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(Formerly known as FAPCCI)
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REPRESENTATION ON THE MODEL GST, CGST AND IGST LAW RELEASED ON JUNE 14, 2016

1. GENERAL:

Definition of Agriculturist under Sec 9 and food processing activities:

(i) In respect of food processing activities where purchases of vegetables and fruits etc are made from the open market or from dealers or are own cultivated the effect of keeping these produce to remain outside the GST regime would mean that the tax cost embedded in the agri operations would be not available to the subsequent downstream activities there by adding to the cascading effect of taxes. In the context of fruits and vegetables where more than 30% of these products are lost in the absence of storage and processing there is an imminent need to bring them into the GST regime. This would enable this sector to take credit and pass on to the subsequent downstream operations. In the present regime these value added products are subject to VAT at around 5 % besides excise duty if these are ready to eat products. The lack of clarity with regard to value added food products would lead to food inflation and this is not the intention of Government.

Secondly with regard to 100% EOU's in the growing and processing of tea, coffee, and other plantation crops for exports there is a need to see that the working capital requirement does not render their operations uncompetitive. Therefore there is a requirement to see that they are also brought under a UIN mechanism as envisaged under Cl 19 of the Model Law so that the refund could be affected without delay and without having to get into the regular registration mechanism.

(ii) FERTILISER INDUSTRY -DUTY AND TAX STRUCTURE AT PRESENT ON FERTILISERS:

Most of the inputs used in the manufacture of fertilisers are imported. The Counter veiling Duty (CVD) and Special Additional Duty (SAD) which are levied on imports along with concessional Basic Custom Duty are exempted for inputs used in the manufacture of fertilisers.

It is also to be noted that Central excise duties are also exempt on the inputs used in the manufacture of fertilisers. The manufacture of fertilisers suffers only concessional rate of excise duty of 1%.

As far as VAT is concerned, it attracts VAT at a concessional rate of 5% and in some of the states like Punjab, Haryana, Tamil Nadu VAT is exempt on sale of fertilisers.

The subsidies granted by the Indian Government is not forming part of value for the purpose of levy of tax.

Right from the beginning the fertiliser industry has been given a special treatment as far as indirect tax is concerned so as to make it affordable to the farmers at a reasonable price.

Possible Adverse impact of GST on fertiliser industry:

i) It is expected that there will not be any exemption on import of inputs used in manufacture of fertiliser which is so far enjoyed. Every import of inputs attracts along with ti concessional basic custom duty and the IGST. Even the inputs procured domestically will attract SGST and CGST which will have significant impact on the working capital of the fertiliser industry.

ii) The sale of fertiliser will attract SGST and CGST at a rate which is very significant compared to the present rate charged. It is assumed that fertiliser will be under the concessional rate of tax which is expected to be 12%.

iii) Even the stock transfers attract GST. It is common in the fertiliser industry that the fertilisers manufactured are stored at places which can easily be made available to the farmers without waste of time. Thus the fertiliser manufacturing company takes care of storing fertilisers on behalf of farmers to make available during season. These stock transfers to be made on payment of GST. Thus working capital are blocked to that extent.

iv) The subsidy granted which is linked to the supplies are also taxable under GST. At present on an average 30% of sales price is covered by way of subsidy. The charging of GST on subsidy will make the fertiliser dearer and may have adverse impact on the usage of fertilisers leading to fall in agriculture production thereby increasing in cost of agriculture produce. Thus charging of GST on fertilisers subsidy will have inflationary impact.

In view of the above submission, the following suggestions are made

a) Fertiliser being different from other industries wherein the government plays a pivotal role by grant of subsidy and exercise control on movement of fertiliser by supply and distribution plan to make the fertilisers available on time at an affordable rate, it should be given a special status by inclusion under zero rated tax.

b) If not under zero rated, it should be charged at a special rate which will not have inflationary impact on the food production. At the same time, it should also be taken care that it should not lead to inverted duty structure.

c) The government provides subsidy to the manufacture of fertilisers to compensate the cost of production which has not been realized on account of selling the fertilisers at a price as monitored by the government. Thus to keep the prices of fertilisers under check and to make it affordable, the subsidy is granted. The same subsidy is included as part of transaction value to charge GST leading to increase in the cost of fertilisers. Thus it goes against the principle of making available the prices at affordable price. Hence it is requested to keep away the subsidy from GST.

(iii) There is a strong need that was expressed for an **"Educational Guide"** illustrating the "why" of the various provisions with examples where ever necessary to give the requisite clarity for Trade and Industry.

(iv) In particular given that the Small and Medium Sector including small traders who have been mainly interacting in the past with VAT at the State level will be exposed to dual control, the requirement for registration must be put in a matrix form so that this could be a ready referencer for the said sector which could be the most vulnerable segment of trade and industry as a result of the transition to GST.

(v) Trading community in agri crops (Chilies, Cotton etc) and commodities in Telangana and A.P. operate also through the system of commission agency. Under Sec 3(2A) of the Model GST Law (GST Law) the scope of supply is extended to cover supply or receipt of goods or services on behalf of a principal. This transaction between a principal and agent is "deemed to be a supply" and would therefore by necessary implication invite the levy of GST.

