A brief look at onerous obligations of businesses in the GST regime

1. Introduction:

An attempt is made in this article to briefly look at the obligations on a business in the GST regime.

2. Levy and collection of GST

2.1 The GST would be applicable on the supply of goods or services. It is a destination based consumption tax. This means that tax would accrue to the State or the Union Territory where the consumption takes place. It would be a dual GST with the Centre and States simultaneously levying tax on a common tax base.

2.2 In GST, taxable event is supply in the course of furtherance of business (Needless to say there are exceptions. There cannot be a rule without exceptions). The system envisages self-assessment of tax by the taxable person (tax payer) and discharge of the tax liability by him. Assessment consists of determination of rate of tax at the time of taxable event, determination of value or the measure of tax, the amount of tax to be paid and determination as to whom the tax should go in case there are inter-state transactions. This has to be done for every transaction. Onerous nature of the task can be understood when we know that there are 29 states and 2 union territories with legislature which are treated as States and for every transaction, place of supply also has to be determined. This is because IGST on inter-State supply has to be collected by the Centre and distributed to the States and this would be done on the basis of place of supply indicated in the invoices. The onerous nature of the task increases when we take note of the provisions relating to demands for short levy/non levy where even in cases of bona fide disputes, penalty of 10% can be levied if the amount is not paid after show cause notice.

2.3 Till now implementation and enforcement of the law was handled by either Union government or State Government. In GST regime, in the same state, 90% of small units (Turnover of less than Rs.1.5 crores) will have to deal with the State Governments and of the rest each 50% of units would have to deal with Union and State Government. This is a new and a novel scheme introduced and it has to be seen how it will work.

2.4 All supplies, whether it is of goods and/or services are subject to GST, either in the hands of supplier or the recipient except those which are specifically exempt. This would mean assessment of goods/services purchased, payment of tax on them, issue invoice on self and payment voucher and enter them on GSTN.

2.5 Because of the deeming provision that employee and employer are related, the question as to how perks in the form of goods/services has to be assessed has also arisen.

3. Input Tax Credit

3.1 It is said that GST is a multi-stage value added tax; it is levied at every stage on value addition; there is no cascading effect of tax; it envisages seamless flow of credit. What is the reality?

3.4 Unfortunately availment of credit and its utilisation process is anything but simple and seamless. Credit is available only when data relating to supply of the supplier and recipient of supply of goods or services match and the vendor has paid the taxes and filed a valid return. System envisages monitoring of the payment of tax by the supplier to the vendor and reversal of credit in case of non-payment within 180 days. There is a time limit for rectification of entries which is only six month for discrepancies in March of the year. The composition scheme available for businesses with turnover up to Rs. 150 lakhs is another broken link in the chain of flow of credit. There are several restrictions on availability of credit on inputs and capital goods. Many of the conditions imposed for availment of input tax credit, require change in business processes and contracts.

4. Threshold Exemption

4.1 Taxpayers with an aggregate turnover in a financial year up to Rs.20 lakhs would be exempt from tax. Aggregate turnover shall be computed on all India basis. For eleven Special Category States, like those in the North East and the hilly States, the exemption threshold shall be Rest. 10 lakhs. All taxpayers eligible for threshold exemption will have the option of paying tax with input tax credit (ITC) benefits. Taxpayers making inter State supplies or paying tax on reverse charge basis shall not be eligible for threshold exemption.

4.2 Threshold exemption is linked to registration. In reality there is no exemption in the case of B to B transactions since the recipient of the supply has to pay tax if he buys from an unregistered person. While the tax liability does not come down for the ultimate consumer, the workload on registered businesses will increase since they are not only required to pay the tax on purchases from unregistered person but have to issue invoices and payment vouchers and account for the same. This has to be done even if the credit is not admissible because of input credit rules requirements.

