



GST IMPACT ON MICRO SMALL AND MEDIUM BUSINESS

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GST subsumes almost all indirect taxes of the previous indirect tax regime wherein the Micro Small and Medium sized businesses, owners or manufacturers had to take care of different taxes and run to various departments to fulfill all the tax-related documentations. Some of them had to file different taxes biannually, annually, half-yearly, etc. This apart, having to face a greater number of departments, used to create severe hardships to the MSMEs.

In contrast, GST having less complexity, allows MSMEs to do business comparatively with ease in India. The distinction between Goods and Services having gone away, it makes the compliance with the laws under GST easier for MSMEs. However, there are some factors which are debatable under GST as discussed below: -

1. Basic Threshold Limit for goods and services helping MSMEs.

With GST in place, the Micro Small and Medium Enterprises (MSMEs) got lot of benefits in terms of compliance reliefs in the form of “threshold exemptions”, “Composition levy schemes”, “Quarterly filing of the GST returns” to mention a few. In a major relief to MSMEs, the GST Council doubled the tax exemption limit to Rs. 40 lakh in annual revenue. Similarly, the turnover limit for businesses availing of the GST composition scheme, which allows them to pay tax on goods and services at a flat rate, was raised to Rs.1.5 crore. The move aims to allay the concerns of small traders. For north-eastern and hilly states, the GST exemption limit has been doubled to Rs.20 lakh.

However, even though the current threshold limit has been increased as above, some of the MSMEs may still want to be part of the GST chain, while some may actually opt for composition scheme. The move to raise the threshold for GST registration is significant, as it would help the MSMEs who had been badly hit by various problems like demonetization, and business disruption in the early days of GST implementation and credit squeezes etc.

Bringing about major changes in the composition scheme, the turnover limit for goods was raised to Rs. 1.5 crore from Rs. 1 crore which will also benefit the Service providers with a turnover limit of up to Rs. 50 lakh to avail of the composition scheme as well at a rate of 6%. The composition scheme allows MSMEs to do away with tedious tax filing formalities and pay GST at a flat rate.

Businesses registered under the composition scheme are required to pay GST at 1% to 6% depending on the type of business activity conducted by the registered person/business entity.

2. High Compliance burden on the MSMEs.

After the initial bumpy ride, MSMEs, who had faced problems with GST compliance and cash flows, are gradually settling down and adapting to the new indirect tax regime. A few MSMEs have confirmed that the procedures of GST are getting easier day by day. The uncertainty over input tax credit had been a dampener for quite some time for MSMEs as it impacted their cash flow, but the proposed simplified return filing system is expected to make the input tax credit flow smoother.

Initially, MSMEs faced problems with GST compliance and had to make certain modifications in their systems. Further, a number of small taxpayers have opted for composition registration wherein they have to pay tax at a specified percentage of their turnover.

Another issue bothering the MSMEs is the continuous monitoring being done by authorities/departments of their monthly transactions with a view to ensure that no activity has escaped the ambit of compliance.

Similarly, the lack of a timely disposal of refunds had impacted the cash flow for exporters of both goods and service. MSME segment exporters had been affected due to the blockage of working capital. "However, the new fully electronic refund process system announced under Circular No. 125/44/2019 – GST, has ensured that the input tax credit is made available to the buyer on accepting the invoices uploaded by the supplier. This introduction of electronic refund process should immensely benefit the MSMEs.

Further, since GST demands high automation of business processes, the MSMEs had to spend enormous amount of time, money and energy on development and maintenance of IT infrastructure. The introduction of a single quarterly return for MSME sector has reduced the compliance burden and the MSMEs can now focus on business development and growth instead of compliance aspects.

3. Adverse impact of Taxation under reverse charge for un-registered taxable persons

Unlike forward charge where the supplier of goods or services pays the tax on supply, in case of Reverse Charge, the receiver becomes liable to pay the tax, i.e., the chargeability gets reversed. This means that the GST will have to be paid directly by the receiver to the Government instead of the supplier. The registered dealer who has to pay GST under reverse charge has to do self-invoicing for the purchases made. For Inter-state purchases the buyer has to pay IGST and for Intra-state purchases CGST and SGST has to be paid under RCM by the purchaser. Also, under Section 24 of CGST Act – Compulsory registration in certain cases - all taxpayers required to pay tax under reverse charge have to register under GST irrespective of the threshold limit applicable to them.

Thus, if any goods or services are supplied by a person who is unregistered and supplied to a registered person, then GST needs to be paid by the registered person under reverse charge as a recipient. Further, if any MSME who does not take registration under GST and claims the basic exemption threshold, then the person receiving goods or services from such MSMEs need to pay GST under reverse charge mechanism.

The above provision of RCM has a very high negative impact, since businesses would definitely not prefer to deal with any unregistered persons and to take the additional burden of compliance under reverse charge mechanism. Therefore, this provision directly impacts the business of MSME Sector negatively and virtually forces them to either register or shut the businesses which anyhow is not the intention of the law makers.