This provision in the context of goods like agri commodities would have a significant implication on the trade since these being on consignment basis are currently taxed under the VAT law only upon sale. This provision would have an effect on a large section of small and medium consignment traders in the States of Telangana and A.P. which are also agricentered States. This provision would necessitate a re-look to protect the interests of the consignment dealers in commodities.

(vi) In States like Telangana and A.P. and particularly in Hyderabad there are significant clusters of job work manufacturers who represent the "make in India" initiative of the Government of India. This is the case even on a national scale.

It is stated in the GST Law that supply of goods by a taxable person to a job worker is not to be treated as supply of goods. Sch II (3) deals with the treatment or process which is being applied to another person's goods and this is supply of service. While so Sec 43A regarding special procedure for removal of goods contemplates a special permission by the Commissioner for dispatch of goods by a taxable person to a job worker. Under the existing Rule 4(5)(a) of the Cenvat Credit Rules, 2004 and the subsequent liberalisations direct supplies from job worker premises is permissible and they do not contemplate any prior approval of the Commissioner. There is no reason to require a special order since it is common practice to engage job workers for manufacture.

Besides the MSME sector, the large units in Drugs and Pharma that have a significant presence in Telangana and A.P. will be subject to this prior approval procedure. This should be revisited and the job worker manufacturer procedure should be made user friendly with least transaction cost burden.

(vii) **Job work Provisions**

As per Clause 43 A (1) (a) after completion of job work such goods may be allowed to be brought back to any of the places of business of the principal without payment of tax. These provisions ignore the materials used by the job worker and the input credit thereon practically remain un-utilized at the job worker premises.

Though a Chapter is dedicated for Job Work, it has not consolidated all the provisions related to job work at one place.

As per Clause 43 A (1) (b) after completion of job work such goods may be allowed to supply from the place of business of the job worker on payment of tax within India. However the provision is silent about valuation of such goods.

Infact the Job work provisions are bound to introduce confusion. The general supply provisions need to be made applicable without having separate provisions.

Clause 43 A (1) (b), restrictively imposes the condition that the principal should declare the place of business of the job worker as his additional place of business. In practical situations the job worker may act like freelance service provider to many others and may not in all the cases be tied up exclusively with one principal. So declaring the place of business of the job worker as his additional place of business by principal may not be practically possible.

Also there is no provision for many practical cases like raw material sent by the Principal to the Job worker who is not registered under GST, for further processing and then delivery directly of Finished Goods (FG) from the job workers premises to the third party (Customer). In such situations who shall discharge the tax liability on FG is not clear.

As per Clause 16A (1) the principal is allowed to take credit of input tax on inputs sent to job worker for job work (even covers the case of inputs directly sent to the job worker without first brought to the principal's place of business) subject to the condition that after completion of job work the materials are received back by the principal within 180 days. Here the case of sending the FG from the job worker to the customer directly after the job work is not covered.

VIII. In some of the industries like Jewellery and consumer durable or electronic goods it is not uncommon to send goods on approval or return basis. The provision of Sec 12 (6) regarding sale on approval in the context of reckoning of "time of supply" which decides when payment of tax is to be made employs the expression: "when it becomes known" that the supply has taken place subject to a time cap of 6 months from the date of removal of goods. This expression "when it becomes known" in the absence of any legislative aid to determine "knowledge of supply" taking place could lead to disputes particularly in the jewellery industry and even in respect of consumer durables and electronic goods. This requires revisitation.

IX There is also a concern in the Large industry particularly with respect to the application of Sec 12(2)(c) which deals with receipt of payment with respect to supply of goods for purpose of payment of tax in terms of the "time of supply" rules. This is a deviation from the current VAT procedure and will lead to myriad complications in accounting, reconciliation and also involve additional working capital. This will require re consideration

X There are various market committees which are under separate legislative enactments of the State Government and are therefore a "governmental authority" providing functions under article 243 W of the Constitution (Schedule IV (3) to the GST Law) However when it comes to the definition of taxable person under Sec 9(2) the deeming provision does not cover the Governmental authority. This may be looked into once again

2. EDUCATION SECTOR:

Given the paucity of high quality teaching professionals in higher education it is not uncommon for the institution in one State registered as a taxable person to render services by deputing teaching professionals to other entities of the same group or the divisions of the same entity in other States that are registered as taxable persons. With the education sector at the higher levels in the tax net as of now there could be serious issues in the valuation of supplies from one taxable person to another albeit of the same entity. Moreover when these institutions undertake outstation events in other States this would further complicate the tax consideration on account of movement of teaching staff and its valuation besides registration requirement.

This would burden the already weak higher education segment in the knowledge and skill building process in the country and work counterproductive to the Central Government efforts in skill building. The education sector of recognized higher level learning akin to international standards should be exempted from tax as is the practice in economies such as U.K.

3. DUAL CONTROL:

A proper mechanism should be evolved as between the Central Excise department and the State VAT department to ensure that the SME sector and small traders are not subject to repeated harassments and the larger and medium trade and industry segments get enough time to focus on business instead of repeated administrative inconvenience issues. This could be achieved by nominating one of the agencies to regulate the trade segment while the other could perform the audit function at the same time. This position could be periodically rotated to as provide a fair deal to all the stake holders.

4. UNJUST ENRICHMENT:

Law of unjust enrichment is prevalent under Central Excise, Service Tax and Customs at present. There is no such principle of unjust enrichment under VAT.

