

DEEMED REGISTRATION UNDER CENTRAL GOODS AND SERVICES TAX ACT, 2017

Manjunath M Kodihalli
Department of Commerce
Guest Lecturer
Govt First Grade College - Sunkalbidari

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. In simple words, Goods and Service Tax (GST) is an indirect tax levied on the supply of goods and services. This law has replaced many indirect tax laws that previously existed in India.

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GST, two years after its inception, has proved to be a roller-coaster ride for all stakeholders. The GST regime has been marked by continuous change. What are the critical tasks ahead?

Ideally, GST rates should have been stable, GST policy should have had a clear roadmap and technology should have been flexible. However, GST rates are evolving, GST policy is going through changes and technology is rigid (not keeping up with the pace of change). The GST Council has met 35 times and went on to make numerous changes in GST legislation. Certainly it's an achievement to conduct so many meetings and unanimously address so many issues. However, quick fixes and changes in the GST law have brought uncertainty in the design of GST.

Given this, it will be preferable that, going-forward, a detailed long-term roadmap for GST policy should be prepared. India's Goods and Services Tax (GST) regime has entered its third year. The nationwide tax continues to evolve as the decisions of each GST Council meetings indicate. In the latest one - 35th GST Council meeting held in Delhi on June 21 - several key decisions, including the extension of the date for filing annual GST returns by two months to August 30 and introduction of a new single-form GST return filing system from January 1, 2020, were taken.

Keywords: GST, Deemed registration, destination-based, value addition. compliance framework

Introduction

Over time, most businesses came within the compliance framework – with some help from the consulting industry – which freed up government resources to tweak the legislative framework, based on common themes that emerged in the first year. Since then, the government has been engaged in a balancing act. In the last year, the government has been justifying its tax rates to stakeholders of various sectors and offering sector specific insights into the taxation regime. According to PwC, this phase of navigation has been handled adeptly by the government, which has led to a promising scenario with respect to the GST. “Although still in its infancy, over the last two years, GST has proven to be a positive tax reform and has significantly boosted India’s industrial growth. It has enabled standardisation and simplification of processes and reduced India Inc.’s interface with the tax authorities,” states the report.

In June 2014, the draft Constitution Amendment Bill was sent to the Empowered Committee after approval of the new Government. Trust deficit plagued all dialogues between the Centre and the States on GST. States had apprehensions about surrendering their taxation jurisdiction, treatment of petroleum products, subsuming of taxes such as entry tax and purchase tax and getting adequate compensation for any loss of revenue for five years. The Union Finance Minister met with the Chairman of the Empowered Committee and Finance Ministers of States on 3rd July 2014 and 11th December 2014. He further met the Chairman of the Empowered Committee and Finance Ministers of Gujarat, Haryana, Punjab, Tamil Nadu and Karnataka on 15th December 2014. All the pending contentious matters were resolved in these two meetings, wherein it was decided that a provision would be inserted in the Constitution Amendment Bill itself for payment of compensation to the States for the first five years post implementation of GST and that the GST Council would recommend the date on which GST would be made applicable on petroleum products. In terms of this broad consensus, the Government sought the approval of the Cabinet to introduce the revised Constitution (122nd Amendment) Bill in the Parliament. The Constitution (122nd Amendment) Bill, 2014, was thus introduced in the Lok Sabha on 19th December 2014.

In the meanwhile, to bridge the trust deficit, the Union Finance Minister also obtained the approval of the Cabinet for paying compensation to the States for loss of revenue caused to them on account of reduction in the rate of CST from 4% to 2%, for the years 2010-11, 2011-12 and 2012-13, over a three-year period beginning 2014-15. This had been a long-standing demand of the States and non-payment of this compensation amount in the past years had adversely affected the deliberations between the Centre and the States. The Constitution (122nd Amendment) Bill was passed by the Lok Sabha on 6th May 2015, and was sent to Rajya Sabha for consideration. In Rajya Sabha, the Bill was sent to a Select Committee for examination on 12th May 2015. The Select Committee submitted its report on 22nd July 2015. Thereafter, the Bill was passed by both Houses of the Parliament on 8th August 2016. After ratification by 50% of the States, the Constitution (101st Amendment) Act, 2016 was assented to by the President on 8th September 2016. After the passing of this first and biggest hurdle, the process for bringing this historic reform acquired significant momentum.

Objective:

Present paper seeks to investigate the deemed registration under central goods and services tax act, 2017 and its propriety on the GST

Deemed registration.

The grant of registration or the Unique Identity Number under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act shall be deemed to be a grant of registration or the Unique Identity Number under this Act subject to the condition that the application for registration or the Unique Identity Number has not been rejected under this Act within the time specified in sub-section (10) of section 25.

