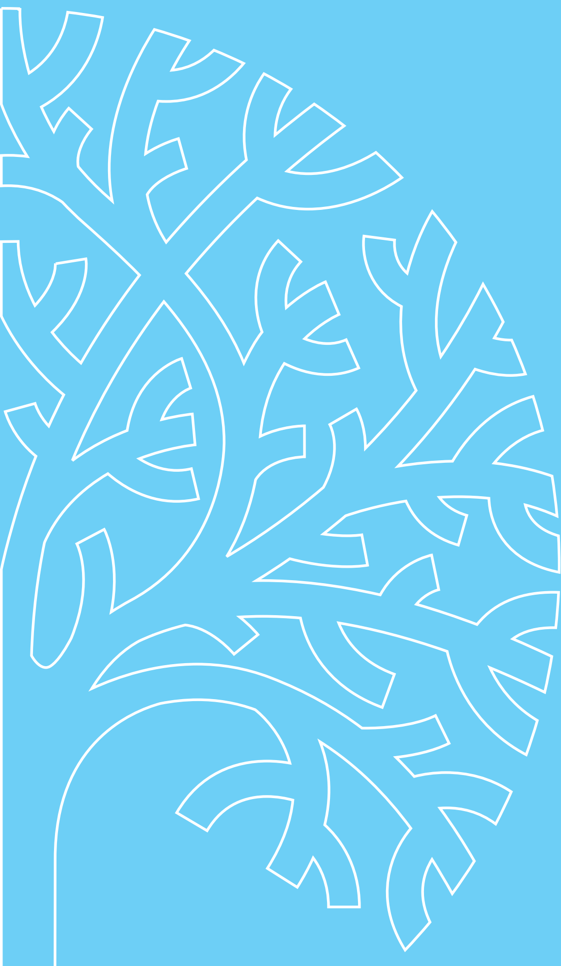
Lakshmikumaran & Sridharan attorneys
30 years
Exceeding Expectations
Since 1985

India prepares for GST

ISSUE #1



The Tree of Knowledge

Knowledge Initiatives at L&S are nurtured by a constant stream of analysis and opinion pieces by our consultants and their practice experiences. The 'Tree of Knowledge' is a part of our wisdom initiative gleaned from the best of the organisation's learning, shared through the year.

INTRODUCTION

Goods and Services Tax ('GST') has been one of the most 'popular' taxes in the world. In the last 50 years, it has spread to over 160 countries across the world. GST is a multi-stage destination based consumption tax. The taxable event is 'supply' of goods and services with credit of taxes paid at input stage being available for setting off against output tax liability. In current taxation regime, credit of VAT is not allowed for service providers. Similarly excise duty on goods is not allowed as credit to traders. This leads to distortions and cascading effect in the supply chain.

In India, dual GST administered by Centre and States is proposed. In the current tax regime, tax is on a taxable event like manufacture, sale, entry, etc. The tax is collected by the Central or the State Government in accordance with Constitutional scheme. The current levies like CST, VAT, Excise Duty, Octroi, Entry Tax, Service Tax, etc will be subsumed by GST. GST would entail a simultaneous levy of tax by both the Governments on the same 'SUPPLY' of goods or services or both. The tax levied by the Centre would be called Central GST ('CGST') and that by the State would be called State GST ('SGST'). Inter-state supply would attract Integrated GST ('IGST').

The Constitutional (122nd) Amendment Bill , 2014 which was passed in Lok Sabha on May 6, 2015 is the first step to usher in Goods and Services Tax (GST) across India. The amendments are aimed at empowering the Federal / Union Government to levy tax on goods beyond manufacturing stage and the Regional / State Governments to tax services.

The GST model, as proposed is ambitious in terms of infrastructure requirements and does pose numerous challenges in terms of transition from the existing regime, evolving jurisprudence and ensuring smooth flow of credit. This booklet is a gathering of certain reflections on key aspects of GST as it evolves and the concerns that remain in the backdrop of the journey travelled so far. It also covers the recent reports brought by the Indian Tax Administration on various business processes like registration, payment, returns and refunds under the GST regime. At the end, the only statutory material available so far on Indian GST – the Constitutional Amendment Bill has been provided.

GST – ISSUES AND CHALLENGES

1

Taxable event of supply under GST[1]

The taxable events India currently follows are broadly manufacture, service and sale - all of which will now be subsumed and the taxable event will be supply of goods or services or both. The Union at present does not have the power to tax transfer of property - sale and deemed sale [Article 366(29A)]. It will get the power to tax such transactions though on account of a 'supply'. To a layman, supply would be to make something available to another, or to fulfil a want of another - something very different from sale.

Sale does involve supply of a thing, service, or a transfer of right, and is not a mere supply in the plain sense of the term. 'Supply' as compared to sale may be satisfied by merely facilitating use/possession of a good or rendering of service. Will supply include transfer of property, can there be a supply of rights, are interesting questions. The legislations to come - Central GST and State GSTs and before that model legislations, will hopefully provide clarity.

The general understanding is that India will not bring real estate - transfer by way of sale of immovable property into the GST ambit. Stamp duty is not proposed to be subsumed. As per the Sale of Goods Act, goods include only movable property, as immovable property is covered under Transfer of Property Act. The present Service Tax law expressly excludes transfer of title in goods or immovable property, by way of sale, gift or in any other manner. How will GST legislation reconcile this position when tax on sale of goods is getting omitted from the State List? Will transfer of immovable property be covered under GST legislation or not?

Supply as defined by the developed world

A look at the definition of supply or taxable supply in certain jurisdictions will assist us in arriving at reasonable assumptions on the shape of the impending definition of supply in the Indian GST statutes. Sixth Directive on VAT of EU defines supply as [under Article 5(1)] "a supply of goods is the transfer of the right to dispose of tangible property as owner". Member-States can consider certain interests and rights as tangible property like right of user of immovable property (as right in rem) and shares giving ownership or possessory rights over immovable property. Hire purchase and transfer of goods under contract where commission is payable on purchase and sale are also treated as supplies as per the EU law.

[1] Extracts from an article published by L&S professionals in www.taxindiaonline.com

UK VAT Act

The VAT Act, 1994 of United Kingdom indirectly seeks to include concepts of transfer of property and ownership when it defines supply of goods as 'any transfer of the whole property in goods', with the exception that the transfer 'of any undivided share of property' or 'of the possession of goods' is a supply of services. The transfer of possession of goods will be a supply of goods if possession is transferred under an agreement for sale or an agreement that provides that at some future point ownership will transfer.

Australian GST

Australian law is more exhaustive in terms of syntax though the definition is inclusive and, therefore, not exhaustive in terms of coverage. According to the GST Act, a supply is any form of supply whatsoever. As this does not provide any meaningful guidance, it is elaborated by way of an inclusive clause to say that supply includes (a) a supply of goods; and (b) a supply of services. This inclusive list encompasses provision of advice or information; a grant, assignment or surrender of real property; a creation, grant, transfer, assignment or surrender of any right; a financial supply; an entry into, or release from, an obligation: to do anything, to refrain from an act, to tolerate an act or situation. Any combination of any 2 or more of the matters listed in this inclusive clause will also be covered under supply.

Canadian GST

Indian GST law as it evolves seeks to draw heavily from Canadian GST law in view of commonality of the federal structure of both countries. Canada has a complex GST system and the relevant provisions are covered under Part IX of the Excise Tax Act. According to this statute, "supply" means the provision of property or a service in any manner, including sale, transfer, barter, exchange, licence, rental, lease, gift or disposition. It is significant to note that Canadian law does not use the word 'goods' but 'property' and property is defined to include both movable and immovable property while the Indian GST appears to keep immovable property out of the new tax system. Another aspect worth paying attention to pertains to the Indian commodity tax system. Given the legacy of sales tax in India and the fact that even Central Excise law has provisions for valuation of certain commodities based on MRP, may be 'supply' in Central GST and State GST Acts needs to be expressly defined as including sale and transfer.

Definition of service

Coming to services, EU defines 'supply of services' to mean any transaction which does not constitute a supply of goods under Article 5, and the Indian Constitutional Amendment Bill seeks to define services in a similar manner. Under EU law, the term also includes 'obligations to refrain from an act or to tolerate an act or situation'. Indian Service Tax law post-negative list follows EU in this regard as the declared service under Section 66E(e) of Finance Act, 1994 is similarly phrased. UK VAT Act adopts a similar definition when it states services as 'anything which is not a supply of goods but is done for consideration (including, if so done, the granting, assignment or surrender of any right) is a 'supply of services". A slightly modified definition of service has been adopted by New Zealand GST Act to state that services would mean anything which is not goods or money.

Supply under GST law of developing nations

The definitions of supply in EU, UK, Canada and Australia may appear to be well-drafted but disputes involving the question as to whether a particular activity can be considered as supply arise time and again and test the limits of jurisprudence. While the above provisions of EU and other developed nations are ***ad nauseam*** mentioned by the intelligentsia and fiscal economists, one sees relatively lesser use of such concepts as they prevail in Asian or African nations. It will be surprising to learn that Botswana has adopted a rather elaborate definition of supply. According to its VAT statute, supply of goods means a sale of goods or a grant of the use or right to use goods or a transfer or provision of thermal or electrical energy, heat, gas, refrigeration, air conditioning, or water. The definition of supply of services more or less conforms to such definition in several VAT statutes when it states supply of services means anything done which is not a supply of goods or money, including granting, assignment, cessation, or surrender of any right; making available a facility or advantage; or refraining from or tolerating any activity.

The Guide on Supply released by Malaysia states that the definition of supply for GST purposes covers all forms of supply where goods and services are supplied in return for a consideration and supply of goods and services without consideration is not a supply unless it is deemed to be a supply. It also cites examples of supply as including sale, barter, exchange, license, rental, lease and right to use. A supply of goods involves transfer of ownership of goods from one person to another person and 'goods' means any kind of movable and immovable property such as machinery, motor vehicle and house. It also includes transactions under hire purchase and finance lease agreements. Regarding services, Malaysia considers any activity that is not a supply of goods as supply of service. "Services" mean anything done or to be done including the granting, assignment or surrender of any right or the making available of any facility or advantage and it may include a transfer of possession of goods without transferring the ownership.

Indian GST law - Certain pointers on supply

The definitions as above will be relevant in the Indian context as Article 366(29A) of the Constitution on deemed sale has been retained in this 122nd Amendment Bill though it was sought to be omitted in the 115th Amendment Bill brought in 2011. Tax on sale of goods is being omitted (Entry 54 of List II) but transactions like hire purchase or composite contracts which involve both goods and services need to be factored in the GST legislations in view of the chequered legal history in taxing them.

The biggest gain from GST as put forth is seamless credit. For credit there must be supply and it must be taxable. Will our law provide for treatment of zero-rated supplies as taxable supplies whereby when the final output is not GST paid, input credit will be available? It is relevant to note here that in respect of certain excise duty exemptions, both full and partial, non-availment of credit is a pre-condition for admissibility of exemption. In the GST scenario the Indian indirect law has to conceptually move from this position and extend credit in case of zero-rated supplies so that the credit mechanism is sustained throughout the supply chain till the goods reach the end consumer.

GST – The issue of one per cent levy[2]

Considered as the second most significant milestone after the introduction of the Value Added Tax (VAT) regime in India, the Goods and Service Tax (GST) has presently become the most debated topic in both tax circles and businesses. If the government has its way, GST is all set to be introduced from 1st April, 2016 and the present time is opportune for businesses to take a relook at their scheme of operations.

While GST as a concept and its scheme of implementation have been discussed for a long time within the government and the industry, information has been forthcoming only in the form of Discussion Papers (The First Discussion Paper, November 2009), Task Force Reports (Report of the Task Force on GST, Thirteen Finance Commission, December 2009), the IT Strategy for GST and other framework documents. However, after introduction of 122nd Constitution Amendment Bill (hereinafter 'Bill'), GST now seems a certainty and no more a mere probability. While the Bill in itself has generated substantial interest and analysis, an attempt is made here to specifically focus on the additional 1% tax introduced in the GST framework.

Clause 18 of the Bill proposes to impose an additional tax of 1%, besides the Revenue Neutral Rate (RNR) which will be the rate of GST in India. As per this clause, the following elements become clear -

- Additional 1% is only leviable on supply of goods
- Such supply must take place in the course of inter -state trade or commerce
- This additional GST levy will initially be imposed for a period of two years but may be extended if the GST Council (to be constituted under Article 279A) so recommends
- The proceeds from the collection of such tax shall not be part of the Consolidated Fund of India and shall be deemed to be assigned to the state where the supply originates

[2] Extracts from article published by L&S professionals in www.taxindiaonline.com

- The government retains the power to exempt any such goods from the levy of this levy
- Parliament has the power to frame principles for determining the place of origin from where supply of goods take place in the course of inter - State trade or commerce.