There are numerous litigations at present that even after assesse receiving a favorable order from the Highest Appellate authority has to be litigated with regard to unjust enrichment to obtain a refund. The result is protracted litigation and uncertainty.

At present the onus is on the assesse / importer to prove that burden of duty has not been passed on to anyone else for the litmus test of principle of unjust enrichment.

At present it is possible to establish this by showing that such tax / duty is not factored in the cost of production, not charged in the invoice, also not charged to profit and loss account as expenditure. It is shown as 'Receivable' on the asset side of Balance sheet. This will be required under GST law also to come out of 'unjust enrichment'.

In the case of disputed taxes / duties wherein the matter is under litigation, it is not prudent for the business to keep paying the taxes and not to charge to profit and loss / factor in the sales price and only show as amount receivable in the books of accounts.

In large companies where such disputes are running into crores of rupees they do not take chances of keeping such amount as current assets in the books of accounts as the protracted litigation takes a longer time to decide the issue. In case, if the decision is against the company, in that year the company has to transfer such disputed tax from current asset to expenditure account. This will hit hard the reporting profit of the company. Hence such disputed payment of taxes will be charged to profit and loss account whenever it is paid. In the competitive environment of the business, it has to be left to the business to factor such disputed tax in the price or not. Such charging in Profit and loss account and factoring in the cost of production may lead to reduction in the profit margin. It all depends on how the market absorbs the price in the competitive market.

To facilitate the business and ease of doing the business and also to reduce the litigation, it is high time under model GST law **to abolish clause of 'unjust enrichment' as is the practice under VAT law.**

5. COMPLICATIONS IN DISCHARGE OF GST LIABILITY ON SUPPLY OF GOODS ON ADVANCES

Discharge of tax liability on supply of goods is covered under 'time of supply of goods'. In terms of Section 12(2) of Model GST law (MGL), receipt of advances is also one of the criterion for discharge of tax liability. Thus receipts of all advances on supplies are subject to tax irrespective of delivery of goods or raising of invoice. This has never been the case either in central excise or VAT. Also so far there is no record of loss of revenue to exchequer of central or state government on account of not levying of duty or tax on advances.

The following are certain illustrative problems which one may encounter, especially in large companies, for having to discharge tax liability on advances.

a. So far the duty / tax liability are discharged on the basis of the list of invoices and it could be easily identified for any missing invoices. Once advance is made the basis to discharge GST liability, it is difficult to keep track unlike in the case of the list of invoices to discharge tax liability under the present regime. There is a possibility of omission to discharge tax liability leading to non-compliance.

b. In the business there is a possibility that certain products are sold on credit and others on advance basis. A recipient taxable person may deal with both such products of the supplier. In business it is normal that any payments made in advance may be asked to be adjusted against credit balance.

c. The supplier on receipt of such advances would have discharged tax liability under GST but later without supplying for such advances when he has been asked to adjust against regular payment, how to adjust such GST tax which was already discharged. These kinds of transactions are plenty in large companies.

d. Booking of goods on receipt of advances and later cancellation of such bookings leading to refund of full advance. How to deal with tax liability discharged on receipt of advances?

e. Once the tax is discharged on advances, at the time of supply of goods by raising an invoice against such advances, it has to be excluded from the list of advances which the industry may find it difficult to monitor. These are only the illustrative cases which makes the due discharge of tax liability compliance very cumbersome.

It is requested to keep the provision simple as to discharge tax liability on dispatch of goods. It's only a matter of timing wherein collection of tax is preponed in the case of advances. Instead of advances, if the time of supply is made on dispatches, there is certainty in compliance. It is also easy to monitor and provide compliance.

6. OMISSION OF 'MAINTENANCE' IN THE DEFINITION OF 'WORKS CONTRACT'

Section 2(107) defines 'works contract'. There is an omission to include 'maintenance' in the definition of works contract. Maintenance involves both material and service components. Works contract is deemed to be treated as 'service' in terms of clause 5 of Schedule II MGL. In the absence of 'maintenance' not covered under the definition of works contract, how it has to be treated whether as supply of goods or supply of service?

7. INTERPRETATION OF EXEMPTION NOTIFICATION:

Explanation to Section 10(1) provides to avail the absolute exemption of goods / services, without leading any option to payment of taxes. Thus if any goods / services are exempted, a supplier does not have any choice except to avail the benefit of exemption.

There may be cases wherein on account of dispute in classification of the goods or services, as to whether it gets covered under the exemption schedule or not, the supplier without taking any chance discharge the tax liability and also avails the credit.

At a later stage if such dispute is settled that such supplies to be classified as exempted, there should be a protective clause to treat all such past transaction as taxable and allow input tax credit already availed. Hence there should be no scope for re-opening of past.

8. REFERENCE OF HSN CLASSIFICATION :

At many places in MGL, there has been reference of Central Excise Tariff classification / HSN classification. But MGL has not adopted the Central Excise Tariff Act as part of its schedule. In view of this, there is no legal sanctity of the Central Excise Tariff Act under MGL.

9. RELEVANCE OF DEFINITION OF CAPITAL GOODS

Capital goods have been defined under Section 2(20) of the MGL. The definition is akin to Rule 2(a) of the present Cenvat Credit Rules, 2004. It is not required to distinguish between inputs and capital goods so long as both are eligible for Input Tax Credit. There are different provisions covered for capital goods like reversal of certain percentage of input tax credit on the disposal of capital goods depending on its use, not to capitalize input tax credit to claim depreciation under Income Tax Act etc to be streamlined to make it uniform both for input and capital goods without making any distinction between them.