4. Taxation on stock Transfers and deemed supplies between distinct persons: -

Valuation, which is the substance for levy, collection and administration of taxes, always impacted indirect tax laws over the past years and GST is no exception to it. It is quite common for an MSME having PAN India transactions to transfer its stock to its other units, depots, warehouses to cater to timely delivery orders from different Geographical Locations. Under the previous tax regime inter- state or intra-state stock transfers were subjected to levy of Excise Duty on removal of Goods. Under the GST law tax collected only on supply of Goods with or without consideration being paid or agreed to be paid.

Per clause 3 read with schedule I of GST law, a supply of goods by a taxable person to another taxable person or non-taxable person during furtherance of business without consideration is also included within the ambit of 'supply'. Further, the subject matter of concern would be the valuation of the stocks being transferred and the availability of Input Tax Credit.

With the shift of taxable event from sales to supply, stock transfers under GST would be taxed and this scenario would certainly impact key MSMEs to the extent of savings in procurement contracts, impact on free supplies, discount schemes, impact on product pricing, and the overall financial impact of GST.

Unlike earlier indirect tax regime, under GST regime, stock transfer of goods/services between distinct persons is made liable to tax. This step shall lead to blockage of working capital apart from high compliance burden. It shall also defeat the idea of GST i.e. to have a free flow of goods anywhere and to create a common national market. MSME's do not have adequate capacities, technology, manpower and cash flows to comply

with this complex requirement of the law. However, since GST is a destination-based consumption tax, it is suggested to defer the taxation on stock transfers at least to the point when such goods are actually sold, or provide for refund of the excess unutilized credit of stock transfer in line with exports to help MSMEs.

5. Return of Goods sent on sale on approval basis and time limit thereof.

Sale on Approval is a business arrangement wherein an individual or company who is interested in purchasing a specific item is allowed to use the item for a given length of time. At the end of that time, if the individual is satisfied with the item, they agree to purchase it. However, if the individual is unsatisfied for any reason, they are allowed to return the item and are not committed to purchasing it.

Unlike “consignment sales”, “sales on approval” basis is not deemed as supplies under GST. Hence, the principal can send the goods to the agent by issuing a delivery challan instead of a tax invoice, and without charging GST on the same. Once the goods are sold by the agent to the end customer, it implies that the agent has accepted the goods received on approval. Once this sale has been ratified by the agent, the principal can then issue the tax invoice, and charge GST. The agent, at his end, can collect the purchase invoice, and avail the input tax credit on the GST paid while filing his returns and paying the output GST liability to the government.

A tax invoice should be issued for Sale on Approval before or at the time of supply OR 6 months from the date of removal of goods from factory/godown.

If the goods are not approved within 6 months or if the agent has not ratified any sales within 6 months, it will be deemed that sales of the said goods has taken place and a tax invoice will need to be raised by the principal. If the Goods are returned within 6 months, for those goods, which have been sent on an approval basis but are returned or rejected within a maximum of period of six months, no tax will be payable, subject to an extension of maximum of 2 months by the Commissioner on merit. Under GST, the maximum time limit for the return of goods sent on sale or return basis is 6 months and if the same is not approved within the said time limit then an invoice needs to be issued and the goods shall be deemed to have been supplied.

In case of various MSMEs, the norms are to send goods to Consignment Sales Agents (CSA) and customers on a “sale or return” basis. However, putting a time-limit on return of goods would have negative impact on such sectors. Therefore, to help such MSMEs it is suggested to remove this provision and continue with the practice of paying GST only when actual supply takes place.

6. Tax on Advances

Generally, GST is imposed on a supplier of goods and service at the time of receipt of payment. However, in some cases, an advance payment is first made to the supplier by the recipient of the goods or/and service or both. When a payment is made ahead of its actual schedule such payment is also termed as advance payment. In addition to this, sometimes the supplier of the goods and service demands an advance payment as a safeguard against non-payment, or to cover its costs for supplying a product or rendering of a service.

As mentioned above advances received against supply of goods and/or services are taxable in GST regime. Collection of GST on advances would be cumbersome and requires high compliance and tracking. Moreover, it is possible that advance may have been received for intra-state as well as inter-state supplies of goods and services and attracting multiple rates and, therefore, the possibility of paying incorrect tax or determining incorrect place of supply. Further, in certain business, advances would be received for multiple supplies and in such circumstances individual identification of advances and matching of the same with the corresponding supply for determining rate and place of supply shall be an additional burden. Therefore, with the limited technological advent and resources in a MSME sector, compliance with the provision of GST on advances would be difficult and lead to unnecessary non-compliances.

Therefore, it is suggested to allow the MSME sector to pay GST only on invoice basis which would ease the compliance and cash flow burden of MSMEs.

