



Model GST Law – An Analysis

KEYWORDS

Composite Supply, Casuable Taxable Person, Demand & Recovery, GST (Goods & Service Tax), Central Goods & Service Tax (CGST), State Goods & Service Tax (SGST), Integrated Goods & Service Tax (IGST)

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ABSTRACT The Model GST Law has been released on 14th June 2016. The release of the Model GST Law is a laudable effort and a very important landmark in the GST passage. Modelled as a piece of legislation, the Draft Model Law sets out provisions on taxing event, place of supply, time of supply, credit availability and valuation among others. The law has several new concepts alongwith provisions from inheritance tax framework to address the requirements of the envisaged structure of GST. In this paper I have tried to identify the provisions such as Definitions, Demand and Recovery, Inspection, Search, Seizure and Arrest, Offences and Penalties, Prosecution & Compounding of Offences where there is a need to analyze them. Trade should represent to the Government for a simpler GST regime and for necessary changes in these provisions..

Discussion & Analysis

A) Important Definitions:

1. Rule (21) :

"Casual Taxable Person" means a person who occasionally under takes transactions involving supply of goods and/or services in the course of furtherance of business whether as principal, agent or in any other capacity, in a taxable territory where he has no fixed place of business:

- In case of any tax liability, how the said person will be traceable, as he has no fixed place of business and he is to be registered for 90 days or more days on his request.

- Even he has to pay advance tax, whether invoice raised by him will be valid for availing credit, as it will not bear Registration NO/UID.

How will be demand raised against him, in case he opts out of registration?

Analysis: The issue raised above needs to be revisited.

2. Rule (27) :

Composite supply means a supply consisting of

- Two or more goods
- Two or more services
- a combination of goods and services provided in the course or furtherance of business, whether or not the same can be segregated:

Analysis: As regards point (c) , in case of combination of goods and service, at what rate the tax is to be levied/collected? And at what value i.e. value of goods and services is to be included or otherwise?

This is a new concept that has been introduced, which inter alia includes any combination of supplies of two or more goods and / or services. **This provision is silent in respect of transactions which include immovable property.**

3. Rule 2(54) :

"input" means any goods other than capital goods, subject to exceptions as may be provided under this Act or the rules made thereunder, used or intended to be used by a supplier for making an outward supply in the course or furtherance of business;

Analysis: Definition is much wider but restricted to receipts of supplies only for furtherance of business for making outward supply and also restricted to the extent of specified in Input Tax Credit. This wider definition will create unnecessary litigations. Further requirement that inputs be used at the place of business has not been specified under the above definition.

4. Rule 2 (54) :

"input service" means any service, subject to exceptions as may be provided under this Act or the rules made thereunder, used or intended to be used by a supplier for making an outward supply in the course or furtherance of business.

Analysis: Definition is much wider but restricted to receipts of supplies only for furtherance of business for making outward supply and also restricted to the extent of specified in Input Tax Credit. This wider definition will create unnecessary litigations.

B) Demand and Recovery

Section 51A(1) : There is no time limit to issue notice for demand of tax dues instead of sub section 51A (7) specifies time limit of three years from the date of filing of return or due date of filing return which is earlier for issuance of the adjudication order. If proper office detects non/short payment of tax etc. at just before expiry of three years i.e 7days or less, then there is no time left for issuance of notice instead he has to pass adjudication order without following natural justice.

Section 51 A.(2) The SCN to be issued alongwith all the Annexure (Statement/relied upon documents) , no need to issue Statement separately after issue of SCN.

Section 51B(1) : There is no time limit to issue notice for

demand of tax dues instead of sub section 51B (7) specifies time limit of Five years from the date of filing of return or due date of filing return which is earlier for issuance of the adjudication order. If proper office detests non/short payment of tax etc. at just before expiry of Five years i.e one month or less, then there is no time left for issuance of notice instead he has to pass adjudication order without following natural justice.

There should be some provisions to deal with above situations.

Section 51C (3) :- More than three times of adjournment of personal hearing not to be given:-

Analysis:- But if the person not available or Party not getting received the letter of personal hearing or if letter returns back, then no provision is mentioned.

Section 51C(9) :- Adjudication Proceedings to be concluded if the order not issued within three years in sub-section A (7) or within five years as provided in sub-section B (7):-

Analysis:- This time limit should be applicable after the issuance of SCN.

Section 52(2) : There is no time limit to issue notice for demand of tax dues collected but not deposited in Govt. Account. Sub section 52 (6) specifies time limit of one year to issue an order from the date of issue of the notice. Generally such type of cases are not detected during the scrutiny of return but detected during Audit or Preventive.

Analysis: There should be some provision to deal with such situation.