10. TIME LIMIT FOR AVAILING OF INPUT TAX CREDIT

In terms of Section 16(15) of MGL, a time limit in any financial year to avail input tax credit within the succeeding year up to September or date of filing of annual return has been fixed. The time limit will cause lot of inconvenience for availing of input Tax Credit. Under matching concept, it is not required to have time limit to avail credit.

11. CERTAIN AMBIGUITY IN SECTION 16(6) ON NON-TAXABLE SUPPLIES AND EXEMPTED SUPPLIES

Exempt supplies has been defined under Section 2(42) which covers goods and or services which are not covered under the Act and also includes goods covered under the exempted schedule.

Section 16(6) of MGL provides for availing of input tax credit attributable to the taxable supplies. It contains the reference of non-taxable supplies and exempt supplies. As non-taxable supplies are part of exempted supplies as per the definition under Section 2(42), it is not required to give separate reference of 'non-exempted supplies' which makes the matter confusing.

12. CONSTRUCTION CONTRACT - IT IS REQUIRED TO BE REVISED

Section 2(77) defines 'Principal' means a person on whose behalf an agent carries on business of supply or receipt of goods and or services. Section 16(6)(d) states that the input tax credit is not available in the case of goods acquired by a principal, the property in which is not transferred (whether as goods or in some other form) to any other person, which are used in the construction of immovable property, other than plant and machinery.

It need not be that there should be a principal agency relationship between the contractor and sub-contractor. The sub-contractor also acts independently on a principal to principal basis.

13. 'RECEIPT OF SERVICE' IS THE CONDITION FOR AVAILING OF THE INPUT TAX CREDIT

Section 16(11) covers certain pre-requisites to avail input tax credit. Clause (b) of Section 16(11) covers receipt of goods and or services for availing of credit. A factory need not receive the services in the factory, it can receive the same anywhere. For example when a material is sent for testing outside, such services are not received within factory but such services are availed by factory.

As per Section 16(11)(b) credit cannot be taken if service it is not received in the factory. Receipt of service in the factory shall not be a condition for availing of the input tax credit.

14. AVAILMENT OF INPUT TAX CREDIT BY PRINICPAL IN JOBWORK

Section 16A provides that principal can avail credit on input sent to job worker. Section 2(77) defines 'Principal' means a person on whose behalf an agent carries on business of supply or receipt of goods and or services.

It need not be that there should be a principal agency relationship between the manufacturer and the job worker. The job worker may also act independently on a principal to principal basis. In such case as per this provision, principal may not be eligible to avail credit. Hence it requires suitable amendment.

15. CREDIT ON CAPITAL GOODS AND SERVICE TAX SHOULD ALSO BE PROVIDED IN TRANSITIONAL PROVISION

Section 145(1) provides for credit of eligible duties and taxes in respect of inputs held in stock and inputs contained in semi-finished and finished goods as held in stock on the appointed day. Transition provision does not include the availment of taxes on services and duties and taxes on capital goods.

16. INPUT SERVICE DISTRIBUTION:

Section 162 provides for distribution of credit of services. There are also goods which are procured in the Head offices / branch offices / sales offices for furtherance of business. There is no such provision to avail and distribute the credit of such goods. There need to be a provision for distribution of input credit.

17. REVISED INVOICE

Explanation to Section 23 provides for reference to 'revised invoice'. Once the invoice is raised, it can't be revised. There is no such provision under the model GST law for revision of invoice. Any correction in the invoices has to be done by Debit or Credit Note. Such reference of 'revised invoice' only creates a confusion which needs to be deleted.

18. ACCUMULATED CREDIT OF SAD

On account of inverted duty structure, there has been accumulation of credit especially of SAD which is charged on imports under Section 3(5) of the Customs Tariff Act. If such credit is allowed to be carried forward under GST, it continues to remain as credit only in the books and cannot be utilized. Hence there should be a transitional provision to provide refund of such accumulated credit arising out of inverted duty structure under earlier laws.

Given the inter company re charges where one company plays the role of the "**operator**" the valuation provision is such cases as applicable to "**related party**" (Sec cl 2(82) which is based on Customs Valuation Rules will cause procedural impact in arriving at the values of the transactions. It is suggested that Rule 3(4) of the GST Valuation Rules 2016 should incorporate a similar provision as in the case of Customs Valuation Rules 2007 which read as follows in Rule 3 (b):

(3) (a) Where the buyer and seller are related, the transaction value shall be accepted provided that the examination of the circumstances of the sale of the imported goods indicate that the relationship did not influence the price.

(b) In a sale between related persons, the transaction value shall be accepted, whenever the importer demonstrates that the declared value of the goods being valued closely approximates to one of the following values ascertained at or about the same time.

(i) The transaction value of identical goods, or of similar goods, in sales to unrelated buyers in India;
(ii) The deductive value for identical goods or similar goods;
(iii) The computed value for identical goods or similar goods:

Provided that in applying the values used for comparison, due account shall be taken of demonstrated difference in commercial levels, quantity levels, adjustments in accordance with the provisions of rule 10 and cost incurred by the seller in sales in which he and the buyer are not related;
In the absence of such a provision as suggested in intercompany transactions the sequential process as stipulated in Rule 3(6) of the GST Valuation Rules will take effect thereby denying the option to intercompany transactions the choice of method as is available in Rule 3(b) of the Customs Valuation Rules.

