

## **Goods and Services Tax (GST) Implementation with Special Reference to E-Commerce**

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### **ABSTRACT**

*Signifying the spirit of co-operative federalism, Goods and Services Tax(GST) has been a historic and game-changing tax reform aimed at improving governance, strengthening tax institutions, and imparting buoyancy to the tax base in India. This paper examines the implementation of GST with special reference to the e-commerce sector. Since the e-commerce sector is becoming a significant sector for the India economy, the paper attempts to understand the clarity of tax provisions with regard to this sector. It is observed that due to differential practices of states regarding treatment of e-commerce operators during the pre-GST period, there was a lot of confusion and ambiguity. Under GST, however, there are clear-cut provisions applicable to e-commerce sector on all-India basis and there is no complication regarding inter-state movement of goods.*

***Keywords:*** Goods and Services Tax(GST); E-commerce; Buoyancy; CENVAT

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### **1.0 Commodity Taxation in India Prior to the Introduction of GST**

Prior to the introduction of GST on July 1, 2017, the indirect tax system of India suffered from various disabilities. There was a burden of tax-on-tax in the pre-GST system of Central excise duty and the sales tax system of the States. The introduction of Central VAT (CENVAT) did remove the cascading burden of taxes to a good extent by providing a mechanism of set-offs for tax paid on inputs and services up to the stage of production, and was an improvement over the pre-CENVAT Central excise duty.

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However, both the CENVAT and the State VAT had certain deficiencies. CENVAT was deficient because it did not extend to include chain of value additions in the distributive trade below the stage of production. Further, it did not include several Central taxes (such as additional excise duties, additional customs duties, surcharges etc.) in its overall framework. Hence, the benefits of a comprehensive input tax set-offs was not available to manufacturers/dealers under CENVAT.

Likewise, in the State-level VAT scheme, CENVAT load on the goods was not removed and the cascading effect of that part of tax burden had remained unrelieved. Moreover, there were several taxes in the States (such as luxury tax, entertainment tax, etc.) which had not been subsumed under the VAT. In addition, although the burden of Central sales tax (CST) on inter-State movement of goods had been lessened with reduction of CST rate from 4 percent to 2 percent, this burden had also not been fully phased out.

## **2.0 Introduction of GST: A Historic Tax Reform**

After an arduous journey of 12 years—beginning with the mention of Goods and Services Tax (GST) by the then Finance Minister Shri P. Chidambaram in his Budget Speech for 2005-06 on February 28, 2005—GST finally became operative on July 1, 2017. The historic tax reform saw various ups and downs during this period.

### **2.1 What is GST?**

GST is a tax on goods and services with comprehensive and continuous chain of set-off benefits up to the retailer level. It is essentially a tax only on value addition at each stage, and a supplier at each stage is permitted to set-off, through a tax credit mechanism, the GST paid on the purchase of goods and services. Ultimately, the burden of GST is borne by the end-user (i.e. final consumer) of the commodity/service.

According to clause 12A of Article 366 of the Constitution, *goods and services tax* means any tax on supply of goods, or services or both except taxes on the supply of the alcoholic liquor for human consumption. According to the same Article, *goods* includes all materials, commodities, and articles (clause 12), *services* means anything other than goods (clause 26A) and *State* with reference to Articles 246A, 268, 269, 269A and Article 279A includes a Union Territory with legislature (clause 26B).

The power to levy GST is derived from Article 246A of the Constitution which confers concurrent powers to both Parliament and State Legislatures to make laws with respect to GST. However, clause 2 of Article 246A read with Article 269A provides exclusive power to the Parliament to legislate with respect to inter-state trade or

commerce. The taxable event under GST is the supply of goods and/or services. CGST and SGST are levied on intra-state supplies while IGST is levied on inter-state supplies.

GST is a comprehensive indirect tax levy on manufacture, sale and consumption of goods as well as services at the national level. GST is an indirect tax for the whole of India to make it one unified common market. GST is designed to give India a world class tax system and improve tax collections. It would end the long-standing distortions of differential treatment of manufacturing sector and services sector. GST will facilitate seamless credit across the entire supply chain and across all States under a common tax base.