Section 53: If CGST / SGCT is wrongly paid in different accounting head than assessee has to pay again the proper accounting head and has to file a refund application for such erroneous payment to the appropriate authority and such refund will be subject the provision of section 38 which is applicable for refund.

Analysis: No internal adjustment is allowed, this will cause undue harassment to the tax payer for small error. Further this will increase work load of the department and cause unnecessary litigation. There should be a mechanism that duty so paid erroneously in different accounting head should be transferred in the another accounting head if so required.

Section 56 Specifies transfer of property to be void in certain cases. There is no mechanism prescribed in the Section to know such transfer of property by the defaulter.

Section 57 specifies tax to be first charge on property. Similar type of provision is in existence in Central Excise Act, 1944 which is also made applicable to service tax matters. But there is either no or nominal recovery on this count. The priority of the other authorities/department like banks, employees, income tax etc should be clearly specified before first charge.

C) INSPECTION, SEARCH, SEIZURE AND ARREST:

Section 60(5): The time limit to issue notice in case of seizure of goods is specified as sixty days from the date of seizure. This time limit should be extended at least 180 days from the seizure of goods. Accordingly proviso should be amended to one year by the competent authority.

Section 61(1): The threshold limit of Rs.50,000/- to carry with tax documents by the person incharge of a conveyance should be reduced to between Rs.25,000/- to Rs.50,000/-.

Section 62. Power to arrest:- No monetary limit is prescribed.

D) OFFENCES AND PENALTIES:

Section 66. (1) (i) to (xx) :- Action as stipulated in 66(i) are very elaborative. Penalties of all the relevant clauses are combined to a general penalty. This will create lot of confusion and discretion to the officers. The penalty should be specific for a particular clause.

Section 66(3) For contravention of more than one sub clause as laid down under Section 66(3)(a) to (e), penalty should be twenty five thousand for each contravention of sub clause. Also the penalty should be increased in the case of deliberate defaulters.

Earlier there was provision of imprisonment under Rule 25(1)C of Central Excise Rules .

Section 67: General penalty - Maximum penalty should be Rs.1,00,000/- instead of twenty five thousand.

Section 69(2) : Detention of goods and levy of penalty- No tax, interest or penalty shall be determined under sub-section (1) without giving a notice to show cause and without giving the person a reasonable opportunity of being heard.

Analysis : There should be provision to waive show cause notice and personal hearing if the person does not want.

Section 70(4): No order of confiscation of goods and/or imposition of penalty shall be issued without giving a notice to show cause and without giving the person a reasonable opportunity of being heard.

Analysis : There should be provision to waive show cause notice and personal hearing if the person does not want.

The above section revamps the provisions for imposition of penalties as existing under the Central Excise Act and the Finance Act, 1994. The conditions for impositions of penalties in relation fraud, collusion , willful misstatement, suppression of facts, contravention of provisions with the intention to evade payment of duty, will be replaced by 29 situations which are listed under Section 66(1). This will create lot of mis-understanding amongst the trade and government.

E) PROSECUTION AND COMPOUNDING OF OFFENCES

Section 73 : Prosecution for various offences committed as mentioned in 73(1) and imprisonment will be as follows :

Evasion	Imprisonment & Fine
More than Rs. 250 lacs -	Max 5 years with fine
Rs. 50 lacs to Rs. 250 lacs -	Max 3 years with fine
Rs. 25 Lacs to rs. 250 lacs -	Max 1 Year with fine
Repeated offence -	Max 5 Years with fine.

Analysis: Earlier the monetary limit for prosecution was above 1 crore (Circular No. 96/54/2014-CX.1 dated the 23rd October, 2015.) Now it has been reduced to Rs 25 lakhs as mentioned above. This limit should be increased

to 1 crore as most of the cases will be above Rs 25 Lakhs only.

Conclusion:

Considerable work has been done for the release of the draft GST Model Law. But still some more work needs to be done to remove ambiguity from some of the provisions mentioned above. Industry would be in a better position to assess the impact on their operations once there is more clarity on the ambiguity on valuation of interstate supply without consideration proposed to be taxed, apportionment of consideration may be a challenge in case of interstate supply arrangement, clarification is awaited on treatment to supplies to SEZ, STPI and backward area units.

References

1. Central Excise Act 1944, CBEC, www.cbec.gov.in
2. Central Excise Rules 2002, CBEC, www.cbec.gov.in
3. CENVAT Credit Rules 2004, CBEC, www.cbec.gov.in
4. Central Excise Valuation Rules 2000, CBEC, www.cbec.gov.in
5. Service Tax Chapter V of the Finance Act, 1994, CBEC, www.cbec.gov.in
6. Service Tax Rules 1944, CBEC, www.cbec.gov.in
7. Model GST Law, Government of India, Ministry of Finance, Department of revenue, Central Board of Central Excise & Customs, www.cbec.gov.in
8. www.cbec.gov.in