19. EXCLUSION OF SERVICE PROVIDED BY EMPLOYEE TO EMPLOYER UNDER TAXABLE PERSON – LOOSELY WORDED

Under Section 9(3) (a) of MGL, the service provided by employee to employer is excluded from the taxable person. While taking into consideration the various degrees of such relationship it has been provided that "...**Any other legal ties creating the relationship……" will also be covered.** It has been loosely worded giving scope for controversies.

20. EXCLUSION OF RECEIPT OF CERTAIN VALUE OF SERVICES FOR PERSONAL USE FROM REVERSE CHARGE UNDER TAXABLE PERSON

Section 9(3)(c) of MGL excludes from taxable person any of receipt of services up to certain values used for personal use from reverse charge. Entire personal use shall be kept outside the purview of taxes.

21. OMISSION TO INCLUDE GOVERNMENTAL AUTHORITY IN THE DEFINITION OF 'PERSON'

Under Schedule IV of the MGL, S.No. 3 provides as follows:

"3.Services provided by a government or local authority or ***governmental authority*** by way of: ……."

The definition of **"person"** which is defined under Section 2(74) does not include **"governmental authority"**

Even under Section 9(2) of the MGL, while defining Central Government, State Government or local authority to be regarded as a taxable person, there is an omission of **"governmental authority".**

This may lead to controversy as what is meant by **'governmental authority'** and effect of non-inclusion of the same in **'person'**.

22. DISCHARGE OF TAX LIABILITY ON SUPPLY OF SERVICE:

a) ON PROVISIONAL BASIS:

Section 13(5) of the MGL provides for timing of discharge of tax on supply of services under reverse charge. One of the provision is the 'the date of debit in the books of accounts' to discharge tax liability.

This gives scope for even the entries recorded in the books on a provisional basis to attract tax on services. Generally in large industries, the input services are recorded on a provisional basis even though the entire services are not fully rendered. Such recording on a provisional basis calls for discharge of service tax liability. Normally such provisions are recorded on with the assumed figures. Discharge of liability on such services before liability to the service provider is crystallized is uncalled for. Also it leads to reconciliation problem when actual liability is crystallized.

b) ON THE DATE OF RECEIPT OF SERVICE:

Reverse charge is also required to be discharged on receipt of service in terms of Section 13(5)(a). The compliance of this will be a problem especially in large industries. The large industries having multiple departments and sections, it is difficult to know when exactly the service is received by such department and sections. It is difficult for the person who takes care of compliance of such liability to keep track of services received in various sections of the company or factory since the same being a large company. Even otherwise it all depends on the departmental / section in charge of the various department / sections of the factory / company to regularly inform of such receipt of services to the person in charge of compliance of tax liability. Thereafter reconciliation of discharge of service tax liability on receipt basis vs. actual payment made to such service provider will be a difficult task. It unnecessarily increases the compliance cost and adds burden to the ease of doing business.

23. DISCHARGE OF TAX LIABILITY ON SUPPLY OF GOODS ON THE BASIS OF ENTRY IN THE BOOKS OF ACCOUNTS OF THE RECEPEINT

Section 12(2) (d) of MGL provides date of entry in the books of account towards receipt of goods by the recipient as one of the basis for discharge of GST liability on supply of goods. It is difficult for the supplier of goods to know the date of entry made for receipt of goods by the recipient since he will not have access to the books of accounts of recipient of goods. Thus this provision seems to be impractical and onerous. . It is impossible to comply with this. It is also difficult to put this into operation.

24. GOODS SUPPLIED ON SALE OR RETURN BASIS NOT PROPERLY DRAFTED

Section 12(6) of MGL covers the provision for sale or return basis.

The relevant provision is reproduced as follow:

*"If the goods (being sent on taken on approval or sale or return are similar terms) are removed before **it is known** whether supply will take place, the time of supply shall be at the time when it **becomes known** that the supply has taken place or six months from the date of removal, whichever is earlier".*

This provision is on the basis of **known fact.** The known fact is very subjective and difficult to prove. This leads to unnecessary controversy in complying with this provision.

25. 'RECIPIENT' IS LOOSELY DEFINED:

Section 2(80) of the MGL defines 'recipient' which is loosely worded. Especially in the case of Section 2(80)(c) which is defined as follow:
"Where no consideration is payable for supply of a service, the person to whom the **service is rendered**"

Whether 'Service rendered' is a provision of service? Uniformity should be maintained while using the phrases such as "service provided" "service rendered". These phrases can't be used as an alternatives.

26. SUPPLIES TO SEZ UNITS

Supplies to SEZ units are to be treated as **'zero rated supplies'** equivalent to exports. Otherwise, the Unique Identification Number as provided in Section 19(6) to Model GST Law has to be extended to SEZ units also.

27. CANCELLATION OF REGISTRATION WITH RETROSPECTIVE EFFECT

Section 23(3) of Model GST Law provides for cancellation of registration with retrospective effect if such registration is obtained by means of fraud, willful misrepresentation or suppression of facts. The recipient of such supplies who obtained the supplies bonafide should not be denied the credit on account of such fault of provider of supplies.