Although it is clear that the new levy has been conceived as a mechanism to persuade and reassure supplier/manufacturing States that their loss of revenue shall not be immediate and compensation is guaranteed in more than one form, what is not clear are the implications of such tax on businesses operating across states. The new levy particularly poses several a challenges.

First, the additional tax has been imposed only in the course of inter -state supply of goods and this means -

- Inter -state supply of services will only attract IGST and will be more economical when compared to inter-state supply of goods in one sense
- Intra-state operations with respect to supply of goods will not attract such additional rate of tax and will be more cost effective, assuming inputs are also procured from the same state.

Secondly, stock transfers, which are not taxed in the present Central Sales Tax (CST) regime, may become taxable. Thirdly, the question as to whether Input Tax Credit (ITC) would be available against this additional 1% tax suffered needs clarity.

To overcome the apprehensions created by the proposal of the additional 1% tax and their impact on stock transfers, it is suggested that the following methods may be resorted to by the legislature -

- Group / branch/ division -wise registration could be introduced in India as is present in New Zealand or other countries and supplies among them could be subject to special rules[3] , or
- 'F' Form or like scheme may be continued to keep stock transfers tax free, or
- Additional tax of 1% may be restricted to the first case of stock transfer (i.e. transfer from the manufacturing state) and subsequent transfers may be exempt from such tax - definition of supply may be suitably framed, or
- A restriction on availing IGST credit on inter-state supply of goods to the extent of 1% may be imposed, without adding an additional cash burden on the business.

Importantly, clarity on the period of levy of such additional tax may project GST as a more appealing, certain and clear proposal to businesses.

[3] This article was written before the Report on GST Business Processes – Registration was released.

GST – Will the distortions continue?[4]

Besides being a source of funding of public expenditure, taxes also enable influencing expenditure patterns thereby distorting individual behavior. Indirect taxes distort expenditures primarily by affecting the price of consumption goods. In India, the existing indirect tax system has become extremely distortionary with its plethora of exemptions and exceptions, and the cascading effect, which favour some goods and services at the expense of others. Consequently, rather than being driven by own needs and preferences, the consumer preferences tend to be driven more by the decisions made in the Ministry of Finance. Thus the distortions yield inefficient resource allocation and in economic terms, come at the price of inferior Gross Domestic Product (GDP) growth.

So the primary question before the policy maker is: how to shift to non-distortionary consumption taxes which enable increase production efficiencies and enhance international competitiveness of Indian goods and services? The Goods and Services Tax (GST) is being proposed as the answer to this question.

As regards the industry, the indirect taxes are taken as a pass-through in their hands and hence perhaps are not given the due attention they may deserve. But the actual reality is quite different.

It may not be possible to shift the entire burden of indirect taxes to final consumers due to say competition from the grey market or other market forces. There is also the cascading effect whenever there is a break in the input tax credit chain. For example, the inter-State purchases are liable for payment of the Central Sales Tax which is not eligible to be taken as input tax credit. Similarly, Cenvat credit of the excise duty paid on inputs is disallowed where a service provider is undertaking a works contract. Further, there are several location/area-based or end-use based tax incentives and exemptions which also significantly influence supply chains and business decisions.

An ideal GST should be in the nature of a destination-based consumption VAT on all goods and services with no exemptions or exceptions. The question is whether the proposed GST conforms to this ideal or not? To answer this, let us take a look at some features of the proposed GST.

Proposed GST in India

- The proposed GST will be on all 'supplies' of goods and services. The term 'supply' has not been defined as such, but is expected to include both sale and consignment transactions. Though the tax paid on stock transfers would be eligible to be taken as input credit by the recipient, if we take into account the higher GST rate, there could be an impact on the working capital and financial costs incurred depending on the working capital cycle.

[4] Article reproduced from Tax Amicus – October, 2015 (e-newsletter from Lakshmikumaran & Sridharan)

- 'Services' has been defined as anything other than goods and hence goods and services together, at least at the definitional level, constitute everything! However, alcoholic liquor for human consumption is proposed to be kept out of GST. During the initial years, five specified petroleum products will also remain out of the GST net.
- The levy will subsume multiple existing levies such as central excise duty, service tax, cesses and surcharges levied by the Central Government, and the sales tax/value added tax, purchase tax, entry tax, entertainment tax, etc. as well as the cesses and surcharges levied the State Governments.
- The levy will be dual with separate GST levies by the Centre and also by each of the States. The Central levy will be called the Central GST ('CGST') and the State levy will be called the State GST ('SGST'). The inter-State supplies will attract Integrated GST ('IGST') to be levied by the Centre. This will mean that the compliance requirements for taking and utilization of input credit of SGST and IGST will need to be watched for.
- A temporary levy in the form of a 1% additional origin-based tax is also proposed on inter-State supplies for consideration. This tax is not eligible to be taken as input credit and hence will have a cascading effect.

Rate variations and exemptions

- The Constitutional Amendment allows for the Goods and Services Tax Council (GSTC) to recommend the rates including floor rates and bands for the GST. Already there is a discussion on having at least two rates – one lower normal rate and a higher rate for demerit goods such as tobacco and luxury items. GSTC will also recommend on the goods and services which may be subjected to or exempt from GST. Special provisions may apply with respect to 11 specified States.

Place of supply

- GST credit chain will follow the underlying documentation whereas the supply chain will flow with the use/consumption of the goods or services. Input credit availability would require that the GST chain should closely follow and integrate with the supply chain. Otherwise there will be loss of credit and the consequent cascading effect. The Place of Supply Rules which are still being finalized will be crucial in this aspect.

Distortions in GST

Read together, it would appear that the policy elites do not want to give up any of the complications or discretions of the existing indirect tax structure and would like to carry them forward into the GST as well. The 1% additional tax adds to the complexity with some cascading effect as well. The GST will also have multiple levies, multiple rates, exemptions and exceptions and special dispensation for certain States. Thus the regime of area-based and end-use based exemptions and exceptions may not exactly be over as such, but would only require a more difficult and much more elaborate political process before they can come through.

So the transition into GST may not be as smooth for the industry as is generally made out to be by some tax experts and in certain media presentations. Hence there may also be a case for the industry to take stock of where they stand now vis-à-vis what is in store for them once the GST is implemented.

GST & Centralised Registration[5]

Much has been said about the introduction of levy of additional 1% tax proposed under clause 18 of the Constitutional (122nd Amendment) Bill 2014, (duly passed in Lok Sabha and which is now placed before a special committee, pending for approval by the Rajya Sabha, and subsequently by 50% of State Legislatures) on supply of goods moved from one State to another including stock transfers which are presently being effected against Form F without payment of CST. Further, the consequence of proposed 1% non-creditable origin-based tax on all interstate supply of goods including branch transfers, as a measure to help the manufacturing states in the initial phase of introduction of GST adds more complication and the situation gets further compounded due to break in GST credit chain, resulting in ultimate increase in the cost of the goods at the hands of end consumer.

In this article an attempt has been made to briefly discuss and share the thoughts on the probable impact of GST on service providers who have opted for centralized service tax registration at present.

Impact of proposed GST on service providers having centralized registration

Under the present negative list based service tax regime, where the person liable for paying service tax on a taxable service is having more than one premises or offices, which are engaged in relation to such service in any other manner, and has centralized billing or centralized accounting system in respect of such service, and such centralized billing or centralized accounting systems are located in one or more premises, he may, at his option, register

[5] Reproduced from article published in L&S Tax Amicus – July, 2015. This article was written before release of Report on GST Business Processes – Registration.

such premises or offices from where centralized billing or centralized accounting systems are located.

Thus, as per Rule 4(2) of the Service Tax Rules, 1994, facility is provided to the provider of output service to opt for centralized service tax registration for a single premise instead of having separate registration at different places.

Furthermore, by exercising this option, the provider of output service can have control over the entire business operations from single location from where invoices for services provided from different places are raised, receive payments against the invoices raised, make payment to the provider of input services as well as to the supplier of inputs and capital goods. Besides, the major benefit of having centralized registration is the facility to avail credit on inputs, capital goods and input services at single location, irrespective of the location of the receipt and use of such inputs, capital goods and input services and the name of the location to which such invoices were addressed.

No doubt such class of service providers are presently enjoying this benefit to a great extent as it allows the service provider to avail credit at single location and utilize such credit effectively for discharging service tax on output services and also can handle litigations at single location from the central place thereby reducing the compliance cost to a great extent.

If one looks at sector-wise distribution of such class of assessees, telecom, insurance and banking are the major sectors which are presumably operating under centralized service tax registration presently say from corporate offices located in different cities.

Report of the Task Force of 13th Finance Commission

The Task Force appointed by the Thirteenth Finance Commission, Government of India, had issued a report on December 15, 2009 with recommendations on various issues relating to the design and implementation of the proposed GST in India. According to this report, all persons with turnover more than Rs. 10 lakhs will be required to obtain registration and it will be a single registration for all branches in a State. Dealers in multiple states / having operations across States will have multiple GST registration numbers. A relevant point here would be that the model GST Registration Form floated by NSDL as part of pilot project, in effect, envisages single registration certificate for multiple business premises within a particular state only and not inter-state.

Proposals made by GST Core team

The CBEC set up a GST Core Team for providing a comprehensive conceptual framework for the proposed GST legislation and submitted its report in the form of a Discussion Paper in October 2011. The Paper suggested that while framing the place of supply rules, as far as practicable, the state where the service is performed should be taken as the place of supply. This Paper acknowledged the importance of requirement of registration at multiple places and also discussed exceptions like telecommunication service which may necessitate special place of supply of services rules. Hence, one of the foremost challenges would be to determine the place of supply of services to fasten GST liability and to require a person engaged in supply of goods or services apply for registration.

Position under the proposed GST regime

However, in the proposed GST regime conceptually supply of service can be again inter-state or intra state and hence in all probability the question of having provisions / facility for centralized registration for assessee supplying services appears to be remote.

In addition, importers of services and persons who make inter-state supplies will, however, be considered as 'taxable persons', irrespective of turnover and accordingly need to take GST registration compulsorily.

Thus, if we weigh the overall impact of GST on service providers having centralized registration, the most crucial issue that emerges, will be the need for taking separate GST registration in multiple locations and the need to have separate books of account for each such premises and also to have control and monitoring system for both receipts and payments (income and credits) by such service providers. Such requirement is subject the caveat of introduction of any other alternative scheme.

Thus the service industry will have to wait, watch and lookout for provisions governing registration under the to-be enacted GST legislations and find an answer to the issue as to whether the concept of centralized registration shall continue under GST atleast for CGST and IGST.

Impact analysis is sine qua non

The need of the hour for all service providers in general and service providers who have opted for centralized registration in particular is to see GST as a reality in the near future considering the Government's commitment to roll out this mega tax reform from April 2016. The industry should well accord priority to study their existing processes and revamping the existing ERP / other accounting software systems to make them compatible with proposed GST. Procedural requirements may not be counted as one of the high impact factors. But an impact study in respect of GST will indicate even registration and having locations in multiple states from where supply is undertaken, are issues which cannot be placed out of the periphery of relevant issues.

GST – Will compliance costs actually go down?[6]

A Goods and Services Tax (GST) is on the anvil. One of the major issues which is holding back its rollout is the lack of consensus on the compensation mechanism for the expected loss of some States on account of its implementation, inclusion or exclusion of specific products from scope of GST and the threshold limit. Even these issues are said to have been more or less been sorted out.

So the all round expectation is that, a dual GST structure will be in place across India with two different levies namely the Central GST (CGST) to be levied and collected by the Centre on all supplies beyond the threshold limit and the State GST (SGST) to be levied and collected by the States. There will also be an inter-State GST (IGST) equivalent to CGST plus SGST, to be levied and collected by the Centre on inter-State supplies, which will be transferred to the destination State using the GST Network.

The tax base for both CGST and SGST would be identical. Except for the tax rate, all other parameters of levy such as classification, valuation, place of supply, point of levy and the documentation requirements would be the same for both these levies. So once the tax base for the levy gets determined for say the CGST, it would get automatically determined for IGST and SGST as well.

In such a situation, is it necessary to have two tax administrations one at the Centre and another at the States to implement the CGST and SGST separately? For the trade, two administrations would mean two of everything for the same supply - two returns, two assessments, two refund claims, two audits, etc., though some of it would be information technology (IT) based. This may also imply say two demands, two hearings, two adjudications, two appeals, etc., and hence double the compliance cost!

