penalty

If the taxpayer pays all their dues **within 30 days from date of notice**, then the penalty will not be applicable. All proceedings (**excluding proceedings u/s 132, i.e., prosecution**) regarding the notice will be closed.

Notice when there is Fraud for tax shortfall(Section 74)

This section applies to cases of tax evasion involving:

- **Fraud**
- **Willful misstatement**
- **Suppression of facts**

This results in:

- unpaid/short paid tax or,
- wrong refunds or,
- wrongly availed/utilized input tax credit

In such cases, the proper officer will **serve a show cause notice** to the taxpayer. They will be required to pay the amount due along with interest and penalty.

Voluntary Tax Payment

If the person pays tax along with interest and a 15% penalty based on their own calculations (or the officer's calculations) **before** the notice/statement is issued and informs the officer in writing, then the officer will not issue any notice.

However, if the officer finds that there is short payment, they can issue a notice for the balance amount.

If the taxpayer pays all their dues and a penalty of 25% within 30 days from the date of the **notice**, then all proceedings (**excluding proceedings u/s 132, i.e., prosecution**) regarding the notice will be closed.

IX. APPEAL AGAINST GST DEMAND ORDER

Taxes are the main source of revenue for the Government regardless of being Direct or Indirect. The provision for raising a **demand order** for the tax and recovering the same where it is paid in short, unpaid or incorrect utilisation of **input tax credit** has been stated in the GST Act, An appeal against a GST demand order may be filed if there is are any discrepancies found in the demand and recovery provisions initiated by the GST Department. In this article, we look at the procedure for filing an appeal against GST Demand Order (GST APL-01).

Eligibility

Any taxpayer having **GST registration** or unregistered individuals who are unsatisfied by any order or decision passed against them by an adjudicating authority may file an appeal with the Appellate Authority within three months from the date of when the resolution was given or the order is communicated to the individual. An appeal may be filed by the taxpayer or an unregistered individual only after the adjudicating authority passes an order.

Criteria for Filing Appeal

The other criteria to cross off while filing an appeal against demand order are as follows.

1. A minimum of 10% of the disputed tax must be paid as a pre-deposit before filing an appeal as per the law. Although, the competent authorities may amend this law by declaring a lower percentage for pre-deposit.
2. An applicant may file an appeal against a Demand Order through DSC or EVC. DSC is mandatory for all companies and LLPs to file an appeal against Demand Order.

TYPES OF GST RETURNS

S.No	Return	Particulars
1.	<u>GSTR-1</u>	Details of outward supplies of taxable goods or services or both effected
2.	<u>GSTR-2</u>	Details of inward supplies of taxable goods or services or both claiming input tax credit
3	<u>GSTR-3</u>	Monthly return on the basis of finalization of details of outward supplies and inward supplies along with the payment of amount of tax
4	GSTR-4	Quarterly Return for compounding taxable persons
5	GSTR-5	Return for Non-Resident foreign taxable persons
6	GSTR-6	Input Service Distributor return
7	GSTR-7	Return for authorities deducting tax at source
8	GSTR-8	Details of supplies effected through e-commerce operator and the amount of tax collected as required under sub-section (52)
9	GSTR-9	Annual Return
10	GSTR-9A	Simplified Annual return by Compounding taxable persons registered under section 10

CONCLUSION

GST is a destination based tax system which is introduced to have a Uniform tax system throughout the country. GST will bring in transparent and corruption-free tax administration, removing the current shortcomings in indirect tax structure. GST is business friendly as well as consumer friendly. GST in India is poised to drastically improve the positions of each of these stakeholders. GST can be a win-win scenario that will benefit the entire value chain and make it easier for both businesses and consumers. GST will allow India to better negotiate its terms in the international trade forums. GST aimed at increasing the taxpayer base by bringing SMEs and the unorganized sector under its compliance. This will make the Indian market more stable than before and Indian companies can compete with foreign companies.

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