28. CENTRALISATION OF REGISTRATION FOR IGST AND CGST SHOULD BE ALLOWED

In the case of large companies that are present in more than one state, as per the requirement of MGL, in each state a separate registration is required to be obtained for SGST, CGST and IGST. SGST being a state specific and IGST & CGST being central, there should be a provision for

single registration of IGST and CGST for all India operations. This should allow adjustment of IGST and CGST on all India basis. Accordingly necessary provisions should also be made in the GST Network.

29. COMPETENT AUTHORITY IS NOT DEFINED

At many of the places in MGL, the term **'Competent Authority'** has been used. In Section 133 under delegation of powers, the term '**competent authority'** has been used. Nowhere in the MGL, has the term '**competent authority'** been defined. It is required to define the **'competent authority'**.

30. INTEREST IS LIABILE EVEN FOR AVAILMENT OF CREDIT

Section 29(8) of MGL, provides for payment of interest even for mere availment of credit of input tax credit even though it is not utilized. Even under Section 36(3) of the MGL, a taxable person makes an undue or excess claim of input tax credit, he is liable for interest even though such claim is not utilized.

There should be a provision for demand of interest only if such input tax credit is utilized and not on mere availment.

31. DEFINITION OF TAX PERIOD SHOULD BE REPLACED

Tax period is defined under Section 2(95) of MGL which defines as **'the period for which the tax return is required to be filed'**. Instead it should be replaced with simple **'Calendar Month'**.

32. RECONCILATION OF ANNUAL RETURN WITH AUDITED COPY OF ANNUAL ACCOUNTS

Section 30(2) of MGL provides for filing of Annual Return in a prescribed form which is required to be reconciled with audited copy of annual accounts for the value of supplies and such other particulars as prescribed. The annual accounts are prepared in a consolidated manner. In the case of presence of taxable person in more than one state, the reconciliation is always prone to dispute since such particulars may not get reflected in the annual accounts individually State wise.

33. REGISTERED TAX PRACTIONERS TO BE ALLOWED TO CERTIFY ACCOUNTS

In terms of Section 42(4) of MGL only the chartered accountant or a cost accountant are allowed to certify the accounts when the turnover of a taxable person exceeds the prescribed limit. At present there are state registered "**Sales Tax Practitioners"** who are experts in the field of taxes and they should be allowed to certify the accounts for the purpose and should be expressly provided in the Act.

34. LATE FEE FOR DELAY IN FILING OF ANNUAL RETURN

Section 33(2) provides for levy of late fee for delay in filing of Annual Return which is Rs. 100 per day till the return is filed. The limit for maximum late fee prescribed is 0.25% of aggregate turnover which is too harsh (high). It calls for reduction in the maximum late fee.

35. USE OF ELECTRONIC CREDIT LEDGER ONLY FOR TAX PAYMENT

Section 35(4) of MGL provides for usage of electronic credit ledger only towards discharge of tax liability. The elements of interest and penalty are not allowed to be paid through electronic credit ledger. When ledgers are maintained in electronic manner, it should not distinguish cash and credit ledgers for payment of interest and penalty. Hence electronic credit ledger is also to be allowed for payment of interest and penalty.

36. DISPENSING OF ISSUING OF TDS CERTIFICATE

Section 37(3) of MGL provides for issuing of TDS certificate towards deduction of TDS by the contractee. Section 35(4) provides for late fee if such TDS certificate is not issued within 5 days from the date of remittance to the government.

In the electronic system of maintenance of records, returns, etc. this provision seems to be irrelevant and inconsistent with the digitization process. When the system itself takes care of direct credit to the electronic ledger of the contractor for such payment of TDS, issuing of TDS certificate will not create any value addition to the system. It should be dispensed with.

37. REFUND OF TDS NOT ALLOWED WHEN THE AMOUNT IS CREDITED TO THE ELECTRONIC CASH LEDGER OF THE DEDUCTEE

Section 37(7) provides that once the TDS deducted is paid and credited to the electronic cash ledger of the deductee a refund to the deductor is not allowed. If such contractor erroneously or excessively makes deposits, and this is credited to the electronic cash ledger of deductee it can't be recovered as refund. A provision is required to refund of the same.

38. ADJUSTMENT OF CREDIT

Adjustment as in the case of Rule 6(3) of the Service Tax Rules 1994 with regard to cancellation of contract and return of the entire sums with the tax etc will be required to be incorporated in Chapter X on Refunds.

39. PAYMENT OF TAX TO AVAIL CREDIT

Under the IGST Law Chapter V read with Sec 29 payment of tax is required to avail input tax credit. This is as against the period of 3 months under the current provisions as applicable to Service Tax and no such requirement in the case of Capital Goods. This will be a severe burden on industry and trade and will affect the working capital immediately. This requires reconsideration.

40. REFUNDS

The provisions regarding withholding of refunds Sec 38(9) and application to the First Appellate authority by the Department under Sec 79(4) relating to "serious case" are deviations and would affect genuine business interest in the absence of sufficient safe guards. It is suggested that these safeguards may be provided in the GST Law itself.

