

TRANSITIONAL PROVISIONS IN GST — INCOMPLETE CODE

By

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Our country is on the verge of implementing the revolutionary indirect tax reform called as 'GST' by the next financial year. There is fear in the minds of the assesseees regarding the compliance to be done post implementation of the tax reform. It is being reported that the State of Assam has already initiated the GST provisional registration number and this clearly indicates that soon GST will be a reality and all assesseees will be required to comply with it. Needless to say that transition of assesseees from a particular taxation framework to a totally new framework requires incorporation of every possibility and uncertainty but since GST will subsume a number of indirect taxes, it is difficult to comprehend that all eventualities are covered in the transitional provisions. There are certain loopholes in the transitional provisions which need immediate attention so that there is smooth transition to the new taxation reform.

The situations which have been untouched are discussed point wise as follows :-

1. **Existing assesseees availaing abatement with condition of non-availment of credit at disadvantageous position** :- Section 145 of Model GST Law provides that a registered taxable person who was not liable to be registered under earlier law or who was engaged in the manufacture of exempted goods under earlier law but which are liable to tax under GST shall be entitled to take credit of eligible duties and taxes in respect of inputs held in stock or inputs contained in semi-finished or finished goods held in stock on appointed date. It is submitted that the above provision is applicable only for assessee engaged in manufacture of exempted goods and does not covers assesseees engaged in provision of partially exempt services like services where abatement is allowed with the condition that no Cenvat credit shall be taken. Say for example, in case of service providers providing construction services wherein the benefit of abatement is available on the condition that Cenvat credit of inputs is not availed. The problem is that they will be carrying forward the credit of input service lying in the return under Section (sic) of Model GST Law. Now the question arises that whether there can be two transitional provisions for the same services of construction viz. one for input service and one for input. Moreover, there is problem for carry forward of VAT. It was told to authors of this article during a seminar by construction industry that in some States, there is composition scheme for VAT also where no credit is allowed. There should be transitional provision for such credit of VAT also. After implementation of GST, such service providers will be liable to pay GST but there is no transitional provision as regards credit admissibility of inputs held in stock and used in provision of construction services post implementation of GST. Whether such existing service providers will not be at disadvantageous position as compared to new service providers undertaking construction services post GST Regime?

Similarly, at present there is abatement of 70% to transporters under Service Tax Laws with condition of non-availment of Cenvat credit. However, till date nothing has been revealed as regards continuation of abatement to transporters in GST Regime. If the transporters are made to pay GST at full rate, they should be allowed credit of inputs held in stock on the appointed day but no such provision has been incorporated in transitional provisions. Moreover, there is no clarity as regards continuation of reverse charge mechanism under goods transport agency services. Even there should be separate situation of transport of goods by road and by rail. For transport of rail, the credit of input service is allowed. But the credit of inputs is not allowed. There should be two transitional provisions for them. One is already there to carry forward the credit in the return. But there should be separate transitional provision for the credit of inputs lying in stock. It is also very important when it is perceived that the petroleum products will also come under GST Regime.

2. **Situation of taxability under GST at later stage not covered :** - It is further submitted that Section 145 only covers situation where assessee switches from exemption under earlier law to GST but does not cover situation where an assessee is exempted under earlier law and is also exempted in GST Law during the initial stages, may be due to threshold limit but becomes liable to pay GST after a particular period of time. The transitional provisions do not contain provision of credit availment on stock of goods with levy of Excise duty/VAT available with assessee when the assessee opts from composition scheme to normal scheme within short span of time or takes voluntary registration within short span of time in order to be in Cenvat chain. There is possibility that an assessee opts for threshold exemption but takes voluntary registration within short span of time or switches from composition levy to normal scheme within short span of time. In such case, although Section 16(3) states that assessee will be entitled to credit of input tax on inputs contained in stock but it is not specified whether assessee will also be able to claim credit of Excise duty/VAT on the old stock of goods available on the date of conversion or on the date of taking voluntary registration. Hence, suitable provision should be made for credit availment of Excise duty/VAT on old stock under this situation as well.
3. **Credit availment on goods in transit :** - The transitional provisions also do not cover situation of goods in transit and its credit availment. There may be possibility that goods have been dispatched under earlier law but the goods remain in transit at the time of implementation of GST. In such cases, there is no provision as regards availment of credit on such goods that are dispatched before implementation of GST but are received by recipient after implementation of GST. In such cases, there is no clarification as regards admissibility of credit of Excise duty/VAT and whether the said credit will be pooled as CGST/SGST or not.
4. **Distribution of credit by centralised assessee :** - At present, there is provision of centralized registration under Service Tax Laws where in a service provider can take single registration for its offices situated at different locations. However, with the introduction of GST,

service provider providing services in different States will be required to take separate registration for each State. In such a situation, no mechanism has been prescribed in transitional provisions as regards distribution of credit available at centralised point. Similarly, if an assessee has taken single registration under VAT Laws for its different business verticals within a particular State and opts for separate registration for each business vertical within that State under GST, then in that case, no mechanism has been prescribed for distribution of consolidated VAT credit available with the assessee. Similar problem will arise in situation where there is separate registration under Central Excise for each factory and the assessee opts for single registration for all business verticals within a State under GST Regime. Whether assessee taking single registration under GST Regime will be allowed to cumulate credit available at all its business verticals within a State? Well, the Model GST Law does not foresee above practical difficulties.