So the question which should actively be agitating the minds of the trade is: will there be an administrative overhaul on introduction of the GST or will it be only a rehash of the existing administrative set up? If the latter, will GST actually reduce compliance cost for them at all? Tax administration, as they say, is the tax policy!

Is there a lesson to learn from other countries which also have dual GST systems? Let us look at Canada and Brazil which also have a Federal structure and a dual GST.

Canada has a complex GST-HST-QST-RST 'system' wherein, in all cases involving a common tax base for both the Federal and provincial levies, the tax administration is Federal except in Quebec where it is provincial. So there is no duality in tax administration though there is dual levy on a common tax base.

[6] Reproduced from Article published in L&S Tax Amicus – December, 2014

As regards Brazil, it has one Value Added Tax (VAT) namely the IPI for the Federal Government and one VAT each namely the ICMS, for each of the state governments. Brazil has been facing complex technical and administrative problems as to how to apply different VATs in different states in addition to the Federal VAT and is still grappling with key questions relating to integrating the IPI and ICMS and developing a system for interstate transactions. It is not sure whether there is any case to follow Brazil as even under the existing structure, as per a study, VAT compliance time in India is lesser than in Brazil!

So India may not have much of a precedent to go by from other countries. Not much has also been heard from the Government so far on the administrative set up to be put in place for implementation of the GST. What has been indicated is that the problem of dual control will be addressed through a compounding scheme as well as administrative simplification for small dealers through measures such as registration by single agency for both SGST and CGST without manual interface, no physical verification of premises, simplified return format, electronic return filing, risk assessment based audit in 1-2% cases and lenient penal provisions. Will the trade be comfortable with only these measures?

The fact is that the GST story has not fully been told as yet. But this does not mean that we should not also take proactive action. It is perhaps the right time for the trade to study the likely impact of GST on their compliance costs, and represent to the Empowered Committee and the Government before it is too late!

2

GST REPORTS

GST REPORTS

2

Report by Rajya Sabha Select Committee

The Select Committee of the Rajya Sabha (Upper House of Indian Parliament) presented its report on the Constitution (122nd) Amendment Bill, 2014 in July 2015. The report of the Select committee covers various aspects touching the design and structure of GST.

Tax on inter-State supply of goods & 1% additional levy

The Committee was of the view that since there was no cascading effect of taxes, GST could be imposed on supplies of goods and services in the course of inter-State trade. It was argued that the additional levy of 1% to be collected on supply of goods in the course of inter-State sale and assigned to the 'manufacturing' States which fear loss of revenue in the GST scenario. The Committee agreed that provision of 1% additional tax in its present form is likely to lead to cascading of taxes and has recommended insertion of an explanation to Clause 18 in the Bill to state that supply means 'All forms of supply made for a consideration'. This would enable such inter-State supplies between different units of same entity like stock transfers to be kept out of this levy.

Compensation to States

The Committee recommended that compensation to States for loss of revenue arising on account of implementation of GST, could be provided for a period of five years.

GST Rate

The Committee did not recommend binding the GST Council to fix a rate below a fixed maximum rate. Certain views were advanced that a maximum rate of tax (suggested as 18%) should be part of the amendments. Since the rate of GST would be dynamic and subject to change based on various factors like economic conditions or nature of goods for instance tobacco or luxury items, the panel did not call for maximum rate.

Petroleum

The Committee did not recommend any change and opined that once the states saw the benefit of inclusion in the GST regime, the GST Council would appropriately notify the date from which these products would be exigible to GST. The proposal to cap this period so that the date will not be beyond 5 years from the date of introduction of GST was not accepted by the Committee.

Definition of supply & services

The Committee stated that the various committees framing the GST laws would lay down the definition of 'supply'. On the definition of 'services' as 'anything other than goods' the Committee opined that the definition is wide such that all supplies that are not goods could potentially be covered within the ambit of services. A view was expressed before the Committee that services should be defined as 'commercial transactions in intangibles' since the current definition was circular leading to what is 'goods'.

Compensation to local bodies

As regards compensating local bodies for loss of revenue and also for States to raise finances in special circumstances, the Committee recommended that the word 'band' used in the (proposed) new Article 279A be defined as range of GST rates over the floor rates within which CGST and SGST may be levied

Dispute resolution

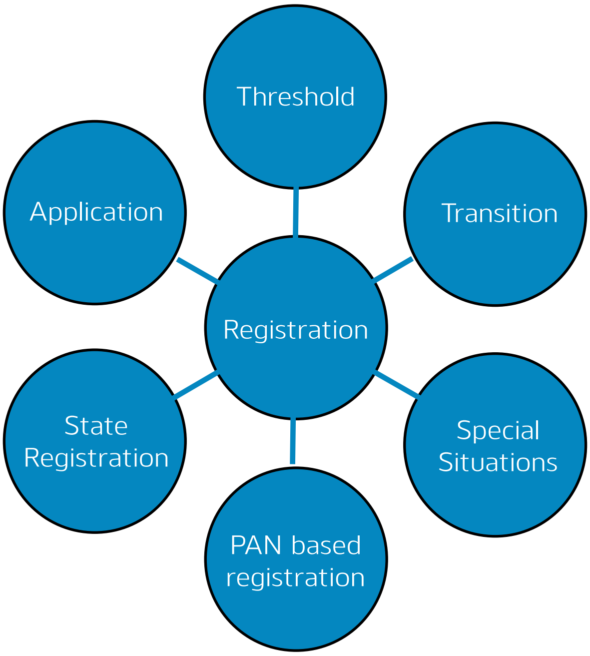
The Committee did not recommend insertion of an article for creation of a GST Settlement Authority.

Other major recommendations

- GST rate for banking industry should be minimum.
- GST Council – No amendment is required in the provisions on composition, working, vote, etc., of the GST Council since neither Centre not States would be at an disadvantageous or dominating position.
- GSTN - Non-government financial institution shareholding in GSTN should be limited to public sector banks or public sector financial institutions since GSTN would be a repository of a lot of sensitive data on business entities across the country.

Report of Joint Committee on Business Processes for GST on Registration Processes in GST Regime

The report of the Joint Committee on Business Processes for GST gives a broad outline of the process to be followed by both new applicants and existing taxpayers to get registered under the Goods & Services Tax or the GST regime. Some important extracts from the Report are,



Who has to register

- Once a dealer crosses the specified threshold or he starts a new business, registration application should be filed within 30 days from the date of the dealer's liability for obtaining such registration.
- Effective date of registration would be the date of application in all cases i.e. whether the application has been filed within prescribed time limit of 30 days or otherwise.
- All existing registered persons, whether with the Centre or State under any of the tax statutes being subsumed in GST, would be allotted a GST registration number called Goods and Services Tax Identification Number (GSTIN) on voluntary basis.
- Irrespective of turnover, if a taxable person carries out any inter-State supply and / or is liable to pay GST under reverse charge, he will be compulsorily required to take registration.
- For each State the taxable person will have to take a separate registration, even though the taxable person may be supplying goods or services or both from more than one State as a single legal entity.

- Multiple registrations within one State to business verticals [as defined in Accounting Standard (AS) 17 issued by ICAI] of a taxable person may be permitted.

Expert Comments

There is no indication that a service provider having places of business in more than one State would be able to apply for one centralized registration.

The concept of Large Tax Payer Unit is not provided.

The proposal for denial of input tax credit after application for registration if the application is not filed within 30 days from the date of liability is contrary to judicial pronouncements.

- A supplier who is not registered on regular basis, whether on mandatory or voluntary basis, in other State(s) and desires to conduct business in a particular State for a limited period, will have to obtain registration in that State for that limited period.
- The concept of Input Service Distributor (ISD) presently being followed in Centre's Law may continue if the GST Law so provides.

Expert Comments

GST being a destination based consumption tax; the methodology for attribution of GST paid on common services to each location will be tedious.

- All UN bodies seeking to claim refund of taxes paid by them would be required to obtain a Unique Identification number (UID) from the GST portal.
- A Unique Identification number would be given by the respective State tax authorities through GST portal to Government authorities / PSUs not making outwards supplies of GST goods (and thus not liable to obtain GST registration) but are making inter-State purchases.

Registration Number

- Each taxpayer will be allotted a State wise PAN-based 15-digit Goods and Services Taxpayer Identification Number (GSTIN).
- Various digits in GSTIN will denote the following,

State Code		**PAN**										**Entity Code**	**Blank**	**Check Digit**
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15

Registration procedure

- For obtaining registration, all the taxable persons shall interact with tax authorities through a common portal called GST Common Portal that would be set up by Goods and Services Tax Network (GSTN).
- Registration will not be allowed without a valid PAN.
- Once the application is approved and GSTIN is generated, the same along with Log-in ID and temporary Password will be sent to the authorized signatory. This credential will be permanently used to access the GST Common Portal subsequently.
- New applicant can apply for registration:
  - (1) at the GST Common Portal directly; or
  - (2) at the GST Common Portal through Facilitation Center (FC)
- Following scanned documents are required to be filed along with the application for Registration:
  - (1) Constitution of Business.
    - Partnership Deed in case of Partnership Firm.
    - Registration Certificate in case of other businesses like Society, Trust etc. which are not captured in PAN.
    - In case of Companies, GSTN would strive for online verification of Company Identification Number (CIN) from MCA21.
  - (2) Details of the Principal Place of business.
    - In case of own premises – any document in support of the ownership of the premises like Latest Tax Paid Receipt or Municipal Khata copy or Electricity Bill copy.
    - In case of rented or leased premises – a copy of the valid Rent / Lease Agreement with any document in support of the ownership of the premises of the lessor like latest tax paid receipt or Municipal Khata copy or Electricity Bill copy.
  - (3) Details of Bank Accounts.
  - (4) Details of Authorised Signatory - Letter of Authorisation or copy of Resolution of the Managing Committee or Board of Directors to that effect.
  - (5) Photograph.
    - Proprietary Concern – Proprietor
    - Partnership Firm / LLP – Managing/ Authorized Partners (personal details of all partners is to be submitted but photos of only ten partners including that of Managing Partner is to be submitted)

- HUF – Karta
- Company – Managing Director or the Authorised Person
- Trust – Managing Trustee
- Association of Person or Body of Individual –Members of Managing Committee (personal details of all members is to be submitted but photos of only ten members including that of Chairman is to be submitted)
- Local Body – CEO or his equivalent
- Statutory Body – CEO or his equivalent
- Others – Person in Charge

- Taxpayers would have the option to sign the submitted application using valid digital signatures (if the applicant is required to obtain DSC under any other prevalent law then he will have to submit his registration application using the same).
- In the absence of digital signature, taxpayers would have to send a signed copy of the summary extract of the submitted application form printed from the portal to a central processing center to be operated by GSTN.
- The tax authorities in the Centre and State would have a period of 3 common working days to respond to the application, either conveying approval or raising a query.
- In case any of the authority neither rejects the application nor raises a query within 3 common working days, then the registration would be deemed to have been approved by both the authorities and the GST Common Portal will automatically generate the registration certificate.
- Jurisdictional officer of tax authorities will take a decision about post registration verification of the application if so provided in the GST Law.
- Existing registrants - System shall be designed to migrate cleaned and verified data from the existing database to the GST Common Portal.
- For Taxpayers Registered under State VAT/Excise, GSTIN will be generated by NSDL in case of all VAT TINs where PAN has been validated.
- In case of Service Tax, the taxpayers are not registered under a State, a different approach will have to be adopted.
- Any verification by State / Central authorities can be done after GSTIN is issued.

Amendments in Registration Form

- Changes to [specific] registration data can be done on self-service basis.
- All amendments in the details in registration application form will be retained in the database of the GSTN and will be made visible to the tax authorities.

Cancellation or surrender of Registration

- In the following cases, the registration can be either surrendered by the registrant or cancelled by the tax authorities,
  - Closure of business of tax payer;
  - Gross Annual Turnover including exports and exempted supplies (to be calculated on all-India basis) falling below threshold for registration;
  - Transfer of business for any reason including due to death of the proprietor of a proprietorship firm;
  - Amalgamation of taxable person with other legal entities or de-merger;
  - Non-commencement of business by the tax payer within the stipulated time period prescribed under the GST laws.
- Cancellation of registration may be done by tax authorities in the following situations:
  - In case signed copy of the summary extract of submitted application form is not received even after a reminder;
  - In case a tax payer contravenes specified provision of the GST law;
  - In case a taxpayer has not filed any return at all during a predetermined period (say six months).
- Cancellation of registration may be preceded by system generated notice giving 7 days time for furnishing reply by the taxpayer.
- Action for revocation / cancellation of registration would have to be initiated by both Centre and State tax authorities. Once the registration is cancelled by one authority it would be deemed to be cancelled by other authority also.
- Cancellation or surrender of registration would always have prospective effect.