41. GST ON ROYALTY & MINING CESS

The list of taxes proposed to be subsumed in GST does not include Royalty / Mining Cess. It is a stated policy that taxes should not be included in value for purpose of valuation to arrive at the transaction value. This will have an implication on all user industries by way of tax on tax which will lead to tax cascade. Since these Royalty payments are made under Reverse Charge on behalf of the Government the Mining Companies cannot take credit of the same but will have to include this for purpose of valuation of the final produce. This will lead to double taxation as well. Hence Royalty on which tax has been paid under Reverse Charge should be excluded for value of transaction value. .

42. GST - Electricity Duty

Electricity Duty is imposed all over the country, both on grid supply and captive power generation. The Glass industry is an energy intensive industry, so Electricity Duty is not covered in GST and it add to the cost. It would be an ideal situation if electricity duty were to be considered as a tax/ duty to be merged with GST and be made eligible to receive credit. In the absence of the same it should be provided as abatement for the energy intensive industries.

43. IMPACT ON AGGREGATORS & STARTUP COMPANIES

Aggregators and the suppliers/service providers transacting through 'Electronic Commerce Operators' have not been provided the basic exemption limit up to a certain turnover for being a small service provider. Thus, all e-commerce suppliers/service providers will have to get themselves registered and start complying with the laws right from the beginning. The same rule is applicable for new online portals and aggregators. This will hit the small & startup companies. Therefore general threshold should also be extended to these types of services

44. GST - TRANSPORT SERVICE

GST is destination based tax. Thus, tax is finally payable where goods and services are consumed. As per Place of Supply definitions, if the recipient of service is registered, his place will be supply of services.

In case the recipient is not registered then the place location at which such goods are handed over for transportation is considered as place of supply.

Similarly the place of supply of services on board a conveyance such as vessel, aircraft, train or motor vehicle shall be the location of first scheduled point of departure of that conveyance for the journey.

The provisions for place of supply for services are complicated and needs simplification.

45. TRANSPORT SECTOR IS HIGHLY UNORGANISED – DIFFICULTY IN LEGAL COMPLIANCE.

Transporters provide services across the country – within the different states as well as interstate. In case transport service provider becomes liable to pay GST, then he has to take registration in multiple states. Registration and compliances requirements across all the locations from where the goods are loaded and dispatched, keeping large number of records and file multiple returns, the compliance cost will go up and also it is difficult to expect them to comply.

46. APPELLATE PROCEDURE:

a) There should be a single first appellate authority for the dispute of SGST & CGST under Section 79 of the MGL Act. For the same offences, if the assessee is asked to file two different appeals before different authorities this will only increase the compliance and cost of litigation. There could be conflicting orders on the same appreciation of facts and evidence

b) Under Section 79(6), for filing an appeal, a Pre-deposit of 10% is fixed on disputed amount which includes interest and penalty. Also Pre-deposit of 10% for the subsequent appeal before the Appellate Tribunal.

   The pre-deposit should be made applicable only for the disputed tax excluding of interest and penalty.

c) The amount of pre-deposit is also required to be reduced so as to reduce the cost of litigation and make this affordable for the sake of justice.

Under 79(4)(a) SGST laws, in a serious case , the first appellate authority has got the power to enhance the pre deposit up to of 50% of disputed amount. Similarly proviso to Section 82(7)(a) provides for enhancing of pre-deposit to 50% of disputed amount. There should be uniformity in demand of pre-deposit which should be 10% of tax amount. Such discretionary powers should not be exercised without proper supervisory approvals

d) Section 80 of SGST in MGL, a revisional power has been given to the Commissioner. He can revise the order passed by the authorities sub-ordinate to him and accordingly pass such orders as deem fit within a period of three years from the date of passing of order / decision sought to be revised. Thus it creates an uncertainty because after having favorable orders the assessee is not sure when the Commissioner would exercise his revisional power. Such revisional powers to be removed and the Appellate Tribunal procedure as in CGST should be made applicable.

e) Under Section 84(1) of the Act, there should be two technical members in the Appellate Tribunal apart from judicial member. It is sufficient to have one technical member as the issue under both SGST and CGST remains same.

47. TRANSITION PROVISIONS:

a) There is no clarity on the goods stored in the depots on the transition date and allowing of Input Tax Credit on duty of Central Excise paid.

b) When a purchase is made from the non-excise dealer, the basic price includes the central excise, this should be allowed for the input tax credit of central excise duty on such purchase stock based on notional basis after certain abatement.

c) There should also be a clear provision for allowing credit by the depots on the closing stock wherein the goods are stock transferred.

d) The VAT input tax credit on the stock held in the depots on account of stock transfer from manufacturing unit should also be allowed under GST.

e) The capital goods which were sent to job worker before GST period and returned to principal after GST period is to be allowed without imposing of GST.

48. FREE ISSUE OF MATERIALS SUBJECT TO TAX TWICE:

Free issue of materials by contractee to the contractor is taxable twice under MGL Once under Section 15(2) of the MGL wherein the contractor has to include the value of free supplies of materials by the contractee.

The Schedule I Entry No. 5 which are proposed to be treat as supply without consideration, which includes *'supply of goods by a taxable person to another taxable or non-taxable person in the course or furtherance of business'.* The free issues would be considered as supply of goods by a taxable person to another taxable person. Thus contractee is subject to tax for such free issue of supplies.