5. **No provision for credit of Excise to trader :** - As we all know that under CST the concept of manufacture, sales, service will come to end and there will be only one taxable event being 'supply of goods'. In such a scenario, a trader who is dealing in excisable goods should be allowed the credit of Excise duty contained in stock of goods held on the appointed day. This is for the reason that GST will subsume all taxes whether it be Excise, VAT, or any other indirect tax on goods. As such, if the credit of Excise duty contained in stock of goods is not allowed to trader, it will lead to disadvantageous position of trader having stock of goods when compared to a new trader buying GST rated goods and dealing in the same. Consequently, the transitional provisions should also incorporate credit availment of Excise duty contained in stock of goods in case of traders so that cascading effect of taxes is eliminated. Even during a seminar, a strong demand raised by trade and industry that most of the traders do not receive the goods from the manufacturer but from the wholesalers. They do not issue excise invoice. Hence the credit will not be available to them. The one-time credit should be allowed as seen by the industry when the Excise duty was imposed for textile industry in 2003-04.
6. **CST credit on stock :** - One of the attractions of GST is that IGST, which is leviable on inter-State supply is creditable thereby eliminating cascading effect of taxes. However, there is no transitional provision as regards one-time credit of CST on stock of goods on the appointed day. Since IGST which is leviable under GST Regime is creditable, one-time credit of CST contained in stock of goods should also be allowed to assessee.
7. **Reverse charge payment post GST implementation :** - As we all know that the liability to pay Service Tax under reverse charge mechanism is when payment is made. Consequently, in cases where payment for service under reverse charge is being made post implementation of GST, the mechanism of discharging Service Tax liability is not incorporated in the transitional provisions. The assessee will be required to pay the applicable Service Tax or will be liable to pay GST is also not clear. Moreover, how the assessee will reflect such transaction in the returns under GST is also not specified.

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CMA TIPS AND OPT WORKING

By

CMA Rajen

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Case Study

Direct

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Ex plant price

Excise Duty

Total

Under GST following return prescribed for manufacturer,

GSTR-1

GSTR-2

GSTR-3

GSTR-8

In outward supply return each invoice to be uploaded in GSTR-1 with HSN code/invoice no./date/value/tax etc.

Section 29 is relating to matching/reversal/reclaim of ITC

Means every inward supply need to match with corresponding outward supply furnished by taxable person in his valid return.

In case of import which document will be considered i.e. Bill of entry etc. and in case of receipt of goods in instalment how matching will be taken care need clarity.

It is suggested to develop robust IT system for timely/correctly uploading outward supply/inward receipt as it has link with GST compliance rating also (Sec. 116).

It is understood that exemption available under VAT/Excise. Both Acts will continue so mostly 99 exemptions will continue for which list is awaited.

Reverse charge will continue

No abatement will be there hence proper planning for clearing of all pending invoices to be cleared before 31-3-2017 to save addition on paying an abated value.

Captive consumption for business is not taxable.

As supply is not from one taxable to another taxable person.

Above analysis is based on Draft MGL and draft return/rule released in public domain. Provision may change under final GST Act in view of many representations made to Govt. for amendments. CMA Professional can continue regular knowledge sharing session for better understanding and smooth implementation of GST with optimizing tax planning and working capital management.

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The accounting code in which tax is to be discharged is also not provided. Therefore, suitable transitional provisions should be made for the same.

The above situations that will be practically faced by a number of assesseees during the transitional phase are not covered by the transitional provisions incorporated in the Draft GST Act, 2016. Apart from the above circumstances, there will be many more situations that will be encountered only on actual implementation of the law. Since GST is a big transformational reform, Government should make endeavour efforts to capture all possible practical difficulties during the transitional phase.

DEMANDS UNDER GST

By

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The collection of taxes is the prime responsibility of CGST, SGST, any short payment exercise quasi-judicial suppliers, trade case may be. A the GST system.

The collection of the demands The Chapter-XI have prescribed paid, input credit sions for demand

Section 11 not paid or short

A. Determination of tax credit wrong willful misstatement

1. When the function is to serve the public interest, the law will be valid. The law will be valid if it is not arbitrary and it is not violative of the principles of natural justice. The law will be valid if it is not arbitrary and it is not violative of the principles of natural justice. The law will be valid if it is not arbitrary and it is not violative of the principles of natural justice.