

Seven Key issues in Goods and Services Tax Law



Even after almost four month of the launch of GST in India, people and businesses are still struggling to accept it completely. Let's see how people from different areas are reacting to GST and what are their concerns. While many people have already started adjusting themselves to the new GST based tax system, many others are still struggling with the shortcomings of GST and the extent of adjustment they are supposed to make. As we have all realised so far, The government may have officially launched the system through the country, common men are facing new problems every day in the post-GST era. Government also trying to make it easy for the stake holders; some major improvement and issue as incorporated under.



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1) GST Rates on Eating Out:-

Type of Restaurants	GST Rates
All Restaurants	5% no ITC

Restaurants within hotels (room tariff<7500-5% without ITC	5% no ITC
Restaurants within hotels (room tariff>7500-18% with ITC	18 % With ITC
Outdoor Catering	18 % With ITC

In the 23rd GST Council meet, tax rate for all AC and non-AC restaurants was fixed at 5 per cent. "Since they did not pass on the ITC benefit to customers, they will not be eligible for the benefit themselves," Jaitley had said. Restaurants inside hotels will also levy 5 per cent GST, except in starred hotels where the tariff is Rs 7,500 or more. The rate for restaurants in starred hotel will remain 18 per cent along with the benefit of input tax credit. Outdoor catering will also be taxed at 18 per cent along with ITC.

2) Availability of Transitional credit for Traders:- It is seen that based on the concerns raised by various exporters, government has immediately acted upon and created a mechanism in GST portal enabling exporters to claim refund of the taxes paid. This step has been widely appreciated and exporters are at ease as their issue of working capital has been now resolved. We urge government to immediately address the similar issue in case of traders wherein as per transitional provision, traders are eligible to get standard input tax credit of 40%/ 60% based on the output rate of tax. Further, this credit was promised to be given upon payment of output tax. It is noted that traders have already made the payment of GST output tax for the months of July 2017 to October 2017 but still there is no mechanism enabled in the GST portal for availing the standard Input Taxes credit. This leading to high cash outflow of taxes blocking the funds required for day to day business operations. Therefore, we urge to enable the mechanism for availing transitional credit for traders.

3) GST on advances for service sector:- In the recently held 23rd GST council meeting, Government has taken some bold decisions; one among them is the waiver for supplier of goods to pay GST on the advances. This is a big booster for manufacturing and trading community wherein the compliance burden would come down. We urge government to enable this

provision even for service sector so that there is complete uniformity in the GST law. This shall not have any impact on revenues for government as taxes would continue to be paid upon raising of the invoice. However, not enabling this provision for service sector would have high legal and practical issues. Firstly, it would lead to rising of the old disputes as to whether a supply is that of 'goods' or 'services'. Further, the very essence of GST i.e. to not have any distinction between goods and services will be lost. Also, since service sector contribute to approximately 60% of the country's GDP, therefore the sector needs to be boosted and must not be given a different and complicated tax treatment.

4) Exemption from Mandatory Registration for Inter-state supplies:- As per section 24 of the GST law, it was stated that a person need to mandatorily take registration if he makes even one transaction of inter-state supply and the basic threshold exemption limit of Rs. 20 lakh would not be applicable. This provision was very harsh for small businesses and restricting such persons from making inter-state supplies defeats the basic agenda of GST i.e. 'One Nation One Tax'. Earlier, government has extended this benefit to job-workers and handicraft goods suppliers. Therefore, the government extended this requirement to everyone i.e. Mandatory GST registration not be required for inter-state supplies even though the persons turnover is below the basic exemption threshold limit ***including E-commerce operators(ECO)***.

5) Postponed filing of GSTR 2 & 3 and matching principle:- As per the outcome of the recently held GST council meeting, it is stated that 'The time period for filing GSTR-2 and GSTR-3 for the months of July, 2017 to March 2018 would be worked out by a Committee of Officers.' Presently, there is no clarity among the industry, trade and professionals whether filing of GSTR 2 and 3 for financial year 2017-18 is merely postponed or whether it needs to be submitted at bulk for the entire financial year or whether the same is fully suspended for FY 2017-18. Everyone is interpreting the above wordings of the press release in their own manner and multiple views are being expressed in this regard. Therefore, we urge government to immediately clarify their stand in respect of filing of GSTR 2 and GSTR 3 for the financial year 2017-18. Since, businesses also needs to plan their workings accordingly i.e. manner of organizing of data, changes in existing

software, procuring new software, training/ strengthening the in-house team, hiring of consultants/ outsourcing of GST work etc.

6) Advance Ruling in GST :- Advance ruling under GST has been made very taxpayer friendly. Advance ruling helps taxpayers plan for GST liability in advance. Advance ruling is binding on both the taxpayer and the Government. Hence, advance ruling can also be used by taxpayer to avoid costly litigations. One of the major advantages of advance ruling under GST compared to advance ruling under service tax is that under GST, advance ruling can be obtained on a proposed transaction as well as a transaction already undertaken by the appellant.

To handle all aspects of advance ruling under GST, the Government has created the Authority for Advance Ruling (AAR), which can give a binding ruling to an applicant who is a registered taxable person or is liable to be registered.

The provisions for advance ruling in GST can be utilised by taxpayer to clarify matters relating to following through online as well as manually also :

- *Classification of goods or services or both.*
- *Applicability of notification issued under the GST Act.*
- *Determining the time and value of goods or services.*
- *Input tax credit admissibility of tax paid or deemed to be paid.*
- *Determination of liability to tax on goods or services or both.*
- *GST Registration requirement of an applicant.*
- *Whether thing done by the applicant amounts to or results in the supply of goods or services or both.*
- *Other matters pertaining to GST Act and Rules.*

7) Guideline for Anti-Profiteering:- It is noted that many advertisements, messages are being published in newspapers, social media etc. that benefit of GST needs to be passed on and stern action will be taken if the same is not complied with. It is noted that the present law in respect of anti-profiteering is very vague and open for multiple interpretations. Government has not provided any mechanism or guideline as to when one can say that there is anti-profiteering and how to compute the same. It is also important

to note that pricing in any business is very dynamic feature and its impact cannot be trimmed down only on the basis of taxation. Also, there is a competition act in place to take care of this situation, therefore how a taxation law can restrict businesses pricing especially when the purpose of tax law is not to regulate pricing as per the Constitution of India. Such loosely drafted provisions can only have high litigation with no any real benefits to the government. Therefore, we urge government to immediately provide guideline as to situations in which one can be said to have been making additional profiteering out of GST and how to compute the same .