4.3 GST is treading a totally new path as regards exemption for small businesses. Exemption or non-payment of tax benefit is available to all only in those cases of non-taxable/exempt supplies. In fact the taxation system of GST puts the businesses availing threshold exemption and composition scheme at a great disadvantage in B to B transactions. Registration and payment of taxes require meticulous account maintenance and discipline in return filing and payment of taxes.

5. Valuation

Provisions of Section 15 of the GST Act for valuation are based on relevant provisions of Customs and Central Excise law. Inclusions and exclusions to the transaction value have been specified to avoid disputes. Reimbursements and free supplies made by the recipient will be part of transaction value thereby taking care of decisions against the department in service tax matters. By giving the meaning of related person without requiring the presence of words ‘mutuality of interest’ another major area of dispute where the department consistently lost in central excise case has been taken out in favour of the department. Amendment to the rules after "Fiat India" case facilitating sale at a loss to capture the market does not find place in new valuation provisions opening an area to raise disputes on the ground that price is not the sole consideration.

6. Exports and Imports

6.1 Supplies to SEZ and EOUs are treated as zero rated supplies. Import of goods and services would be treated as inter-State supplies and would be subject to IGST in addition to the applicable customs duties. The IGST paid shall be available as ITC for further transactions.

6.2 In GST regime, entire IGST would be available as input credit. The only problem will be certain activities which are treated as exports will not be considered as exports in future and GST liability would arise.

7. Tax Disputes

7.1 Major areas of dispute involving classification, exemption, eligibility for input credit and valuation would continue to arise in the GST regime. Burden on the businesses increases because for every transaction, these aspects have to be considered and decisions taken. The only difference is that now all these disputes can arise in respect of purchases made from unregistered businesses also.

7.2 A new concept of settlement of tax disputes has been introduced. It provides that Adjudication Order shall be issued within 3 years of filing of annual return in normal cases and the time limit is 5 years (from the date of filing of annual return) in fraud/suppression cases. SCN will have to be issued at least 3 months prior to the time limit prescribed for issue of adjudication order in normal cases and at least 6 months prior to the time limit prescribed for issue of adjudication order in cases involving fraud/suppression etc. Penalty is Nil if the tax short paid / nonpaid is deposited along with interest at the stage of audit/investigation.

7.3 In GST regime within 3 years adjudication order has to be passed and notice has to be issued at least 3 months before the order. The date of annual return is the relevant date. Effectively normal period for issue of show cause notice is 4 years and 3 months.

7.4 In cases involving fraud, suppression etc. limitation period was 5 years and now it would be 6 ½ years.

7.5 Assessees get maximum 2 months/5 months to submit reply to show cause notice since order has to be passed within the period specified.

7.6 In addition even in cases where no offence is involved, penalty to the extent of 10% can be imposed if the tax with interest is not paid before adjudication order is passed.

7.7 Burden on the tax payers where tax disputes are initiated is going to be much greater and it will be race against time.

7.8 Department gets six months' time to file appeal before commissioner (appeals) and the Appellate Tribunal. Assessees get three months' time. Commissioner has power to revise the orders within 3 years in case department fails to file appeal. Tax payer has to deposit 10% of the tax disputed and full tax admitted for the appeal to be heard by Commissioner (Appeals) and an additional 20% of the tax disputed and the admitted tax for appeal to be heard by the Tribunal.

8. Some other provisions

8.1 E-commerce companies are required to collect tax at source in relation to any supplies made through their online platforms, under fulfilment model, at the rate notified by the Government. There is also a requirement of TDS in case of contracts with Government and other notified agencies.

9.2 An anti-profiteering measure has been incorporated in the GST law to ensure that any benefits on account of reduction in tax rates results in commensurate reduction in prices of such goods/services.

9.3 Every registered person whose turnover during a financial year exceeds Rs.2 crores, has to get his accounts audited by a chartered accountant or a cost accountant and submit a copy of audited annual accounts and a reconciliation statement in prescribed manner.

B S V Murthy

...