7. Non-availability of Composition Scheme.

Composition Scheme is a simple and easy scheme under GST for taxpayers. Small taxpayers can get rid of tedious GST formalities and pay GST at a fixed rate of turnover. This scheme can be opted by any taxpayer whose turnover is less than Rs. 1.5 crore as notified by CBIC. A manufacturer of ice cream, pan masala, or tobacco, A person making inter-state supplies, A casual taxable person or a non-resident taxable person, and Businesses which supply goods through an e-commerce operator, cannot opt for Composition Scheme. Non-availability of composition scheme to those who are supplying services or making any supply of goods which are not leviable to tax under the Act or if any inter-state supply is made, seems to be harsh on such person.

It is, therefore, suggested that eligibility for composition scheme be based on the turnover during a particular financial year and be made available uniformly to all suppliers whether supplying goods or services or both anywhere in India. Alternatively, Sector specific composition schemes may be designed to cater to need of different sectors. The embargo placed on effecting inter-State supplies by the taxable person opting to pay tax under the composition scheme must be done away with to benefit MSMEs.

8. Payment and filing of return for availing input tax credit: -

Once invoice is issued by a supplier under Section-31 with applicable tax reflected on it, anonerous burden is being cast on recipient to prove tax has been deposited by the supplier. The condition of tax to be deposited by the supplier to the credit of appropriate Government in order to enable the purchaser to avail the input tax credit on such supply made may cause undue hardship to the assesses. It is suggested that the pre-conditions relating to payment of tax to the credit of Government and mandatory filing of return be deleted and the same must be reconsidered and liberalized to enable the MSMEs to avail input tax credit of tax paid by them as was prevailing in case of CENVAT credit rules wherein credit can be taken immediately on receipt of goods/ receipt of invoice.

Alternatively, if a supplier has accepted the liability of such taxes and has also disclosed the same in his statement of outward supply, the credit must be made eligible to the recipient irrespective the payment by the supplier to the credit of government. Or else, if the Government believes that certain taxable persons in the unorganized sector may not deposit the collected tax to Government, the concept of reverse charge can be made applicable to them instead of denying/ delaying the credit based on the non-compliance by other party to the contract.

9. Power to Arrest & Prosecution: -

If the Commissioner of CGST/SGST believes a person has committed an offence u/s 132, he can be arrested by any authorized CGST/SGST officer. The arrested person will be informed about the grounds of his arrest. He will appear before the magistrate within 24 hours in case of cognizable offence. Offenses u/s 132 where arrest provisions become applicable are as under: -

- A taxable person supplies any goods/services without any invoice or issues a false invoice
- He issues any invoice or bill without supply of goods/services in violation of the provisions of GST
- He collects any GST but does not submit it to the government within 3 months
- Even if he collects any GST in contravention of provisions, he still has to deposit it to the government within 3 months.
- He has already been convicted of an earlier u/s 132 i.e., this is his 2nd offense.

A Commissioner of CGST or SGST can authorize an arrest of a person if he “has reason to believe” that the person has committed any offence punishable under the GST law. The person can be arrested even if such a person has not been issued a show cause notice intimating the alleged violation and even if the investigations are yet to be concluded. It also does not make a difference whether the alleged tax-liability is on account of deliberate tax-evasion or is simply a differential tax liability in a genuine and bonafide dispute. Such provisions relating to arrest, prosecution etc. are very stringent for lapses under GST which puts more burden on MSMEs.

10. Determination of Place of Supply and the type of taxes.

Under GST 3 types of taxes can be charged in the invoice. SGST and CGST in case of an intra-state transaction and IGST in case of an interstate transaction. But deciding whether a particular transaction is interstate or intrastate is not an easy task. Hence Time, place, and value of supply important under GST. Time of supply means the point in time when goods/services are considered supplied'. When the seller knows the 'time', it helps him identify due date for payment of taxes.

Usually, in case of goods, the place of supply is where the goods are delivered. So, the place of supply of goods is the place where the ownership of goods changes. If there is no movement of goods, the place of supply is the location of goods at the time of delivery to the recipient.

Generally, the place of supply of services is the location of the service recipient. In cases where the services are provided to an unregistered dealer and their location is not available the location of service provider will be the place of provision of service.

Value of supply means the money that a seller would want to collect the goods and services supplied. The amount collected by the seller from the buyer is the value of supply.

Since, GST is a destination-based consumption tax, wherein taxes would accrue to the destination state, Government has provided provisions for determining the place of supply in various situations. Hence under GST, small businesses have to identify place of supply for each of their transactions and accordingly GST needs to be paid to the credit of respective governments which shall be a cumbersome task. Further, in case the place of supply is not correctly determined then tax needs to be again paid to correct government and the taxes paid earlier needs to be claimed as refund. It is suggested that law be amended so that in case tax is wrongly paid to incorrect government, then instead of again paying the tax and applying for refund, such government can itself do an inter-governmental settlement which shall ease the taxation law.

CONCLUSION

While the GST provides certain advantages to the MSMEs, the government may seriously look into the recommendations and suggestion given above so that the matters can be resolved as soon as possible for the benefit of all MSMEs. MSMEs can also highlight these issues to the law makers, through its associations or various representative bodies or any specific committees formed by Government for the development of MSME Sector. It is also not out of context to state that this article will, as per the expectation of the author, serve the interest of student community at large.