Compounding Dealers

- Higher threshold of Gross Annual Turnover to be called compounding turnover, up to which the registered person can opt to pay tax at a specified percentage of the turnover, without entering the credit chain.
- Any existing taxpayer not under compounding scheme may opt for compounding scheme, if eligible, only from the beginning of the next Financial Year.
- When the taxable person opts for Compounding scheme he should indicate so in the registration form and GST Common Portal would internally flag him as a compounding dealer.
- Compounding dealers shall remain under compounding scheme till their turnover crosses threshold or they opt for out of the scheme.
- Dealer may be allowed to switch over to normal scheme even during the year if they so want, with a condition that they cannot switch over to compounding scheme again during the same financial year.
- Dealers don't have to apply every year to remain under the compounding scheme.

Expert Comments

This report provides useful guidance and clarity with respect to registration under GST. The taxable person needs to take multiple registrations to conduct business. Whether this process will turn out to be cumbersome and tedious for the taxpayers is dependent on how seamlessly the GSTN can function and integrate with the existing backend process.

The possibility of the ISD mechanism being continued under the GST regime is expected to provide some relief for the industry.

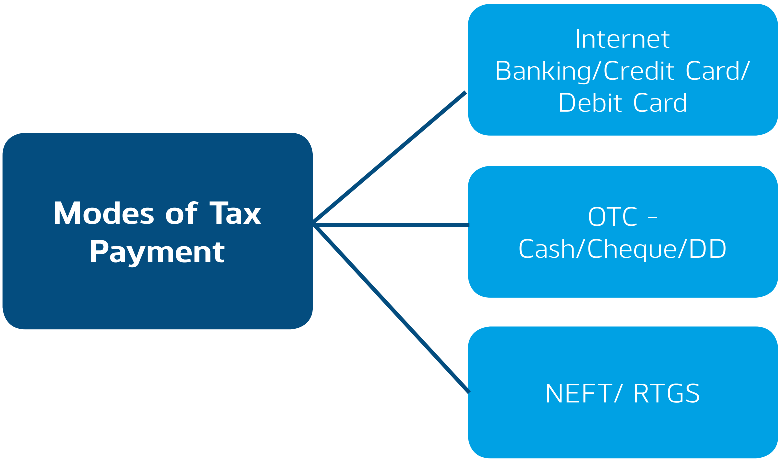
Registration of business vertical in terms of accounting standard needs more clarity.

Report of Joint Committee on Business Processes for GST on Payment Processes in GST Regime

The report of the Joint Committee on Business Processes for GST gives a broad outline of the process to be followed and responsibility to be assigned to various stakeholders in respect of tax payment under the GST regime. The report primarily discusses three modes of payment of taxes, banking arrangements under GST, the proposed accounting system, reconciliation of receipts, resolution of discrepancies, challan correction mechanism, payment under enforcement and anti-evasion effort and the challan format.

Payment of Tax - Overview

- Three modes of payment are proposed,
    - Payment by taxpayers through Internet Banking through authorized banks and through credit card/debit card.

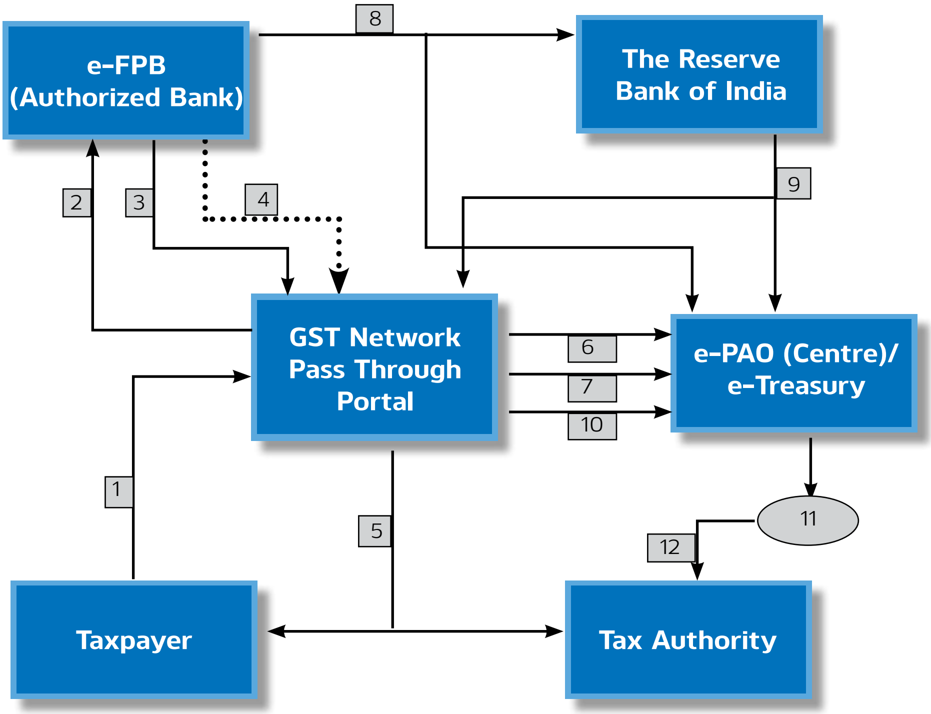


    - Over the Counter payment (OTC) through authorized banks - For payments up to Rs. 10,000/- per challan only.
    - Payment through NEFT/RTGS from any bank.
- Payment by debit to export scrips while paying tax would not be allowed.
- Payment process has been simplified with only one challan required per registration for payment of Central as well as State levies.
- Taxpayer will have the option to pay CGST, IGST, Additional Tax and SGST concurrently.
- Payment can be made on generation of Common Portal Identification Number (CPIN).
- There would be 20 ledger accounts (one for each Major heads i.e. CGST, IGST, Additional Tax & SGST and 4 Minor heads for each Major Head i.e. Interest, Penalty, Fees & Others).

Payment through Internet Banking/ Credit Card (CC)/ Debit Card (DC)

- This mode can be used only with authorized banks.
- The taxpayer shall login to his account on the GSTN Portal to create a challan. The challan can be saved for editing at a later stage.
- Final challan shall contain a CPIN and must be paid within 7 days of generation. The system will automatically purge unused challans thereafter.
- SGST shall be specific to the State to which the GST Identification Number (GSTIN) belongs.
- Once payment is successful, the taxpayer should check his tax ledger in a couple of days to check whether payment is credited.
- Payments using credit cards can be allowed without any monetary limit to facilitate ease of doing business..

Process flow for this mode of payment



Sequence of activities

1. The taxpayer shall create a challan by logging on to GSTN. Once the challan is finalised, a CPIN is generated. The CPIN is valid for 7 days after which it shall be automatically purged if still unpaid.

2. Taxpayer shall choose a mode of payment - Internet Banking/ CC/ DC. The GSTN shall route the taxpayer to the website of the bank or the payment gateway. Simultaneously, an electronic string would be sent to the selected bank specifying the GSTIN, CPIN, Challan amount, breakup into CGST, IGST, Additional Tax and SGST and State/ Union Territories (UT) to which SGST pertains.

3. On successful payment, the Electronic Focal Point Branch (e-FPB) would create a unique Challan Identification Number (CIN). Real time data would be relayed to the GSTN through electronic string containing CIN, GSTIN, Branch Receipt Number (BRN), Challan amount, date and time of payment. From this point onwards, CIN would be used as the primary identifier.

4. In case of a lost connection, the GSTN would re-ping the e-FPB for confirmation of payment and subsequent relay of electronic string.

5. On receiving electronic string, the GSTN would credit the taxpayer's tax ledger account and CIN would be locked. Simultaneously, payment details would be shared with the Tax Authorities. There would be 20 functional types of ledger accounts (Major heads - CGST, IGST, Additional Tax & SGST; Minor heads for each major head – Interest, Penalty, Fees & Others).

6. GSTN would send EOD report of CPINs generated during the day to Accounting Authorities to facilitate estimation of revenue and fund management.

7. On T+1 morning, GSTN would send report of all successful payments on T+0 value date.

8. On end of T+1 day, each e-FPB would send daily luggage files [39 files, one each for CGST, IGST, Additional tax and every State Government and UT (SGST)] simultaneously to RBI and Accounting Authorities.

9. RBI, basis the luggage files, using e-Kuber (Core Banking System) shall debit the authorized banks accounts held with it and credit the respective 39 accounts - CGST, IGST and Additional tax accounts of GOI and SGST accounts for each State and UT. RBI would create daily 39 e-scrolls for the accounts credited and send simultaneously to GSTN and Accounting Authority. Each transaction additionally would include inter-alia RBI transaction number and control totals.

10. GSTN would reconcile the e-scrolls with the e-FPB real time CIN data, append RBI transaction number to the CIN and send the same to Accounting Authority.

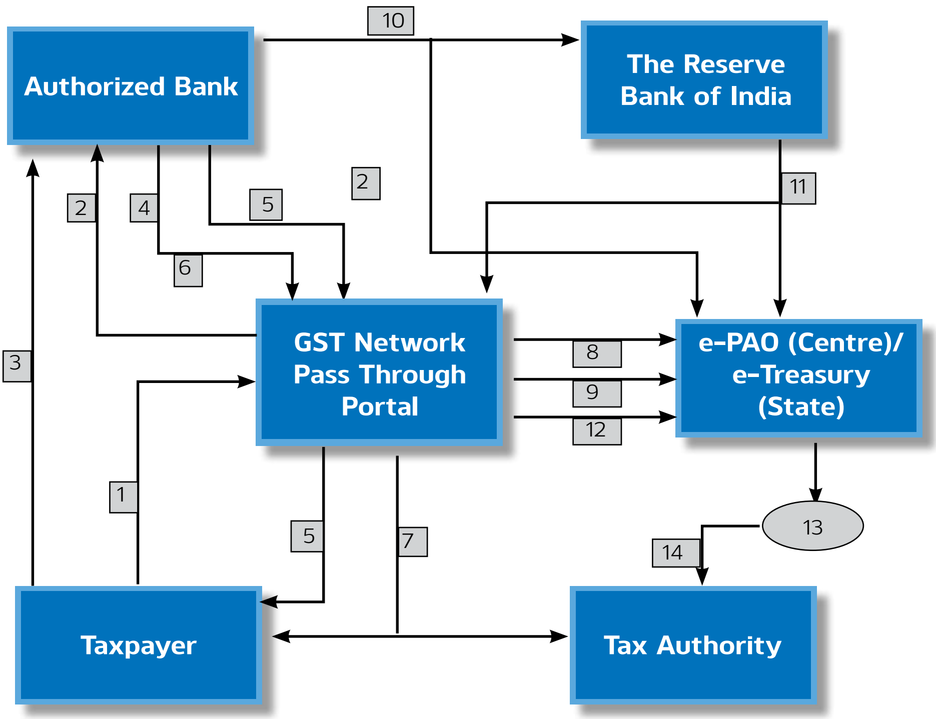
11. The Accounting Authority, on the basis of data received in step numbers 8, 9 and 10, shall account for the receipts. A mapping mechanism would be put in place to track the revenue from formations using Taxpayer Master and CIN details.

12. The Accounting Authority shall on a periodic basis reconcile jurisdictional tax collections with Revenue Authorities of the Centre and States.

Over the counter payment

- This mode of payment can be used with authorized banks only.
- The limit for such payment is Rs. 10,000 per challan.
- The taxpayer shall be barred from using this mode if the cheque bounces even once.
- The basic framework is similar to Mode 1 (e-payment) with a few modifications.
- The taxpayer has to carry two copies of the challan or fill a pay-in-slip with Common Portal Identification Number (CPIN) details.
- Outstation cheques would not be accepted, except payable at par across all branches and such branch in the same city as the authorized bank.
- The taxpayer should check his tax ledger in a few days to check whether payment is credited.
- Four instruments, for payment of four type of taxes, may not be required if pooled account for realization of instrument (GST pool account) is maintained.

Process flow for this mode of payment



Sequence of activities

1. The taxpayer shall create a challan by logging on to GSTN. Once the challan is finalised, a CPIN would be generated. The CPIN would be valid for 7 days after which it shall be automatically purged if still unpaid.

2. Taxpayer shall choose a mode of payment – OTC through Cash/ Cheque/ DD. The GSTN would send a real time electronic string to the selected bank specifying the GSTIN, CPIN, Challan amount, breakup into CGST, IGST, Additional Tax and SGST and State/ UT to which SGST pertains. The Core Banking Solution (CBS) of the Bank must be integrated with GSTN.