49. RECORDS MADE AVAILABLE FOR AUDIT:

Explanation to Section 49(4) provides that the date when the records and documents called for by the auditors are made available is to be construed as 'commencement of audit'. This is always subject to dispute. Even after the production of records, department may still say that they the records were not fully produced to their satisfaction, thus the audit will not get commenced till such time.

50. TIME LIMIT FOR DETERMINATON OF TAX NOT PAID OR SHORT PAID OR ERRONEOUSLY REFUNDED FOR ANY REASON OTHER THAN FRAUD, SUPPRESSION OF FACTS OR ANY WILLFUL MISTATEMENT

Section 51 of the Model GST law provides for time limit of 3 years from the due / actual date of filing of annual return of that financial year. Thus effectively demand can be made for the period up to 4 years 9 months. The business has to carry on with such uncertainty for a longer period of 4 years and 9 months as at any time within these periods a demand notice is expected. The normal period of demand can be reduced to 2 years.

51. WRONGFUL COLLECTION AND DEPOSIT OF TAX

Section 53 of the Act provides that in case of erroneous payment of CGST/SGST for inter-state transactions, taxable person has to make payment of IGST and apply for refund of CGST / IGST. Further that refund should also be subject to proving of unjust enrichment.

It is natural that such erroneous payment may happen in the business. But the rectification of such mistake is very onerous. It should be allowed as an adjustment from Form one account to other account.

52. RECOVERY OF TAX FROM RECIPIENT IF SUPPLIER FAILS TO PAY

Section 54 of the MGL provides for recovery of the tax from a recipient or third person if the supplier fails to pay tax to the government. Also those penal provisions are invoked if such recipient or third person fails to act on the notice to make good the failure of the supplier to make payment. For the fault of supplier, the recipient or third person should not be penalized. These provisions are very harsh.

53. TRANSFEROR ALSO MADE LIABILE IN CERTAIN CASES

Chapter XXII provides for liability to pay in certain cases. In the case of transfer of business under Section 108, the transferor is made responsible for failure of the transferee to discharge tax liability. Similarly, in the case of retiring of partner under Section 111, if such retirement is not intimated to the dept. till such time of intimation, tax can be recovered from him. Thus these provisions are very harsh so as to make the other person liable for the fault of transferee or the firm.

54. MOVEMENT OF GOODS – DOCUMENTS / INTERCEPTIONS

Section 61 of the Model GST Law provides for inspection of goods in movement and Section 71 for confiscation of conveyance. It further provides that if such goods, on movement, are not accompanied with documents as prescribed and on its interception liable for penal provisions. Thus it gives the impression that the way bill and check post may continue even under GST. This provision has to be sparingly used as the check post and way bills are not required in the paper less regime with matching of invoices electronically and in the presence of a Nationwide Dealer Master.

55. OFFENCES AND PENALTIES

There is a provision under Section 66(2), for a repeated mistake of short payment where the penalty is Rs.10,000 or 10% of such short paid tax whichever is higher. The penal provision is very harsh as it is expected that inadvertently the error may crop-up leading to short payment. This needs to be looked into.

56. GENERAL DISCIPLINES RELATED TO PENALTY

Section 68 of Model GST Law provides for general disciplines related to penalty. The provisions under this section are loosely worded and subjective. It also gives wide power to the authorities.

57. PROSECUTION

Section 73(1) provides for various offences which attracts prosecution. Clause (a) to Section 73(1) is for offences of issuing incorrect invoices and clause (c) to Section 73(1) provides for tax collected but not paid over a period of 3 months also subject to prosecution. In a business, it is these actions could occur inadvertently without any ill intention. Prosecuting for such offences is too harsh. It requires to be re-phrased.

58. COMPUNDING OF OFFENCES

The provisions under Section 78(2) for compounding of offence is very harsh which is minimum of 50% of tax involved or 150% of tax involved. It has to be re-looked into it.

59. ADVANCE RULING

Advance Ruling provided under Chapter XIX should be made applicable and binding on the authorities of all other states where such taxable person is present.

60. E-COMMERCE:

There is lot of returns under e-commerce mode of business. The e-commerce industry particularly the start ups have to be exempted from plethora of returns and instead have to provide a single return.

61. RULE MAKING POWER WITH RETROSPETIVE EFFECT

The Central and State Government have been given power to make rules/ issue notifications with retrospective effect which makes the law very uncertain to abide by. Under Doctrine of fairness, the law which is beneficial to the taxable person should be given retrospective effect and not which is prejudicial to the interest of the taxable person. Thus the power of retrospective effect should be limited only to the extent of Rules beneficial to the interest of taxable person.

62. INTRA-STATE STOCK TRANSFERS:

There is no clarity on the intra-state stock transfers as to whether it suffers GST or not. There should a specific provision keeping out of the ambit of GST the intra-state stock transfers. Thus charging GST on the supplies of same taxable person should be outside the ambit of GST.

63. STOCK TRANSFRS FOR CAPTIVE CONSUMPTION:
In terms of Rule 3 of the Valuation Rules, the stock transfers to be valued at transaction value for the purpose of GST.

It does not differentiate between the stock transfers for captive consumption or for onward sales. At present the stock transfer for captive consumption is valued at Cost of Production+10% Notional Profit. Similar such provision should be introduced for the stock transfers to captive consumption. Paying GST on transaction value for stock transfers meant for captive consumption will lead to increase in burden on working capital.

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