

GUIDE TO GST

1. Object and Purpose of GST as implemented w.e.f. 1-7-2017

- ◆ Develop National Market - One Nation One Tax.
- ◆ Avoid cascading effect of various indirect taxes like Central Excise, Central Sales Tax, State Vat and Entry Tax (Octroi).
- ◆ Reduce multiplicity of indirect taxes.
- ◆ Reduce distinction between goods and services to avoid overlapping of State and Central Tax on same transaction.
- ◆ Remove barriers in inter-State movement of goods to reduce wastage of truck time and wastage of man-hours at check posts.

1.1 Achievement in last five years

- ◆ National Market - about 70% achieved
- ◆ Avoid cascading effect of taxes - about 60% achieved
- ◆ Problems due to overlapping of VAT and service tax – more or less eliminated
- ◆ Abolition of check posts (but not abolition of harassment through road checks - Official Highway Robbery)

1.2 Unique features of GST as implemented in India

- ◆ Concept of IGST is a unique idea - goods move with taxes - nowhere else tried in world - it is a game changer
- ◆ GST on supply and not on manufacture or sale. This changes entire structure of tax
- ◆ Dual structure of GST
- ◆ Uniform law on goods and services all over India - great achievement

2. Overall structure of Goods and Services Tax

- ◆ Goods and Services Tax (GST) will be on 'supply' of goods or services or both, in India w.e.f. 1-7-2017 (*including Jammu and*

Kashmir w.e.f. 8-7-2017). Area upto 200 nautical miles inside sea is 'India' for purpose of GST.

- ◆ For supplies within the State or Union Territory - (a) Central tax (Central GST *i.e.* CGST) will be payable to Central Government *and* (b) State tax (State GST - SGST) or Union Territory Tax (UTGST - Union Territory GST) will be payable to State Government or Union Territory (as applicable). Area upto 12 nautical miles inside sea is part of State or Union territory which is nearest.
- ◆ For inter-State supplies (supply from one State or Union Territory to another State or Union Territory), Integrated tax (Integrated GST *i.e.* IGST) will be payable to Central Government. IGST is payable if supply is beyond 12 nautical miles but upto 200 nautical miles. However, there is no IGST on high seas sale *i.e.* sale beyond 200 nautical miles or sale before clearance of goods from customs bonded warehouse.
- ◆ In addition, GST Compensation Cess will be payable on few items like pan masala, tobacco products, coal, aerated waters and motor cars.
- ◆ Basic customs duty, Social Welfare Cess, IGST and GST Compensation Cess (on goods where Compensation Cess is applicable) will be payable on import of goods.
- ◆ Distinction between goods and services has been reduced. This has reduced problem of dual taxation which was faced by construction industry, works contract, food related services (like restaurants, canteens and outdoor catering), leasing and hire services and software services.
- ◆ GST is based on Vat concept of allowing input tax credit of tax paid on inputs, input services and capital goods, for payment of output tax. This will avoid cascading effect of taxes.
- ◆ GST is consumption based tax *i.e. normally*, tax is payable in the State where goods or services or both are finally consumed.
- ◆ The rates of IGST - Nil, 0.25%, 3%, 5%, 12%, 18% and 28%. In case of supply within State, CGST rate will be 50% of IGST Rates and SGST/ UTGST rate for supply within the State or Union Territory will be 50% of IGST rates. Thus, CGST *plus* SGST/UTGST rates will be equal to IGST Rate.
- ◆ Though tax is payable to both Central Government and State Government/Union Territory, control will be exercised either by State Government/Union Territory Authorities or Central Government Authorities. This will avoid dual control.

- ◆ Central Excise duty will continue on petroleum products *i.e.* petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel. These products are out of GST at present and may be brought under GST later.
- ◆ Tobacco products will be subject to excise duty plus GST.
- ◆ Alcoholic liquor will be subject to State duty. This product is out of GST.
- ◆ GST Council (Goods and Services Tax Council) is Apex Constitutional body which will determine policies of GST.

Note - The terms used in CGST, SGST, UTGST and IGST Acts are 'Central Tax', 'State Tax', 'Union Territory Tax' and 'Integrated Tax'. However, generally, for sake of brevity, the terms used are CGST, SGST, UTGST and IGST respectively.

3. Budget 2024 and changes in GST law made by Finance Bill, 2024

Nirmala Sitharaman, Minister of Finance, Government of India, presented Budget for four months of 2024-25 on 1-2-2024. Finance Bill, 2024 was also presented. Finance Bill, 2024 will be Act when passed by Parliament and becomes Finance Act, 2024, after receiving assent of President. This was a pre-election budget and very few changes were made.