3. The taxpayer would have to carry two copies of the challan or fill a pay-in-slip with CPIN details. The bank shall draw data from the CBS records. In case of cash or same bank cheque, payment would be processed immediately and step 4 would be initiated. In case of other bank cheque (outstation cheque not accepted, except payable at par across a branch in the same city), acknowledgment would be given subject to realization.

4. On successful payment, the e-FPB of the bank would create unique CIN. Real time data would be relayed to the GSTN through electronic string containing CIN, GSTIN, BRN, Challan amount, date and time of payment. From this point onwards, CIN would be used as the primary identifier.

5. In case of other bank cheque, the e-FPB of the bank would send CPIN, GSTIN, Challan amount and Bank's acknowledgment number to the GSTN on real time basis. This is First Level Intimation. Thereupon, the GSTN shall send an SMS to the taxpayer.

6. Once the other bank cheque clears, the bank shall send an electronic string to GSTN containing information as in step 5 with additional data of CIN, date of time of cheque realization and BRN/BTN.

7. On receiving electronic string either at step 4 or step 6, the GSTN would credit the taxpayer's tax ledger account and CIN would be locked. Simultaneously, payment details would be shared with the Tax Authorities.

8. GSTN would send End of Day (EOD) report of CPINs generated during the day to Accounting Authorities to facilitate estimation of revenue and fund management.

9. On T+1 morning, GSTN would send report of all successful payments on T+0 value date.

10. On end of T+1 day, each e-FPB would send daily luggage files [39 files, one each for CGST, IGST, Additional tax and every State Government and UT (SGST)] simultaneously to RBI and Accounting Authorities.

11. RBI, based on the luggage files, using e-Kuber (Core Banking System) shall debit the authorized banks accounts held with it and credit the respective 39 accounts - CGST, IGST and Additional tax accounts of GOI and SGST accounts for each State and UT. The RBI would create daily 39 e-scrolls for the accounts credited and send simultaneously to GSTN and Accounting Authority. Each transaction would additionally include inter-alia RBI transaction number and control totals.

12. GSTN would reconcile the e-scrolls with the e-FPB real time CIN data, append RBI transaction number to the CIN and send the same to Accounting Authority.

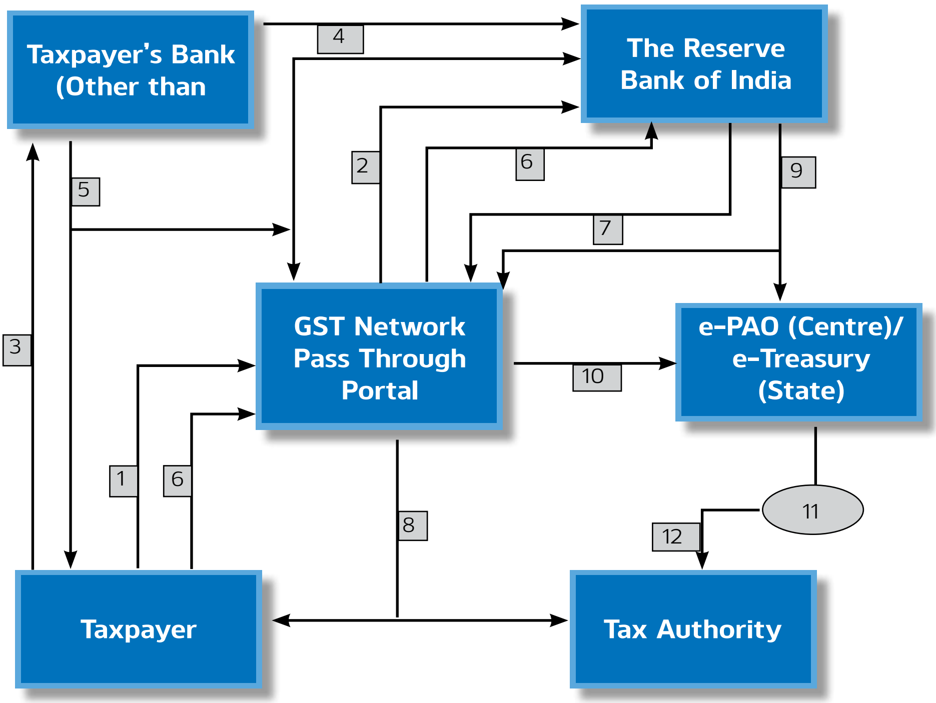
13. The Accounting Authority, on the basis of data received in step numbers 10, 11 and 12, shall account for the receipts. A mapping mechanism would be put in place to track the revenue from formations using Taxpayer Master and CIN details.

14. The Accounting Authority shall on a periodic basis reconcile jurisdictional tax collections with Revenue Authorities of the Centre and States.

Payment through NEFT / RTGS

- This mode of payment can be used through all banks i.e. both authorized banks and other banks.
- The basic framework is similar to Mode 1 (e-payment) with a few modifications.
- The taxpayer shall be barred from using this mode if the CPIN lapses more than two times.
- The NEFT/ RTGS challans shall be auto populated with regard to the payee account and IFSC details. The payee shall be RBI.
- The payments in this mode would be permitted only against cheques and no cash payments would be permitted to initiate NEFT / RTGS transaction.
- The taxpayer must update the Unique Transaction Reference (UTR) on the GSTN Portal to enable matching of the receipts.
- If there is a mismatch, the taxpayer's ledger would not be credited.
- The taxpayer should check his tax ledger in a few days to check whether payment is credited.

Process flow for this mode of payment



Sequence of activities

1. The taxpayer shall create a challan by logging on to GSTN. Once the challan is finalised, a CPIN is generated. The CPIN is valid for 7 days after which it shall be automatically purged if still unpaid.
2. Taxpayer chooses a mode of payment – NEFT / RTGS. The GSTN would send a real time electronic string to the RBI specifying the GSTIN, CPIN, Challan amount, breakup into CGST, IGST, Additional Tax and SGST and State/ UT to which SGST pertains.
3. The taxpayer shall take the prefilled NEFT/ RTGS challan to his bank. Only cheques can be used in this mode. RTGS must be made within 7 days.
4. The taxpayer's bank shall process the payment to RBI. The RBI would park the funds in a GST pooling account.
5. The taxpayer's bank shall simultaneously intimate the Unique Transaction Reference (UTR) to the taxpayer, GSTN and RBI.
6. On receiving UTR, the Taxpayer shall update the records in GSTN portal. GSTN shall send the UTR to RBI on receipt.
7. RBI shall match the UTR and CPIN and on successful matching, the RBI creates unique Challan Identification Number (CIN). Real time data would be relayed to the GSTN through electronic string containing CIN, GSTIN, BRN, UTR, Challan amount, date and time of payment. From this point onwards, CIN would be used as the primary identifier.
8. On receiving electronic string, the GSTN would credit the taxpayer's tax ledger account and CIN would be locked. Simultaneously, payment details would be shared with the Tax Authorities.
9. RBI shall carry out T+1 matching. Thereafter, using e-Kuber (Core Banking System) shall debit the GST pooling accounts and credit the respective 39 accounts - CGST, IGST and Additional tax accounts of GOI and SGST accounts for each State and UT. The RBI shall create daily 39 e-scrolls for the accounts credited and send simultaneously to GSTN and Accounting Authority.
10. GSTN would reconcile the e-scrolls with the UTR and CIN data and would send the same to Accounting Authority.
11. The Accounting Authority, on the basis of data received in step number 9 and 10, shall account for the receipts. A mapping mechanism would be put in place to track the revenue from formations using Taxpayer Master and CIN details.
12. The Accounting Authority shall on a periodic basis reconcile jurisdictional tax collections with Revenue Authorities of the Centre and States.

Payment across departmental counter

- Departmental officers will accept deposit of taxes during the course of enforcement and anti-evasion investigations including by flying squads, etc.
- Officers will collect the amount in respect of all types of taxes payable in cash/cheque/DD, issue a temporary receipt, generate challan from GSTN, fill up the challan (at a later stage, if not possible at that time) and remit the amount using Mode 2 (over the counter payment).

Reconciliation of Receipts

- Various checks and balances in-built in the Payment Process to ensure that each leg of the transaction is vetted by at least two entities.
- The cross movement of electronic data facilitates such control checks and consolidated data warehouses enable electronic matching of the records to iron out any lapses which may arise in the matching of receipts due to data losses.

Expert Comments

Minimizing human intervention is the key to processing of voluminous data. The checks and balances built into the payments process, it appears, are capable of handling large traffic and would reduce the unproductive man hours spent in reconciling accounts. However, the key success factor would be the efficient and effective implementation of the IT infrastructure and coordination between the Centre and the States GSTN Modules. Desired level of automation would not be possible unless all stakeholders are on the same platform. Compatibility of IT platforms for States opting to develop their own infrastructure should be ensured.

Challan correction mechanism

- Error in GSTIN owing to wrong details entered by the authorized representative or someone on taxpayer's behalf would not be open to rectification - Person entering the wrong details must be held accountable.
- Error in major head by bank – Banks permitted to rectify error before the end of the day.
- Error in total amount – Provision would be there to either claim refund or the amount can be carried forward to the next period.

Banking arrangements under GST

- Report specifies technical, infrastructural, systemic and procedural capabilities of the banks required for supporting the payments processes.
- Only those banks which are able to refine their IT systems to handle GST remittances in a seamless manner shall be accredited for GST payment process.

Other Salient Points

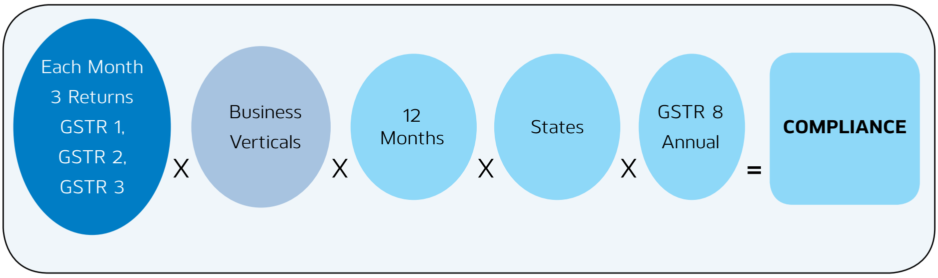
- Existing Electronic Pay and Accounts Offices (e-PAO) for Excise and Service Tax would be converted to e-PAO for IGST and CGST respectively. New e-PAOs for SGST and Additional Tax would be created.
- The Tax Payer master shall be provided by the existing tax departments to the GSTN and any updates thereafter shall be reported to GSTN on a real time basis.

Expert Comments

Integration of the payment process across the Centre and States is a positive move and shall work towards improving the ease of doing business in India. The real time matching of payments and reflection in the taxpayer's ledger would contribute to better awareness and compliance. It is however important to look out for the mechanism for tax credit matching. A return-cum challan could be an option. The cumbersome process of matching invoice details at a later stage should be avoided and a mechanism in line with the payment process should be integrated. Time differences in invoice based credit availment and actual receipt of payment in the Government Treasury should not be allowed to become a contentious issue as seamless credit is the bedrock of GST.

Report of Joint Committee on Business Processes for GST on GST Returns

The report of "The Joint Committee on Business Processes for GST" on GST Returns gives an outline of the return filing process, return formats, data requirement for filing the returns and the mechanism of back-end processing of the returns under the Goods and Services Tax regime.



Returns – Overview

- Every registered person is required to file returns (even if there is no business activity).
- One common return is sufficient for Central GST, State GST, Integrated GST and Additional Tax.
- Each taxpayer would have to file three monthly returns for each registration. Separate registrations within the State for different business verticals would require independent return filing.
- Persons dealing exclusively in exempted/ nil rated/ non-GST goods or services would neither be required to obtain registration nor file returns.
- UN agencies are not required to file regular returns.
- Returns can be filed without payment of self-assessment tax. However, the return would be treated as 'invalid' and would not be taken into consideration for matching of invoices. Effectively, credit will not be available until tax is paid and invoices are matched.
- Description of goods and services, in the returns, may not be required to be submitted by the taxpayer.
- Option will be available to file return online or via offline mode on common GSTN portal.
- Separate returns called GST Returns ('GSTR') would be prescribed for filing outward supply details (GSTR 1), inward supply details (GSTR 2), consolidated details (GSTR 3), annual details (GSTR 8), input service distributor details (GSTR 6) and tax deducted at source ('TDS') (GSTR 7). Separate returns would be prescribed for the dealers opting for compounding scheme.