Notwithstanding anything contained in sub-section (10) of section 25, any rejection of application for registration or the Unique Identity Number under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act shall be deemed to be a rejection of application for registration under this Act. These are the linking provisions between the Central Goods and Services Tax and State/Union Territory Goods and Services Tax Act. By enabling these provisions, the burden of taking registrations under various Acts has been removed. Thus, if a supplier takes a registration under one act it shall be deemed that the registration has also been obtained under the other Act and vice-versa. Even otherwise the registration must be taken on the common portal and is based on the PAN hence the registration will remain common across various Acts.

However, if the registration is rejected under the Central Goods and Services Tax, then such rejection will be treated as if the registration has not been obtained under the Central Goods and Services Tax even though it has been obtained in State/Union Territory Goods and Services Tax Act.

If an application for registration has been rejected under State/Union Territory Goods and Services Tax Act then it shall be deemed that the same has been rejected under the Central Goods and Services Tax

Provisions under Section 26 of the Central Goods and Services Tax (CGST) Act, 2017 relating to “Deemed Registration”, are as under:

Section 26 of CGST Act 2017: Deemed Registration (CHAPTER VI – REGISTRATION)

(1) The grant of registration or the Unique Identity Number under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act shall be deemed to be a grant of registration or the Unique Identity Number under this Act subject to the condition that the application for registration or the Unique Identity Number has not been rejected under this Act within the time specified in sub-section (10) of section 25.

(2) Notwithstanding anything contained in sub-section (10) of section 25, any rejection of application for registration or the Unique Identity Number under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act shall be deemed to be a rejection of application for registration under this Act.

Govt. has notified the Central Goods and Services Tax (CGST) Act, 2017 on 12 April, 2017 followed with various CBIC Notifications on commencement date for various Sections/ Provisions thereof from time to time. Govt. has further notified the Central Goods and Services Tax (CGST) (Amendment) Act, 2018 on 30 Aug. 2018 followed with CBIC Notification on commencement date of various Sections/ Provisions thereof from 1 Feb. 2019 vide Notification No. 2/2019 Central Tax dt. 29 Jan. 2019 except for amendments where the date of commencement is different from 1 Feb. 2019 and has specifically been mentioned in the CGST Amendment Act, 2018 itself.

Section 26 provides that If the proper officer fails to take any action, -

- within a period of 3 working days from the date of submission of the application; or
- within a period of seven working days from the date of the receipt of the clarification, information or documents furnished by the applicant
- the application for grant of registration shall be deemed to have been approved.

In 'West Bengal Lottery Stockists Syndicate Private Limited v. Union of India' – 2019 (5) TMI 1396 - KERALA HIGH COURT the petitioner applied for registration under the Act and KGST Act. The petitioner uploaded the application on 16.01.2019. The petitioner received a notice on 31.01.2019 seeking additional information for registration stating the following reasons-

- ❖ Documents to prove the ownership of the business premises and bank details of the directors are not uploaded;
- ❖ The application is for registration to deal lottery services but the documents enclosed are to prove that the petitioner is authorized to deal the lottery services under various provisions of law for which authorization to deal with the lottery service is sought.

The petitioner was directed to submit their reply by 08.02.2019. The Registering Authority issued an order rejecting the petitioner's application stating that reply has not been found satisfactory and also the application is not in accordance with the provisions of the Act. The petitioner challenged the said order in the High Court through this writ petition. The petitioner submitted the following before the High Court-If the officer fails to take steps within 3 working days from the date of submission of the application, the petitioner is entitled for deemed registration.

The application cannot be rejected on any factors outside the scope of GST Act and Rules. But the Registering Authority needed to produce authorization to deal with the lottery services under various statutory provisions. No communication has been received from the Registering Authority within the time limit for additional information. There are different modes of communication enumerated under section 169 and therefore the Department also could have sent communication through email provided in the application. The Department submitted the following before the High Court-

They have generated response on 18.01.2019 pointing out the defects.

Therefore deeming provision will not come to the aid of the petitioner. The technical snag involved is a matter purely beyond the control of the Department and what is required on their side is only taking steps. Once steps are taken, legal fiction on deeming could not arise. The Department also produced the documentary evidence on technical snag. The High Court observed that the officer concerned must be very prompt in taking the action for registration. The outer limit of 3 days for the grant of registration is fixed to secure the above purpose. In this case there is an attempt on the part of the officer concerned to intimate the defects exist in the application and the same could not be communicated to the applicant on account of a technical snag.