## 2.2 Objectives of GST

The basic objective of tax reforms in any country should be to establish a tax system that is economically efficient, distributionally acceptable, and simple to administer. GST is India's most ambitious and remarkable indirect tax reform. Its objective is to levy a single uniform tax across India on all goods and services. Implementing a new tax, encompassing both goods and services, by the Centre and the States in a large and complex federal system, is perhaps unprecedented in modern global tax history.

Signifying the spirit of co-operative federalism, GST is a historic and game-changing tax reform. Domestically, it will help improve governance, strengthen tax institutions, facilitate *make-in-India by making-one-India*, and impart buoyancy to the tax base. The Indian GST is 21st century's global standard for VAT in large federal systems.

As the world economy slows, and increasing financial volatility and turbulence become the *newest normal*, only a few economies have the resilience to be a refuge of stability and the potential to be an outpost of opportunity. India is one of those few. As oil and commodity prices continue to be soft, macroeconomic stability seems reasonably assured for India. This bedrock of stability coupled with reforms can propel the economy to a high growth trajectory. Key amongst these reforms is the national level GST.

Implementation of GST leaves behind an inefficient, complicated and fragmented indirect tax system. Switch over to GST is fraught with many problems—administrative and technical. However, such problems are endemic of any change of revolutionary proportions. Many of the problems will be transitory in nature. No one should expect a foolproof GST from day one. GST Council has successfully sorted out political, administrative and implementation differences among the stakeholders and it

is competent enough to grapple with any future challenges and rectifications

GST requires a very high level of compliance. The age of hand-written ledgers, account books, balance sheets and manual record-keeping is gone. Everything will now be online and need to be updated regularly.

Since major Central and State indirect taxes have got subsumed under GST, the multiplicity of taxes has been substantially reduced which, in turn, would decrease the operating costs of the country's tax system. With GST in place, the burden of Central sales tax (CST) has also been removed. The uniformity in tax rates and procedures across the country will go a long way in reducing compliance costs.

### **3.0 Salient Features of GST**

GST has subsumed a profusion of Central and State indirect taxes to create a single unified market. GST will make India a seamless national market, boosting trade and industry and hence growth rate.

As against the erstwhile system of tax on the manufacture of goods or on sale of goods or on provision of services, GST is applicable on *supply* of goods or services or both.

#### **3.1 Destination-based consumption tax**

GST is a destination-based consumption tax as against the erstwhile origin-based tax system. This implies that all SGST collected will ordinarily accrue to the State where the consumer of the goods and/or services sold resides. In other words, the tax would accrue to the taxing authority which has jurisdiction over the place of consumption which is also termed as place of supply.

In the case of inter-State trade, the inter-State seller pays IGST on the sale of his goods to the Central Government after adjusting credit of IGST, CGST and SGST on his purchases (in that order). The exporting State transfers to the Centre the credit of SGST used in payment of IGST. The importing dealer claims credit of IGST while discharging his output tax liability (both CGST and SGST) in his own State. The Centre transfers to the importing State the credit of IGST used in payment of SGST. Since GST is a destination-based tax, all SGST on the final product ordinarily accrues to the consuming State.

#### **3.2 Dual GST model**

It is a dual GST with the Centre and the States simultaneously levying it on a common base. GST levied by the Centre on intra-State supply of goods and services is

called Central GST (CGST) and that levied by the States (including Union territories with legislature) is called State GST (SGST). Union territories without legislature levy Union Territory GST (UT-GST).

CGST and SGST are levied simultaneously on every transaction of supply of goods and services. Further, both CGST and SGST are levied on the same price or value unlike the erstwhile State VAT which was levied on the value of the goods inclusive of Central Value Added Tax (CENVAT).

While the location of the supplier and the recipient within the country is immaterial for the purpose of CGST, SGST is chargeable only when the supplier and the recipient are both located within the same State.

This dual GST model is implemented through multiple statutes (one for CGST and one each SGST statute for every State). To the extent feasible, uniform procedures for collection of both CGST and SGST are prescribed in the respective legislations for CGST and SGST. The basic features of law such as chargeability, definition of taxable event and taxable person, measure of levy including valuation provisions, basis of classification etc. are uniform across these statutes as far as practicable.

CGST and SGST are paid electronically into the accounts of the Centre and the States separately. Centre levies and administers CGST and IGST while respective States levy and administer SGST.