- Information regarding quantity of goods (as per Unique Quantity Code) supplied would be submitted by the taxpayer in the annual return.
- Taxpayer is not required to submit any other document, along with the return.
- There will be no provision to file revised return. All corrections are to be undertaken in the subsequent period return (time limit shall be prescribed). Additional invoices can be reported within specified time based on invoices reported by counter parties.
- GST Law may also provide for imposition of automatic late fees for non-filers and late filers which can also be in-built in the notices. There may be provision also for penal provisions for short-filing and non-filing of return.

Periodicity of return filing would be as under:

Sr. No.	Return	For	Periodicity	To be filed by
1	GSTR 1	Outward supplies made by taxpayer (other than compounding taxpayer and ISD)	Monthly	10th of the next month
2	GSTR 2	Inward supplies received by a taxpayer (other than a compounding taxpayer and ISD)	Monthly	15th of the next month
3	GSTR 3	Monthly return (other than compounding taxpayer and ISD)	Monthly	20th of the next month
4	GSTR 4	Quarterly return for compounding Taxpayer	Quarterly	18th of the month next to quarter
5	GSTR 5	Periodic return by Non-Resident Foreign Taxpayer	Monthly, if period exceeds one month, else on expiry of registration	7 days from expiry of registration
6	GSTR 6	Return for Input Service Distributor (ISD)	Monthly	15th of the next month
7	GSTR 7	Return for Tax Deducted at Source	Monthly	10th of the next month
8	GSTR 8	Annual Return	Annual	By 31st Dec of next FY

Other features of the GST Returns Report:

- Separate information reporting requirements specified for Business to Business ('B2B') and Business to Consumer ('B2C') transactions.
- Inter-State supplies to end consumers of less than Rs. 50,000 per invoice where recipient's address not mentioned would be deemed as intra-State supply.
- Taxpayers to report place of supply wherever destination State is different from the location of the recipient.
- The ITC claim for the taxpayer would be auto computed from GSTR-1, GSTR-2, GSTR-6 and GSTR 7 and the same would be automatically captured in GSTR-3. The taxpayer would pay GST as per GSTR-3 and file GSTR-3.
- Return form would display all bank account numbers mentioned in the registration, out of which one will be selected by the taxpayer to which the refund will be credited.
- Taxpayers would have to declare the eligibility or ineligibility of input tax credit in relation to inward supplies via a drop-down list in the return.
- GSTN may facilitate periodic (daily, weekly, etc) upload of details of supplies to minimize last minute load on system.
- Address of the buyer has to be mandatorily reflected in every invoice having a value of Rs. 50,000/- or more.
- Phased implementation of HSN code for supply of goods depending upon the turnover of taxpayers to be prescribed.
- Accounting code would be mandatory for specific services where special rules are prescribed in the Place of Supply Rules for determining the consumption destination.
- GST Law may provide what constitutes a sale price especially with respect to post sales discount.
- GST Law may provide the time period within which sales return can be made and the date (invoice date or date of receipt by the buyer) from which such time period is to be calculated.
- The concept of tax deduction at source is proposed to be incorporated in the GST regime.

Report of Joint Committee on Business Processes for GST on Refund Processes

The report of "the Joint Committee on Business Processes for GST" on Refund Processes gives a bird's eye view of the circumstances and the procedural mechanism for granting of refunds under the Goods and Services Tax ('GST') regime. The report covers 9 situations which call for a refund of the taxes/ amount paid. These situations have been discussed in depth and the tentative mechanism of handling the refund claims have been brought out.

Refund situations

- Excess payment of tax due to mistake or inadvertence.
- Export (including deemed export) of goods / services under claim of rebate or refund of accumulated input credit of duty / tax when goods / services are exported.
- Finalization of provisional assessment.
- Refund of pre-deposit for filing appeal including refund arising in pursuance of an appellate authority's order (when the appeal is decided in favour of the appellant).
- Payment of duty / tax during investigation but no/ less liability arises at the time of finalization of investigation / adjudication.
- Refund of tax payment on purchases made by Embassies or UN bodies.
- Credit accumulation due to inverted duty structure i.e. due to tax rate differential between output and inputs.
- Year-end or volume based incentives provided by the supplier through credit notes.
- Tax refund for international tourists.

Excess payment of tax due to mistake or inadvertence

- Excess payment may be on account of:
  - Wrong mention of nature of tax (CGST / SGST / IGST),
  - Wrong mention of GSTIN, or
  - Wrong mention of tax amount.
- Taxpayer may file a refund application in case of wrong mention of nature of tax and in case of wrong mention of GSTIN.
- In case of wrong mention of tax amount, amount would either be automatically carried forward for adjustment against future tax liabilities or be refunded on submission of application by the taxpayer. Excess payment however should not be on account of difference of opinion between the tax administration and the taxpayer. Return itself can be treated as a refund application in this case.

Exports of goods or services

- Export of goods and services will be zero rated.
- Option to procure duty free inputs for exported goods should not be available in the GST regime.
- Refund of IGST is to be paid by Centre as exports to be treated as inter-State sales.
- No refund of ITC of GST paid on inputs (including input services) used for such exported goods available, in case of goods on which Customs Export duty is leviable.
- *Some common compliance requirements and verification procedure are*:
  - Time limit for filing refund application to be one year from date of export.
  - The shipping bill and Let Export Order ('LEO') shall be verified online by creating a link between ICEGATE and GSTN.
  - Invoice details to be cross verified between monthly sales data uploaded at GSTN and export data with ICEGATE.
  - Scanned Mate's Receipt and Bill of Lading to be uploaded along with refund application.
  - Post facto verification of Bank Realization Certificate ('BRC') to ensure foreign exchange inflow. BRC is not mandatory at the time of filing of refund.
  - GSTN to be integrated with e-BRC module.
  - For service exports, as there is no physical export, BRC shall be the evidence of export. Relevant date will be the date of invoice or the date of BRC, whichever is later.

- Payment of GST on exported goods can be verified online (as the sales invoices are required to be filed along with the monthly return).
- Proportionate ITC refund (in case refund route is opted) based on export turnover divided by total turnover.
- The GST paid character of inputs to be established from IT records of purchases and sales. Eligibility of ITC may still be based on review of invoices, though in an electronic form.
- A declaration to be filed by the taxpayer regarding utilization of inputs and input services in the exported goods.

Expert Comments

Constitutional Power – The report provides for payment of IGST on export and claiming rebate of tax paid. However, the Constitutional Amendment Bill does not provide for levying of IGST on exports deeming the transaction as inter-State. Levying of IGST on import is specifically provided under Article 269A deeming the supply to be inter-State. Similar deeming provision for export is absent. However, the power of the State to tax exports is curtailed under amended Article 286. The Parliament can legislate under Entry 97 of the Union List to levy IGST on exports.

Prior to the negative list regime, the rebate route was open for Service Tax also. During the present Negative List regime, the option of paying service tax on exported services and claiming rebate of output tax is not allowed. Service Tax is not leviable at all on services performed outside India. Going forward, it would be interesting to see how IGST is proposed to be levied on export of services.

Manual Intervention – Back to old ways? – The idea of integrating GSTN with ICEGATE and e-BRC module is very promising and would lead to vast time saving in refund processing. However, no solution for the automated checking of qualitative aspects of credit eligibility has been proposed. Leaving such key aspects to manual scrutiny and satisfaction of officers may undo the benefits of IT infrastructure.

Refund vs. Rebate – Refund mechanism would entail liaison with the Centre as well as respective State administration, whereas, rebate would only arise in case of IGST payment (only CG liaison). However in the case of accumulated ITC on inputs the refund application needs to filed with both State and Central authorities.

Software Goods or Services? – The report relies on integration between ICEGATE and GSTN for verifying export of goods. Presently, software export in electronic form is not routed through ICEGATE. Proposed mechanism would fail in the case of software. The industry may be inclined to call software goods as refund process for goods does not hinge upon the BRC. However, other physical export documents would not be generated.

Deemed export of goods or services

- Deemed exports shall be treated at par with actual export and attract IGST.
- The procedural aspects of IT based invoice matching shall be same as actual exports.
- Supplies to EOU, SEZ, projects under ICB, Mega power plants, and World Bank funded projects have been mentioned as deemed export.
- Two mutually exclusive mechanisms for refund on deemed exports – Refund to supplier and refund to recipient.
- Refund to supplier –
  - Supplier should not recover GST on his invoice.
  - Non-availment of credit by the recipient would be verified.
  - Supplier to furnish a Chartered Accountant Certificate confirming non-passing of GST burden.
- Refund to recipient –
  - Recipient shall be eligible for refund only if it has actually paid IGST at the time of obtaining goods / services from the domestic supplier.
  - In case recipient is not registered under GST, invoice copies would have to be filed; otherwise monthly purchase details along with return would suffice.

Expert Comments

Clarity on the applicability of doctrine of unjust enrichment in the hands of the recipient is not provided.

The States would lose out on revenue because no such deemed export benefit is available in the current VAT regime.

The first method is cumbersome and shall require dual verification at both the ends of the supplier as well as the recipient. A method similar to the special person mechanism would be more efficient.

Finalisation of provisional assessment

- Provisional assessment to be handled by system of issuance of debit and credit notes.
- In case present system of provisional assessment continues:
  - Return to contain field for indicating whether assessment is final or provisional.
  - GST law may provide for timelines to finalization of the assessment - 90 days suggested.
  - Speaking order to be passed by officer.
  - CA Certificate to be furnished to prove non-passing of tax burden.
  - Refund amount to be reflected in the return for the month in which the assessment is finalized.

Refund of Pre-deposit for filing appeal and refund arising pursuant to an Appellate Authority's order

- Refund application to be filed along with CA Certificate of non-passing of tax burden.
- Refund shall not be stopped unless the department has obtained a stay from a higher Appellate Authority.
- Mandatory waiting period, for outcome of appeal/stay application, may be provided during which refund may not be granted.
- Sufficiently senior level authority may be given powers to withhold refund in exceptional circumstances.

Tax paid during investigation, but no/ less liability arises at time of finalization of investigation/ adjudication

- Refund application to be filed along with CA Certificate of non-passing of tax burden.
- Refund shall not be stopped unless the department has obtained a stay from a Appellate Authority.
- Mandatory waiting period, to allow department to file appeal, may be provided during which refund may not be granted.
- Sufficiently senior level authority may be given powers to withhold refund in exceptional circumstances.

Refund of tax paid on purchases by specified persons

- Upfront exemption to specified persons (United Nation Bodies, CSD Canteens, Para Military Forces, etc.) proposed to be discontinued.
- Tax to be refunded by the following practice:
  - Special Persons shall obtain registration under GST and be assigned Unique Identification Numbers ('UID').

- All invoices, returns and other documents shall contain a column for capturing the UID.
- Suppliers shall indicate their UID in their invoices and upload such data along with their monthly sales statements.
- Special Persons shall file purchase statements along with their claim for refund. Certain specified goods and services ineligible for refund should be marked in the purchase statement.
- Matching of supplies shown by suppliers and the purchase statements filed by the Special Persons shall be matched by the IT system and refund shall be granted accordingly. Unmatched supplies shall be matched again in the subsequent process runs.

Refund for carry forward ITC

- Refund of ITC attributable to accumulation of stock or capital goods shall not be allowed and would have to be carried forward to the subsequent accounting period.
- ITC refund due to inverted duty structure shall be allowed only after due audit.
- Proportionate ITC refund may be provided in case of partial reverse charge mechanism.
- Blocking the utilization of input tax credit claimed as refund at the time of submission of application for refund itself, has been suggested.

Expert Comments

The periodicity of refund has not been mentioned. In the United Kingdom, refunds are granted in case ITC balance is available at the end of the return period. This practice helps the businesses in managing their cash flows better.

Refund on account of year end or volume based incentives provider by supplier through credit notes

- Refund application to be filed along with CA Certificate certifying non-passing of tax burden.
- Eligibility for ITC at the buyer's end and the output liability at the supplier's end will get simultaneously reduced / adjusted.
- GSTN should have suitable validations to include matching of credit and debit notes and reversal of the reduction of the output tax liability in case of the mismatch.
- Need for resorting to provisional assessment would be obviated.

Expert Comments

The purpose of computerisation of the scheme would be defeated if it is made subject to unjust enrichment. Presently, facility for suo motu adjustment of service tax liability is available under Rule 6(3) of the Service Tax Rules, 1994 without applicability of unjust enrichment. Under Central Excise law, price adjustment by issuance of credit/ debit note was rejected by the CESTAT in the case of ***S. Kumar's Limited v.. CCE, Indore [2003 (153) E.L.T. 217]*** citing unjust enrichment. Even though the assessee had repaid the entire duty collected from the buyer, relief was not given. Hence, the doctrine of unjust enrichment would make this issue litigious.