Implications of deeming provision

The deeming provision has to be interpreted strictly as it creates legal fiction. If the officer had taken steps within three days, the applicant cannot have an advantage of deeming provision even though the applicant had not received such communication. The deeming provision does not stipulate that deeming would arise if the communication is not received by the applicant within 3 days. There the High Court held that the petitioner cannot have an advantage of deeming registration. Recommendations of some of the Groups of Ministers like the GoM on Restaurant Sector, GoM on Reverse Charge Mechanism have been accepted by the Council. GoM on IT challenges is a standing GoM which is monitoring and guiding the IT implementation aspect of GST. Other GOMs are at various stages of deliberation. The GoMs have helped to find common ground with respect to the issues referred to them. These GoMs afford an element of nimbleness to the proceedings of the Council by meeting as frequently as situations demand

The High Court has set aside the reason enumerated by the Department in point no.2 of the notice. The petitioner will have to satisfy all other relevant materials like proving ownership of business through such documents which may be required and also such details which they may be required to be furnished under the Act. The High Court directed the Department to reconsider the case and fresh decision may be taken in accordance with the Act and rules on submitting the application by the petitioner. The High Court further held that the previous rejection of the application will not stand in the way of the petitioner in filing a fresh application.

The potential areas of future work:

Widening of GST ambit:

To facilitate free flow of credits, various stakeholders requested the inclusion of Petroleum and other products which are presently outside the ambit of GST. Article 279A(5) gives the Council the power to decide the date on which GST may be made applicable on Petroleum products.

Simplification of Returns:

With great attention given to the feedback from businesses and taxpayers, the GST Council decided to revamp the return forms with high premium on simplification and ease of filing. Accordingly, the Council approved the new return forms 'Sahaj' and 'Sugam' slated to be introduced soon. The new returns also make filing nil returns easier, through adoption of SMS based return filing mechanism.

Futuristic Returns (Returns 3.0):

Guided by the vision of the Revenue Secretary, frameworks of new GST Returns that can possibly automate the entire tax return process are being developed. This new model of returns draws the best from international practices, experiences in the field of tax management. The possibility of including new tools like invoice generation system, one-pager automated returns format are also being looked at.

Restructuring of GST Council Secretariat:

The Cabinet Note creating the GST Council Secretariat mandated it with assisting the Council in the conduct of its meetings, research in tax policy. As the GST regime continuously looks for innovation, feedback, the Council Secretariat is also being revamped to include a Research Centre in its premises. This Research Centre now hosts databases from International Monetary

Fund, World Bank and European Union VAT Directives. Reflecting the true federal spirit of the GST Council, its Secretariat also has officers from Centre and the States working together to assist the Council. Apart from these new initiatives, the Council Secretariat also began hiring Research Assistants, Consultants to bring in diverse experiences, insights in tax policy design.

Conclusion

Goods and Services Tax Network (GSTN) has been set up by the Government as a private company under erstwhile Section 25 of the Companies Act, 1956. GSTN would provide three front end services to the taxpayers namely registration, payment and return. Besides providing these services to the taxpayers, GSTN would be developing back-end IT modules for 27 States who have opted for the same. Infosys has been appointed as Managed Service Provider (MSP). GSTN has selected 73 IT, ITeS and financial technology companies and 1 Commissioner of Commercial Taxes (CCT, Karnataka), to be called GST Suvidha Providers (GSPs). GSPs would develop applications to be used by taxpayers for interacting with the GSTN. The diagram below shows the work distribution under GST.

In order to give an effect of the suspension of GST registration, entire new rule 21A has been inserted into the CGST Rules, 2017, vide the Central Goods and Service Tax (Amendment) Rules, 2019 effective from 1st February, 2019

DEEMING PROVISION OF SUSPENSION

The deeming provision of suspension of GST registration shall be effective when the registered person has applied for the cancellation of GST registration. The effective date of suspension of GST registration would be later of the following –

Date of submission of registration cancellation application; or Date from which the cancellation is sought.

Chanakya's words summarize the whole GST process – ‘even if something is very difficult to be achieved, one can obtain it with penance and hard work’. If we take into consideration the 29 states, the 7 Union Territories, the 7 taxes of the Centre and the 8 taxes of the states, and several different taxes for different commodities, the number of taxes sum up to a figure of 500!. Any new change is accompanied by difficulties and problems at the outset. A change as comprehensive as GST is bound to pose certain challenges not only for the government but also for business community, tax administration and even common citizens of the country. Some of these challenges relate to the unfamiliarity with the new regime and IT systems, legal challenges, return filing and reconciliations, passing on transition credit. Lack of robust IT infrastructure and system delays makes compliance difficult for the taxpayers. Many of the processes in the GST are new for small and medium enterprises in particular, who were not used to regular and online filing of returns and other formalities. The introduction of GST is truly a game changer for Indian economy as it has replaced multi-layered, complex indirect tax structure with a simple, transparent and technology-driven tax regime. It will integrate India into a single, common market by breaking barriers to inter-State trade and commerce. By eliminating cascading of taxes and reducing transaction costs, it will enhance ease of doing business in the country and provide an impetus to —Make in India campaign. GST will result in —"ONE NATION, ONE TAX, ONE MARKET"

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