4. Nature of IGST

- ◆ IGST (Integrated GST) is payable on supply of goods or services or IGST is intermediary tax mainly on B2B (Business to Business) transactions. It is not envisaged as final tax as input tax credit of IGST will be available to recipient in another State.
- ◆ If IGST is paid on B2C transaction (Business to Customer), the State where goods or services or both are consumed will get their share of SGST.
- ◆ IGST Rate is double the CGST rate and will be uniform all over India.
- ◆ IGST will ensure that goods or services or both and taxes move together across the country, which will ensure seamless and tax free movement of goods and services within the country.
- ◆ In view of IGST, there will be no need to claim refund of input taxes, except in case of physical exports and supplies to SEZ.

Refund is also permissible in case of inverted duty structure *i.e.* tax on output is less than tax payable on inputs and input goods (except in few cases).

- ◆ Exports and supplies to Special Economic Zones (SEZ) are zero rated *i.e.* input tax credit will be available even if tax is not paid on output. This will make exports and supplies to SEZ really tax free.
- ◆ Supply from SEZ to DTA unit will be treated as 'import' by DTA unit and customs duty will be payable.
- ◆ IGST, concept of 'supply' instead of sales and removal of distinction between goods and services are game changers in GST.
- ◆ IGST is a unique concept nowhere else been tried in the world.

5. Overview of IGST Act

IGST Act small but very important Act, similar to CST - IGST Act is small but very important Act [It can be compared with Central Sales Tax Act]. 'Integrated tax' means the integrated goods and services tax levied under Integrated Goods and Services Tax Act – section 2(12) of IGST Act [In this book, the tax is termed as IGST and Act is termed as IGST Act for sake of brevity].

Important definitions in IGST Act - The IGST Act carries important definitions relating to export and import of goods, export and import of services, location of supplier and recipient of services, taxable territory and zero rated supply [section 2 of IGST Act]

Power of Parliament to impose tax on inter state supply of goods or services - As per Article 246A(2) of Constitution of India as amended w.e.f. 16-9-2016, Parliament will have exclusive powers to make laws with respect of goods and services tax where the supply of goods, or of services, or both takes place in the course of inter-state trade or commerce. Under this Constitutional Authority, section 5(1) of IGST Act imposes tax on inter-state supply.

IGST on inter-state supplies - Section 5(1) of IGST Act provides that IGST is payable on all inter-state supplies, except alcoholic liquor, petroleum crude, HSD, petrol, natural gas and aviation turbine fuel.

IGST on import of goods other than goods notified by Government - As per *proviso* to section 5(1) of CGST Act, IGST levied on goods *other than the goods as may be notified by the Government on the recommendations of the Council* imported into India shall be paid at the point when customs duties are leviable on such imported goods [words in italics proposed to be inserted *vide* IGST (Amendment) Act, 2023 from date to be notified [likely to be made effective from 1-10-2023].

At present, IGST is payable when the goods are cleared from customs bonded warehouse. Section 65A of Customs Act has been introduced *vide* Finance Act, 2023 from date to be notified, to make provisions of warehousing of goods on which IGST and Compensation Cess has been paid, for manufacture as per provisions of section 65 of Customs Act. Such goods may be imported goods or removed from another customs warehouse.

The intention behind amendment to *proviso* to section 5(1) of CGST Act seems to be to allow bringing goods for manufacture in warehouse on payment of IGST and GST Compensation Cess. The exemption for removing goods from customs port for manufacture warehousing will be only to the extent of customs duty and social welfare surcharge.

Inter-state supply of aircraft engines, parts and accessories by airlines to own branch – Inter-state supply of aircraft engines, parts and accessories by airlines to own branch in another State will be subject to IGST. The Input Tax Credit can be availed for payment of tax on inter-state supply even if the airlines are not allowed to take input tax credit for supply of services of transport of passengers by air in economy class - MF(DR) circular No. 16/16/2017-GST dated 15-11-2017.

Reverse charge under IGST - Section 5(3) of IGST Act make provisions in respect of reverse charge in case of notified services. Section 5(4) of IGST Act provides for reverse charge when supplies are received from registered person.