The European Court of Justice ('ECJ') in the case of ***Elida Gibbs Ltd. v. Comm. of Customs and Excise (Case C-317/94)*** held that the amount paid by the manufacturer to honour a discount coupon issued for the purpose of sales promotion, was eligible to be deducted from the taxable value of supplies. Principle laid down: The taxable amount, serving as a basis for the VAT to be collected by the tax authorities, cannot exceed the consideration actually received by the manufacturer, which is the basis for calculating the VAT.

Tax Refund for International Tourists ('TRT')

- This scheme provides opportunity to foreign tourists to purchase goods during their stay in any country on payment of GST and obtain refund of the GST so paid, at the time of exit from the country.
- TRT scheme is proposed to be implemented through particular dealers who would be registered for this scheme.
- Refund would be available at designated airports/ ports.
- Handling fee shall be deducted from the refund amount.

Expert Comments

The TRT scheme adds to the list of international best practices proposed to be adopted by India in the GST regime. The intricacies of this scheme would become clear only when the fine print is out. Broadly, countries which have similar schemes allow for refund of GST paid on the goods purchased within the country and which are being carried abroad by the tourist along with him. Safeguards and restrictions in terms of documentary proof, timing of purchases, declaration norms, re-entry of goods and monetary limits are generally prescribed.

Refund – Limitation for claim

- Period of one year from the relevant date may be allowed for filing of refund application.
- 'Relevant date' for various business situations would be:

Business Situations	Relevant date for Refund
Excess payment of tax due to mistake or inadvertence	Date of payment of GST on account of which refund arises
Export of Goods	Date of 'Let Export Order'
Export of Services	Date of BRC
Deemed Export – In the hands of Supplier	Not mentioned
Deemed Export – In the hands of Recipient	Date of payment of IGST to supplier
Finalization of Provisional Assessment	Date of Finalization Order
Refund of Pre-deposit	Date of communication of Appellate Authority's order
Tax paid during investigation	Date of communication of adjudication order or order relating to completion of investigation.
Refund of tax paid by Special Persons	Date of payment of GST to the supplier
Partial Reverse Charge-Refund for ITC carried forward	Date of provision of service
Inverted Duty Structure - Refund for ITC carried forward	Last date of financial year

Refund procedure

- Option of filing refund application either through the GSTN portal or through the respective State / Central Tax portal, to be available.
- Receipt/ acknowledgement number may be generated and communicated to the applicant via SMS and email.
- "Carry forward input tax credit" in the return and the cash ledger should get reduced automatically, if the application is filed at GSTN portal itself.
- Preliminary scrutiny may be carried out within 30 common working days and deficiency, if any, should be communicated to the applicant directly from the respective tax portal.
- Once refund application is found to be complete and in order, the same shall be communicated via SMS and e-mail.
- This date of communication would be relevant from the perspective of time limit for sanctioning the refund and interest to be paid in case of delay.
- Jurisdictional tax authority to examine refund application in light of provisions of the GST Law relating to refund, covering timeliness of refund application, tax payment, date of export (if relating to export), reasons for refund, unjust enrichment, etc.
- SCN shall be issued if refund application is legally incorrect.
- Once tax authority decides about sanctioning of the refund, the same shall be granted to the applicant promptly.

Expert Comments

A system of data collection with appropriate data fields, capable of catering to the myriad qualification requirements of ITC, refund, unjust enrichment and export confirmation amongst others, must be envisioned with great attention to detail. Such an exercise is required to create a return/ statement format which captures all the relevant data on the basis of which data fields can be cross linked with other information platforms.

Uploading of scanned invoices would be extremely cumbersome and data heavy. Maintenance of such huge volumes of data is a futile expense which can be avoided by use of light weight invoice schemas. Integrating the invoice generation mechanism with the GSTN through such schemas would answer all data collection problems. Steps should be taken towards such degree of integration.

It is crucial that the documentation and other procedural aspects remain similar if not same for refund applications filed before both Central and State Tax Administrations.

- Adjustment of refund claim against any amount of un-stayed confirmed demand lying beyond the appeal period, may be provided for.
- Pre-refund audit in cases where the refund amount exceeds INR 1 crore has been proposed. Post refund audits have been proposed where the refund amounts exceed INR 1 lakh / INR 2 lakhs in case of specified taxpayers.
- Process of audit should be time bound with clearly defined timeline.
- Either the review procedure or system of pre-audit & post-audit may be kept in the GST Law.

Interest on delayed refund

- GST Law may provide for a prescribed time limit of 90 days, from the date of the system generated acknowledgment of complete refund application, within which refund has to be paid.
- Interest clause may start automatically once the prescribed time limit for sanctioning of refund has been breached.
- Rate of interest in case of delay in refund may be around 6%.
- Interest may accrue from the last date when refund should have been sanctioned even when the refund is ordered to be paid by the order of the appellate authority

Expert Comments

The date of filing of the refund application will not be considered as relevant date in case of deficiency in the application. This gives a huge discretionary power in the hands of authorities.

ITC on inputs and input services used for manufacturing/ generation/ production/ creation of tax free supplies or non-GST supplies

- Suppliers of exempted, nil rated or non-GST supplies would be ineligible to avail ITC.
- Details of even those invoices would have to be uploaded along with the return on which no ITC is available.
- Exclusion list of goods and services is proposed to be brought out on which ITC would not be available.
- Ineligible ITC should be allocated to the State where the final consumption of supply takes place.

Expert Comments

The ambitious plan of the Government to distribute taxes to the ultimate consuming State is very promising and in line with the GST principles. However, tracking the final consumption of supplies would require tremendous amount of data to be captured from the supplier's invoices. This entails voluminous data uploading responsibility on the suppliers and data retention and processing facility at the GSTN. The industry must take a cue from this proposal and align their ERPs and accounting systems to capture consumption pattern data. The apportionment of revenue in the said situation would be a matter of concern between Centre and States; hence the taxpayer should not be affected by the same.

3

The Constitution
(One hundred and twenty-second Amendment) BILL, 2014

THE CONSTITUTION (One hundred and twenty-second Amendment) BILL, 2014[7] (Bill No. 192 of 2014)

3

The Constitution (One hundred and twenty-second Amendment) Bill, 2014 (Bill No. 192 of 2014)

1. Short title and commencement (1) This Act may be called the Constitution (One Hundred and Twenty-second Amendment) Act, 2014.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the commencement of that provision.

2. Insertion of new article 246A – After article 246 of the Constitution, the following Article shall be inserted, namely:--

"246A. Special provision with respect to goods and services tax – (1) Notwithstanding anything contained in articles 246 and 254, Parliament, and. subject to clause (2), the Legislature of every State, have power to make laws with respect to goods and services tax imposed by the Union or by such State.

(2) Parliament has exclusive power to make laws with respect to 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.

Explanation – The provisions of this article, shall, in respect of goods and services tax referred to in clause (5), of article 279A, take effect from the date recommended by the Goods and Services Tax Council.".

3. Amendment of article 248 – In article 248 of the Constitution, in clause (1), for the word "Parliament", the words, figures and letter "Subject to article 246A. Parliament" shall be substituted.

[7] Passed by Lok Sabha (Lower House of Indian Parliament) and pending before Rajya Sabha (Upper House) at the time of publication of this booklet (29 October, 2015).

4. **Amendment of article 249 –** In article 249 of the Constitution, in clause (1), after the words "with respect to", the words, figures and letter" goods and services tax provided under article 246A or" shall be inserted.

5. **Amendment to article 250 –** In article 250 of the Constitution, in clause (1), after the words "with respect to", the words. figures and letter "goods and service tax provided under article 246A or" shall be inserted.

6. **Amendment to article 268 –** In article 268 of the Constitution, in clause (1), the words "and such duties of excise on medicinal and toilet preparations" shall be omitted.

7. **Omission of article 268A –** Article 268A of the Constitution, as inserted by section 2 of the Constitution (Eighty-eighth Amendment) Act, 2003 shall be omitted.

8. **Amendment to Article 269 –** In article 269 of the Constitution, in clause (1), after the words "consignment of goods", the words, figures and letter "except as provided in article 269A" shall be inserted.

9. **Insertion of new article 269A –** After article 269 of the Constitution, the following article shall be inserted, namely:-

> **"269A. Levy and collection of goods and service tax in course of inter-state trade or commerce** (I) Goods and services tax on supplies in the course of inter-State trade or commerce shall be levied and collected by the Government of India and such tax shall be apportioned between the Union and the States in the manner as may be provided by Parliament by law on the recommendations of the Goods and Services Tax Council.
>
> *Explanation-* For· the purposes of this clause, supply of goods, or of services, or both in the course of import into the territory of India shall be deemed to be supply of goods, or of services, or both in the course of inter-State trade or commerce.

(2) Parliament may, by law, formulate the principles for determining the place of supply, and when a supply of goods, or of services, or both takes place in the course of inter-State trade or commerce."

10. **Amendment of article 270 –** In article 270 of the Constitution.--

(i) in clause (1), for the words, figures and letter "articles 268, 268A and article 269", the words, figures and letter "articles 268, 269 and ar1icle 269A" shall be substituted;

(ii) after clause (1), the following clause shall be inserted. Namely:---

> "(1A) The goods and services tax levied and collected by the Government of India, except the tax apportioned with the States under clause of article 269A, shall also be distributed between the Union and the States in the manner provided in clause (2). ".

11. **Amendment of article 271 -** In article 271 of the Constitution, after the words "in those articles", the words, figures and letter "except the goods and services tax under ar1icle 246A, "shall be inserted

12. **Insertion of new article 279A -** After article 279 of the Constitution, the following article shall be inserted, namely:-

"279A. Goods and Services Tax Council". - (1) The President shall, within sixty days from the date of commencement of the Constitution (One Hundred and Twenty-second Amendment) Act, 2014, by order, constitute a Council to be called the Goods and Services Tax Council.

(2) The Goods and Services Tax Council shall consist of the following members, namely:-

(a) the Union Finance Minister.......................Chairperson;

(b) the Union Minister of State in charge of Revenue or Finance................Member;

(c) the Minister in charge of Finance or Taxation or any other Minister nominated by each State Government.................. Members.

(3) The Members of the Goods and Services Tax Council referred to in sub-clause (c) of clause (2) shall, as soon as may be, choose one amongst themselves to be the Vice-Chairperson of the Council for such period as they may decide.

(4) The Goods and Services Tax Council shall make recommendations to the Union and the States on –

(a) the taxes, cesses and surcharges levied by the Union, the States and the local bodies which may be subsumed in the goods and services tax;

(b) the goods and services that may be subjected to, or exempted from the goods and services tax;

(c) model Goods and Services Tax Laws, principles of levy, apportionment of Integrated Goods and Services Tax and the principles that govern the place of supply;

(d) the threshold limit of turnover below which goods and services may be exempted from goods and services tax;

(e) the rates including floor rates with bands of goods and services tax;

(f) any special rate or rates for a specified period, to raise additional resources during any natural calamity or disaster;

(g) special provision with respect to the States of Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur; Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand; and

(h) any other matter relating to the goods and services tax, as the Council may decide.

(5) The Goods and Services Tax Council shall recommend the date on which the goods and services tax be levied on petroleum crude, high speed diesel, motor spirit(commonly known as petrol), natural gas and aviation turbine fuel.

(6) While discharging the functions conferred by this article, the Goods and Services Tax Council shall be guided by the need for a harmonised structure of goods and services tax and for the development of a harmonised national market for goods and services.

(7) One half of the total number of Members of the Goods and Services Tax Council shall constitute the quorum at its meetings.

(8) The Goods and Services Tax Council shall determine the procedure in the performance of its functions.

(9) Every decision of the Goods and Services Tax Council shall be taken at a meeting, by a majority of not less than three-fourths of the weighted votes of the members present and voting, in accordance with the following principles, namely:-

(a) the vote of the Central Government shall have a weightage of onethird of the total votes cast, and

(b) the votes of all the State Governments taken together shall have a weightage of two-thirds of the total vote cast,

in that meeting.

(10) No act or proceedings of the Goods and Services Tax Council shall be invalid merely by reason of-

(a) anv vacancy in, or any defect in, the constitution of t he Council: or

(b) any defect in the appointment of a person as a member of the Council; or

(c) any procedural irregularity of the Council not affecting the merits of the case.

(11) The Goods and Services Tax Council may decide about the modalities to resolve disputes arising out of its recommendation.".