### **3.3 Integrated GST (IGST) on inter-state transactions and imports**

IGST mechanism has been designed to ensure seamless flow of input tax credit from one State to another. Centre levies IGST which is CGST plus SGST on all inter-State transactions of taxable goods and services.

### **3.4 Input tax credit (ITC)**

According to Section 16 (1) of the Central Goods and Services Tax Act, 2017, "Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in Section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person." ITC is an important feature of GST. There are well-defined rules for availing ITC.

### **3.5 GST and foreign trade**

Exports are zero-rated supplies under GST law. Supplies made to SEZs are zero-rated and considered as physical exports. As per explanation to clause (1) of

Article 269A of the Constitution, IGST (CGST plus SGST) will be levied on all imports into the territory of India. Thus, import of goods is treated as inter-state supplies and hence subject to IGST in addition to the applicable customs duties. Import of services is treated as inter-state supplies and hence subject to IGST.

#### **4.0 Components of GST**

The introduction of GST on July 1, 2017 was a significant reform in the field of indirect taxes in India. Multiple taxes levied on goods and services by the Centre and the States were replaced by GST.

A dual GST model is in place in view of the federal structure of India. Centre and the States now simultaneously levy GST on every supply of goods or services or both which takes place within a State or Union Territory (i.e. intra-state trade). Hence, there are three components of GST so far as intra-state trade is concerned.

- Central Goods and Services Tax (CGST).
- State Goods and Services Tax (SGST).
- Union Territory Goods and Services Tax (UT-GST).

Another important component of GST is Integrated Goods and Service Tax (IGST) which is levied by the Centre on inter-state supply of goods or services or both. IGST rate is broadly equal to CGST rate plus SGST rate. SGST component of IGST accrues to the consumer state.

Similarly, a compensation cess on certain specified goods is imposed to compensate States for any revenue loss on account of implementation of GST.

#### **4.1 Central Goods and Services Tax (CGST)**

GST levied by the Centre on intra-State supply of goods or services or both is called CGST. It is levied under Central Goods and Services Tax (CGST) Act, 2017 which makes provisions for the levy and collection of tax on intra-state supply of goods or services or both by the Central Government. The Act is divided into 21 chapters which deal with matters connected with the levy, collection and administration of GST.

#### **4.2 State Goods and Services Tax (SGST)**

GST levied by the States on intra-state supply of goods or services or both under their respective SGST Acts is called SGST. Union territories with legislature (Delhi, Puducherry and Jammu and Kashmir) are covered under the definition of *state*. However, Union territories without legislature are governed by Union Territory Goods

and Services Tax (UT-GST), Act, 2017.

The Secretariat of the GST Council released the Model GST Law (MGL) in November 2016. The MGL provided a common draft of Central GST (CGST) Act and State GST (SGST) Act. MGL also included the draft of Integrated GST (IGST) Act as well as draft GST Valuation Rules.

Telangana was the first State to pass the SGST Act. Jammu and Kashmir was the last to do so and that too post-GST implementation.

#### **4.3 Union Territory Goods and Services Tax (UT-GST)**

Union Territories without legislature are governed by a separate Act, namely the Union Territory Goods and Services Tax (UT-GST), Act, 2017 which makes provisions for the levy and collection of tax on intra-UT supply of goods or services or both in the Union Territories without legislature. Thus, it extends to the following five Union Territories:

1. Andaman and Nicobar Islands.
2. Lakshadweep.
3. Dadra and Nagar Haveli and Daman and Diu.
4. Chandigarh.
5. Ladakh.

Why was there the need for a separate Act for UTs without legislature? It is notable that the Constitution (One Hundred and First Amendment) Act, 2016 inserted a new clause, viz. clause 26B in Article 366 of the Constitution. As per this clause, *State* with reference to Articles 246A, 268, 269, 269A and 279A includes a Union Territory with legislature. Delhi and Puducherry are Union Territories with legislature and hence covered under the definition of *State* for the purpose of GST.

Unlike States and Union Territories with legislature, Union Territories without legislature do not have their legislative assemblies. Hence, they do not have power to make Acts and Rules. As far as CGST is concerned, it applies to these territories also. However, a separate law, corresponding to SGST, was required for Union Territories without legislatures. Hence, the Central Government passed the Union Territory Goods and Services Tax (UT-GST), Act, 2017.