Determination of place of supply and when supply is inter-state - Parliament may, by law, formulate principles for determining (a) place of supply of goods or services (b) when supply of goods or services or both are in the course of inter-State trade or commerce –Article 269A(2) of Constitution of India inserted w.e.f. 16-9-2016. Under this constitutional authority – (a) Sections 7, 8 and 9 define inter-state and intra state supply (b) Sections 10 to 13 of IGST Act make provisions of place of supply.

International tourists - Section 15 of IGST Act makes provision for refund of IGST to international tourists.

Zero rated supply - Section 16 of IGST Act defines exports and supplies to SEZ as ‘zero rated supply’. **In case of such supplies, ITC is not required to be reversed even if goods are supplied without payment of GST.**

Apportionment of IGST between Union and States - As per Article 269A(1) (inserted w.e.f. 16-9-2016), IGST collected by Union will be apportioned between Union and States as per law made by Parliament on the recommendation of GST Council. Sections 17 and 18 of IGST Act make provisions for such apportionment under this constitutional authority.

Refund if IGST wrongly paid instead of CGST and SGST/UTGST - If IGST was wrongly paid instead of CGST and SGST/UTGST, refund will be granted subject to specified conditions – section 19 of IGST Act. [parallel provision in section 77 of the CGST Act].

Applicability of CGST Act to IGST Act - Section 20 of IGST Act provides that provisions of CGST Act relating to provisions listed in that section shall *mutatis mutandis* apply to IGST Act.

IGST rate double the CGST rate - IGST rate is presently double the CGST rate, though there is no such statutory restriction.

6. GST Compensation Cess

- ◆ Some States, particularly producing States like Maharashtra, Gujarat, Tamil Nadu, Punjab, Karnataka may lose tax revenue due to abolition of Central Sales Tax.
- ◆ Such States will be paid compensation by Central Government for five years.
- ◆ To enable Central Government to pay the compensation, a GST Compensation Cess has been levied on supply of goods or services or both within India and also on import of goods and services.
- ◆ Sections 3 to 7 of GST Cess Act provide for mode of calculating compensation payable to States.
- ◆ Input Tax Credit of GST Compensation Cess will be available, but the input tax credit in respect of GST Compensation Cess can be utilised only towards payment of GST Compensation Cess.
- ◆ CGST Rules, 2017 will apply to GST Compensation Cess *mutatis mutandis* apply [except rules 3 to 7 and 117 to 120] - Notification No. 2/2017-Compensation Cess, dated 1-7-2017.
- ◆ GST Compensation Cess will continue upto 31-3-2026.

7. State GST Act (SGST)

- ◆ Each State Government has passed its own State GST Act to impose SGST on supply of goods or services or both within the State.
- ◆ These State GST Acts are practically copies of CGST Act. The definitions and provisions are identical. There are some variations in transitory provisions and provisions relating to input tax credit, to adapt CGST Act to SGST Act.
- ◆ Central Sales Tax is continuing to be applicable to petroleum products. In case of procurement of these products, C form can be issued even if the final product is covered under GST.

8. Union Territories GST Act (UTGST)

- ◆ In case of Union Territories which do not have legislature, UTGST (Union Territory Goods and Services Tax) will be payable. Parliament has passed Union Territory Goods and Services Act, 2017 [UTGST Act] for this purposes.
- ◆ The Union Territories to which UTGST Act applies are as follows - (a) Andaman and Nicobar Islands (b) Lakshadweep (c) Dadra and Nagar Haveli, Daman and Diu (d) Chandigarh; and (e) other territory [as amended w.e.f. 26-1-2020 *vide* Regulations 1 and 2 of 2020 dated 24-1-2020, issued by President of India [Also amended *vide* Finance Act, 2020].
- ◆ For the purposes of CGST Act and UTGST Act, each of the territories specified above shall be considered to be a separate Union territory. Thus, IGST will be payable when supply is made from one Union Territory to another.
- ◆ Delhi, Puducherry and Jammu and Kashmir have their own legislatures and they have their own GST Act.
- ◆ “Other territory” includes territories other than those comprising in a State and those referred above - section 2(81) of CGST Act. This will cover Exclusive Economic Zone (except territorial waters). Thus, ‘other territory’ means area inside sea between 12 nautical miles to 200 nautical miles. UTGST will apply for supply of goods and services within that area. However, it is not possible to obtain GST registration there, as it is not possible to have ‘fixed establishment’ at that place.

9. GST on Supply of Goods or Services or both

- ◆ Supply of goods or services or both *in the course or furtherance of business* is ‘taxable event’ in GST as that event triggers liability to pay GST [section 9(1) of CGST and SGST Act]
- ◆ Definition of ‘business’ is wide. Even occasional supply can be ‘business’.
- ◆ Supply covers all forms of supplies like sale, barter, rental, lease, exchange or disposal, made or agreed to be made.
- ◆ Supply of goods and services for consideration is always taxable. Consideration means something in return. It need not be in form of cash. It can be in any other form.
- ◆ In case of activities specified in Schedule I of SGST and CGST Act, supply is taxable even if there is no consideration.
- ◆ Supply by taxable person to related person is subject to GST even if there is no consideration *i.e.* no amount is charged.

- ◆ This will cover transactions between group companies (like deputation of persons *i.e.* secondment, supply of goods on loan basis, transactions between branches in different States having different GSTIN). However, services provided by a company to its branch or division outside the State or within the State with different GSTIN will not be subject to GST, if the branch or division is eligible for entire ITC.
- ◆ Free gifts to related persons will be subject to GST.
- ◆ Employer and Employee have been defined as 'related persons'. Hence, a view is clearly possible that GST may be payable on fringe benefits by employer to employees like transport, meals, telephone etc. provided to employees. PIB Press Release dated 10-7-2017, had stated that GST will not be payable on such fringe benefits to employees. However, that clarification cannot be held as law.
- ◆ Gifts upto Rs. 50,000 to employees will not be subject to GST, but input tax credit will have to be reversed. The word 'gift' has to be interpreted as understood in trade parlance *e.g.* supply of meals in canteen cannot be termed as 'gift'.
- ◆ Supply between two distinct persons in course of business is subject to GST. This will cover inter-State stock transfers, branch transfers, services by Banks and telecom companies in one State to their own branches in another State and the like.
- ◆ Supply by principal to agent is subject to GST. Thus, GST is payable on supplies to C&F Agents. However, commission agent has to pay GST only on his commission as he does not deal with goods or services.
- ◆ Import of services from related person or from business establishment outside India is subject to GST even if there is no consideration. Branch/Head Office in India receiving free services from Head Office/outside India will be subject to GST.
- ◆ Lottery, betting, gambling is subject to GST. Online money gaming will be subject to GST @ 28% w.e.f. 1-10-2023.
- ◆ Lottery tickets are goods and GST will be payable. GST will also be payable on services relating to betting and gambling.
- ◆ Some services provided by Government (except sovereign activities) and by Local Authority are taxable and mostly will be subject to reverse charge *i.e.* GST will be payable by taxable person receiving the service from Government or Local Authority.
- ◆ Alcoholic liquor and petroleum products [petroleum crude, HSD, petrol, natural gas and aviation turbine fuel] are presently outside GST. Petroleum products will be brought in GST at later stage.

- ◆ Petroleum products other than those specified above are subject to GST.

10. What are 'Goods'

- ◆ Though tax is payable whether supply is goods or services, distinction has been made in some cases. This is given in Schedule II of CGST and SGST Act.
- ◆ This distinction is relevant to determine place of supply and time of supply and also for valuation and composition schemes.
- ◆ Hire purchase of goods and financial lease is 'goods'.
- ◆ Supply of goods in club is taxable.
- ◆ Development of software is 'service'. However, software in physical form will still be 'goods', whether as packaged software or tailor-made software.
- ◆ Permanent transfer of Intellectual Property Rights [IPR like patent, copyright, trade marks, designs] are 'goods'.
- ◆ Lottery, betting and gambling is taxable as 'goods' but any other Actionable Claim is not subject to tax.
- ◆ Free gifts to non-related persons is not subject to GST, but input tax credit will have to be reversed.
- ◆ Securities and money are not 'goods'. However, facilitating or arranging transactions in securities is a service and subject to GST.

11. What is 'service'

- ◆ Though tax is payable whether supply is goods or services, distinction has been made in some cases. This is given in Schedule II of CGST and SGST Act.
- ◆ Hire or operating lease of goods is 'service'.
- ◆ Renting, leasing of immovable property is 'service'.
- ◆ Works contract of immovable property (mainly construction and erection and commissioning related) is 'service'.
- ◆ Supply of food by way of or as part of service is 'service'.
- ◆ Development of software is 'service'. However, software in physical form is still be 'goods'.
- ◆ Temporary transfer or permitting use or enjoyment of IPR (Intellectual Property Right) like patent, design, copyright is service. Permanent transfer of IPR is 'goods'.
- ◆ Job work is 'service'. GST will be payable on job work charges, unless some specific exemption has been given.