It is noteworthy in the above context that as per Article 246 (4) of the Constitution, the Parliament has powers to make laws with respect to any matter for any part of the territory of India, which is not included in the State, including the matters enumerated in State List (List II) of the Seventh Schedule to the Constitution of India. Therefore, with the approval from the GST Council, the Central Government passed the UT-GST law in the Parliament.

Supply of goods/services within these Union Territories (for example supply by a trader from Chandigarh to another trader in Chandigarh) is subject to CGST plus UT-GST. For the purpose of GST, each of these territories is considered as a separate Union Territory. Thus, if a trader in Andaman and Nicobar Islands supplies goods to a trader in Lakshadweep, it will be treated as inter-state supply and hence subject to IGST.

#### **4.4 Integrated Goods and Service Tax (IGST)**

IGST is levied by the Centre on inter-state supply of goods or services or both. IGST is a mechanism to monitor the inter-state supply of goods or services or both. It is levied by the Central Government on all inter-state transactions of taxable goods and services. IGST rate is broadly equal to CGST rate plus SGST rate. SGST component of IGST accrues to the consumer state. IGST maintains the integrity of input tax credit (ITC) chain in inter-state supplies.

GST makes distinction between intra-state and inter-state supply of goods and services. Hence, IGST—as a part of GST regime—is levied on inter-State supply (including stock transfers) of goods and services. It is levied and collected by the Centre so that the credit chain is not disrupted. IGST also applies on imports.

##### **4.4.1 Advantages of IGST Model**

The major advantages of IGST model are as under:

1. Maintenance of uninterrupted input tax credit (ITC) chain on inter-State transactions.
2. No upfront payment of tax or substantial blockage of funds for the inter-State seller or buyer.
3. No refund claim in exporting State, as ITC is used up while paying the tax.
4. Self-monitoring mechanism.
5. Level of computerization is limited to inter-State dealers and Central and State Governments are able to computerize their processes expeditiously.
6. As all inter-State dealers are e-registered and correspondence with them is by email, the compliance level is substantially high.
7. IGST can take into account *business-to-business* as well as *business-to-consumer* transactions.
8. It facilitates the seamless flow of ITC across states as it is a destination-based tax, i.e., the IGST amount will be apportioned between the Centre and States although the power to levy and collect IGST lies with the Centre to ensure that a single coordinating agency administers it.



It is noteworthy that CGST, IGST and UT-GST laws are the exclusive domain of the Centre. Central Board of Indirect Taxes and Customs (CBIC)—formerly Central Board of Excise and Customs (CBEC)—is responsible for administration of the CGST, IGST and UT-GST laws. In addition, excise duty regime continues to be administered by the CBIC for levy and collection of Central excise duty on five specified petroleum products as well as on tobacco products. CBIC also continues to handle the work relating to levy and collection of customs duties.

SGST is administered by the respective State Governments through their commercial tax departments.

### **5.0 Rationale for Different Categories of GST**

What is the logic for CGST, SGST, UT-GST and IGST? India is a federal polity where both the Centre and the States have been assigned the powers to levy and collect taxes. Both the levels of Government have distinct responsibilities to perform, as per the Constitution, for which they need to raise resources. Therefore, a dual GST is in keeping with the constitutional requirement of fiscal federalism. The Centre and States simultaneously levy GST.

In the pre-GST era, taxation powers between the Centre and the States were clearly demarcated in the constitution with no overlap between the respective domains. In other words, there were no concurrent powers of taxation (or joint occupancy of tax fields) by the two levels of government. Introduction of GST has concurrently empowered the Centre and the States to levy and collect it.

To sum up, GST is meant to evolve an efficient and harmonized consumption-based tax system in the country. GST is a consumption-based tax because the tax is received by the State in which the goods or services are consumed and not by the state in which such goods are manufactured. GST has replaced parallel systems of indirect taxation at the Central and State levels. The changeover to GST is a game-changing tax reform which will significantly contribute to the buoyancy of tax revenues, acceleration of growth, and generation of many positive externalities. Different components of GST are meant to ensure:

- One-country, one-tax and one-market.
- Adequate revenue for both the Centre and the States.

### **6.0 E-commerce, E-commerce Operator and GST**

Electronic commerce means the supply of goods or services or both, including digital products over digital or electronic network [Section 2 (44) of the CGST Act,

2017]. Electronic commerce operator means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce [Section 2 (45) of the CGST Act, 2017].

As per Section 9 (5) of the CGST Act, 2017, “The Government may, on the recommendations of the Council, by notification, specify categories of services the tax on intra-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services:

Provided that where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax:

Provided further that where an electronic commerce operator does not have a physical presence in the taxable territory and also he does not have a representative in the said territory, such electronic commerce operator shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax”.

It may be recalled that during pre-GST era supplying goods through e-commerce platform was not well-defined. E-commerce operators (like Amazon and Flipkart) were treated as facilitators by some states (like West Bengal and Kerala) and hence not required to register themselves for VAT. Contrarily, in some states (e.g. Uttar Pradesh) they were required to file a VAT declaration and other documents. Due to differential practices of states in this regard, there was lot of confusion and ambiguity. Under GST, there are clear-cut provisions applicable to e-commerce sector on all-India basis. There is no complication regarding inter-state movement of goods.

### **6.1 Tax collection at source (TCS)**

TCS means that any dealer selling through e-commerce will receive payment after deduction of tax at specified rate. Since TCS is mainly for e-commerce aggregators, it is necessary to understand what is e-commerce and who is an electronic commerce operator.

### **6.2 Legal provisions for TCS**

With regard to tax collection at source (TCS), sub-sections (1) and (3) of Section 52 of CGST Act, 2017 read as follows,

“(1) Notwithstanding anything to the contrary contained in this Act, every electronic commerce operator (hereafter in this section referred to as the “operator”),

not being an agent, shall collect an amount calculated at such rate not exceeding one percent, as may be notified by the Government on the recommendations of the Council, of the net value of taxable supplies made through it by other suppliers where the consideration with respect to such supplies is to be collected by the operator...(3) The amount collected under sub-section (1) shall be paid to the Government by the operator within ten days after the end of the month in which such collection is made, in such manner as may be prescribed”.

Benefit of threshold exemption is not available to e-commerce operators and they are liable to be registered irrespective of the value of supply made by them. Thus, Amazon is e-commerce operator because it is facilitating actual suppliers to supply goods through its platform.

If a person is supplying own products through his own hosting website then tax collection at source (TCS) will not take place because TCS is required when taxable supply is made through e-commerce operator by other supplier and consideration is collected by e-commerce operator. When someone is selling own product through own website there is no need for TCS. Here normal GST rate will be applicable.

If someone is purchasing goods from different vendors and selling such goods on his own website under his own billing, then TCS is not needed because supply is not made by other supplier. Again, Amazon is e-commerce operator because it is facilitating suppliers to supply goods through its platform (popularly called market place model or fulfilment model). However, Amazon will not be treated as e-commerce operators in relation to those supplies which it makes on its own account (popularly called inventory model).

Twenty-sixth Meeting of the GST Council held on March 10, 2018 decided to postpone the applicability of TCS until June 30, 2018. Provisions relating to TCS were again deferred for another 3 months till September-end, 2018.

On September 13, 2018, Government notified the provision part of Section 52 of the CGST Act, 2017 which had been kept in abeyance since the rollout of GST on July 1, 2017. As per the notification, TCS provisions under GST regime took effect from October 1, 2018. Rate of TCS for intra-state supplies is 1 percent of net taxable supplies (0.5 percent CGST plus 0.5 percent SGST). Rate of TCS for inter-state supplies (IGST) is 1 percent of net taxable supplies.

Thus, e-commerce firms have to collect tax at the specified rate before making the payment to the supplier for proceeds of sale. E-commerce operators had opposed TCS arguing that it would add to their compliance burden due to the cumbersome reporting provisions. E-commerce firms have to furnish a monthly statement and an annual statement containing details of the outward supplies. In addition, they have to

deposit tax collected at source by 10th of the next month in which the tax was collected.

With the TCS provisions coming into force, tax authorities are empowered to monitor e-commerce transactions and ensure that suppliers selling their goods through e-commerce platforms do not get away with under-reporting their turnover.

TCS implementation as a tool to check tax evasion comes at a time when GST revenues are lagging behind budgeted targets and the tax authorities are struggling to stabilize revenues at higher level. Government is hoping that TCS along with e-way bill implementation will prevent non-reporting and under-reporting of transactions thereby enlarging the taxpayer base.

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