13. Amendment to article 286 – In article 286 of the Constitution.--

(i) in clause (1).-

(A) for the words "the sale or purchase of goods where such sale or purchase takes place". the words "the supply of goods or of services or both. where such supply takes place" shall be substituted:

(B) in sub-clause (h), for the word '·goods", at both the places where it occurs the words "goods or services or both" shall be substituted:

(ii) in clause (2), for the words "sale or purchase of goods takes place", the words "supply of goods or of services or both" shall be substituted:

(iii) clause (3) shall be omitted.

14. Amendment of article 366 – In article 366 of the Constitution.---

(i) after clause (12), the following clause shall be inserted, namely:-

"(I2A)" goods and services tax" means any tax on supply of goods, or services or both except taxes on the supply of the alcoholic liquor for human consumption:·:

(ii) after clause (26), the following clauses shall be inserted, namely:--

'(26A) "Services" means anything other than goods;

(26B) "State" with reference to articles 246A. 268, 269. 269A and article 279 A includes a Union territory with Legislature;'.

15. Amendment of article 368 – In article 368 of the Constitution, in clause (2), in the proviso, in clause (a), for the words and figures "article 162 or article 241", the words, figures and letter "article 162,, article 241 or article 279A" shall be substituted.

16. Amendment to Sixth Schedule – In the Sixth Schedule to the Constitution, in paragraph 8, in sub-paragraph (3),-

(i) in clause (c) the word "and" occurring at the end shall be omitted:

(ii) in clause (d) the word "and" shall be inserted at the end;

(iii) after clause (d), the following clause shall be inserted, namely:---

"(e) taxes on entertainment and amusements.".

17. Amendment of Seventh Schedule. – In the Seventh Schedule to the Constitution,—

(a) in List I — Union List,—

(i) for entry 84, the following entry shall be substituted, namely:—

"84. Duties of excise on the following goods manufactured or produced in India, namely:—

(a) petroleum crude;

(b) high speed diesel;

(c) motor spirit (commonly known as petrol);

(d) natural gas;

(e) aviation turbine fuel; and

(f) tobacco and tobacco products.";

(ii) entries 92 and 92C shall be omitted;

(b) in List II — State List,—

(i) entry 52 shall be omitted;

(ii) for entry 54, the following entry shall be substituted, namely:—

"54. Taxes on the sale of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption, but not including sale in the course of inter-State trade or commerce or sale in the course of international trade or commerce of such goods.";

(iii) entry 55 shall be omitted;

(iv) for entry 62, the following entry shall be substituted, namely:—

"62. Taxes on entertainments and amusements to the extent levied and collected by a Panchayat or a Municipality or a Regional Council or a District Council.".

18. Arrangement for assignment of additional tax on supply of goods to States for two years or such other period recommended by the Council. – (1) An additional tax on supply of goods, not exceeding one per cent. in the course of inter-State trade or commerce shall, notwithstanding anything contained in clause (1) of article 269A, be levied and collected by the Government of India for a period of two years or such other period as the Goods and Services Tax Council may recommend, and such tax shall be assigned to the States in the manner provided in clause (2).

(2) The net proceeds of additional tax on supply of goods in any financial year, except the proceeds attributable to the Union territories, shall not form part of the Consolidated Fund of India and be deemed to have been assigned to the States from where the supply originates.

(3) The Government of India may, where it considers necessary in the public interest, exempt such goods from the levy of tax under clause (1).

(4) Parliament may, by law, formulate the principles for determining the place of origin from where supply of goods take place in the course of inter-State trade or commerce.

19. Compensation to States for loss of revenue on account of introduction of goods and services tax. – Parliament may, by law, on the recommendation of the Goods and Services Tax Council, provide for compensation to the States for loss of revenue arising on account of implementation of the goods and services tax for such period which may extend to five years.

20. Transitional provisions. – Notwithstanding anything in this Act, any provision of any law relating to tax on goods or services or on both in force in any State immediately before the commencement of this Act, which is inconsistent with the provisions of the Constitution as amended by this Act shall continue to be inforce until amended or repealed by a competent Legislature or other competent authority or until expiration of one year from such commencement, whichever is earlier.

21. Power of President to remove difficulties. – (1) If any difficulty arises in giving effect to the provisions of the Constitution as amended by this Act (including any difficulty in relation to the transition from the provisions of the Constitution as they stood immediately before the date of assent of the President to this Act to the provisions of the Constitution as amended by this Act), the President may, by order, make such provisions, including any adaptation or modification of any provision of the Constitution as amended by this Act or law, as appear to the President to be necessary or expedient for the purpose of removing the difficulty:

Provided that no such order shall be made after the expiry of three years from the date of such assent.

(2) Every order made under sub-section (1) shall, as soon as may be after it is made, be laid before each House of Parliament.

STATEMENT OF OBJECTS AND REASONS

The Constitution is proposed to be amended to introduce the goods and services tax for conferring concurrent taxing powers on the Union as well as the States including Union territory with Legislature to make laws for levying goods and services tax on every transaction of supply of goods or services or both. The goods and services tax shall replace a number of indirect taxes being levied by the Union and the State Governments and is intended to remove cascading effect of taxes and provide for a common national market for goods and services. The proposed Central and State goods and services tax will be levied on all transactions involving supply of goods and services, except those which are kept out of the purview of the goods and services tax.

2. The proposed Bill, which seeks further to amend the Constitution, inter alia, provides for—

(a) subsuming of various Central indirect taxes and levies such as Central Excise Duty, Additional Excise Duties, Excise Duty levied under the Medicinal and Toilet

Preparations (Excise Duties) Act, 1955, Service Tax, Additional Customs Duty commonly known as Countervailing Duty, Special Additional Duty of Customs, and Central Surcharges and Cesses so far as they relate to the supply of goods and services;

(b) subsuming of State Value Added Tax/Sales Tax, Entertainment Tax (other than the tax levied by the local bodies), Central Sales Tax (levied by the Centre and collected by the States), Octroi and Entry tax, Purchase Tax, Luxury tax, Taxes on lottery, betting and gambling; and State cesses and surcharges in so far as they relate to supply of goods and services;

(c) dispensing with the concept of 'declared goods of special importance' under the Constitution;

(d) levy of Integrated Goods and Services Tax on inter-State transactions of goods and services;

(e) levy of an additional tax on supply of goods, not exceeding one per cent. In the course of inter-State trade or commerce to be collected by the Government of India for a period of two years, and assigned to the States from where the supply originates;

(f) conferring concurrent power upon Parliament and the State Legislatures to make laws governing goods and services tax;

(g) coverage of all goods and services, except alcoholic liquor for human consumption, for the levy of goods and services tax. In case of petroleum and petroleum products, it has been provided that these goods shall not be subject to the levy of Goods and Services Tax till a date notified on the recommendation of the Goods and Services Tax Council.

(h) compensation to the States for loss of revenue arising on account of implementation of the Goods and Services Tax for a period which may extend to five years;

(i) creation of Goods and Services Tax Council to examine issues relating to goods and services tax and make recommendations to the Union and the States on parameters like rates, exemption list and threshold limits. The Council shall function

under the Chairmanship of the Union Finance Minister and will have the Union Minister of State in charge of Revenue or Finance as member, along with the Minister in-charge of Finance or Taxation or any other Minister nominated by each State Government. It is further provided that every decision of the Council shall be taken by a majority of not less than three-fourths of the weighted votes of the members present and voting in accordance with the following principles:—

(A) the vote of the Central Government shall have a weightage of one-third of the total votes cast, and

(B) the votes of all the State Governments taken together shall have a weightage of two-thirds of the total votes cast in that meeting.

Illustration:

In terms of clause (9) of the proposed article 279A, the "weighted votes of the members present and voting" in favour of a proposal in the Goods and Services Tax Council shall be determined as under:—

WT = WC + WS = (WST/SP)⁄ SF

Wherein—

WT = Total weighted votes of all members in favour of a proposal.

WC = Weighted vote of the Union = i.e., 33.33% if the Union is in favour of the proposal and be taken as "0" if, Union is not in favour of a proposal.

WS = Weighted votes of the States in favour of a proposal.

SP = Number of States present and voting.

WST = Weighted votes of all States present and voting i.e., 2/3 i.e., 66.67%

SF = Number of States voting in favour of a proposal.

(j) Clause 20 of the proposed Bill makes transitional provisions to take care of any inconsistency which may arise with respect to any law relating to tax on goods or services or on both in force in any State on the commencement of the provisions of the Constitution as amended by this Act within a period of one year.

3. The Bill seeks to achieve the above objects.

FINANCIAL MEMORANDUM

Clause 12 of the Bill seeks to insert a new article 279A in the Constitution relating to Constitution of Goods and Services Tax Council. The Council shall function under the Chairmanship of the Union Finance Minister and will have the Union Minister of State incharge of Revenue or Finance as member, along with the Minister in-charge of Finance or

Taxation or any other Minister nominated by each State Government.

2. The creation of Goods and Services Tax Council will involve expenditure on office expenses, salaries and allowances of the officers and staff. The objective that the introduction of goods and services tax will make the Indian trade and industry more competitive, domestically as well as internationally and contribute significantly to the growth of the economy, such additional expenditure on the Council will not be significant.

3. At this stage, it will be difficult to make an estimate of the expenditure, both recurring and non-recurring on account of the Constitution of the Council.

4. Further, it is provided for compensation to the States for loss of revenue arising on account of implementation of the Goods and Services Tax for such period which may extend to five years. The exact compensation can be worked out only when the provisions of the Bill are implemented.

Founded by V. Lakshmikumaran and V. Sridharan in 1985, Lakshmikumaran & Sridharan (L&S) is one of the largest integrated law firms in India with over 300 professionals including 43 partners.

The firm has ten offices located across India. In Europe, the firm's office is in Geneva. It specializes in the areas of Competition Law, Customs & International Trade, Taxation, Intellectual Property and Corporate law.

The firm has provided more than 30,000 legal opinions, undertaken legal compliance review for more than 300 companies and handled more than 40,000 litigation cases before various fora both in India and abroad including more than 2,000 cases before the Supreme Court of India.

Should you have any query based on the contents of the booklet, please feel free to get in touch with:

V. Lakshmikumaran, Managing Partner
vlakshmi@lakshmisri.com

R. Nambirajan, Principal Partner
nambi@lakshmisri.com

R. Parthasarathy, Principal Partner
partha@lakshmisri.com

G. Shivadass, Principal Partner
shivadas@lakshmisri.com

B.L. Narasimhan, Principal Partner
narasimhan@lakshmisri.com

N. Mathivanan, Principal Partner
mathi@lakshmisri.com

Kalpesh Shah, Executive Partner
kalpesh@lakshmisri.com

L. Badrinarayanan, Partner
badri@lakshmisri.com

or write to
gst@lakshmisri.com

Lakshmikumaran & Sridharan attorneys

An ISO 9001:2008 and ISO 27001:2005 certified law firm

N E W D E L H I

5 Link Road, Jangpura Extension,
New Delhi 110014

B-6/10, Safdarjung Enclave
New Delhi - 110 029
Phone : +91-11-4129 9811
E-mail : lsdel@lakshmisri.com

M U M B A I

2nd Floor, CNERGY IT Park,
Old Standard Mill,
Appa Saheb Marathe Marg,
Prabhadevi,
Mumbai - 400 025
Phone : +91-22-2439 2500
E-mail : lsbom@lakshmisri.com

C H E N N A I

2, Wallace Garden, 2nd Street
Chennai - 600 006
Phone : +91-44-2833 4700
E-mail : lsmds@lakshmisri.com

B E N G A L U R U

World Trade Center,
No. 404-406, 4th Floor, South Wing,
Brigade Gateway Campus,
No. 26/1 Dr. Rajkumar Road,
Malleswaram West,
Bengaluru - 560 055
Phone : +91-80-49331800
E-mail : lsblr@lakshmisri.com

H Y D E R A B A D

'Hastigiri', 5-9-163, Chapel Road
Opp. Methodist Church, Nampally
Hyderabad - 500 001
Phone : +91-40-2323 4924
E-mail : lshyd@lakshmisri.com

E U R O P E

Lakshmikumaran & Sridharan SARL
Avenue Giuseppe-Motta 35-37
1202 Geneva
Phone: +41 22 919 04 30
Fax: +41 22 919 04 31
E-mail: lsgeneva@lakshmisri.com

A H M E D A B A D

B-334, SAKAR-VII,
Nehru Bridge Corner, Ashram Road,
Ahmedabad - 380 009
Phone : +91-79-4001 4500
E-mail : lsahd@lakshmisri.com

P U N E

607-609, Nucleus
1 Church Road, Camp
Pune - 411 001
Phone : +91-20-66801900
E-mail : lspune@lakshmisri.com

K O L K A T A

2nd Floor, Kanak Building
41, Chowringhee Road
Kolkata - 700071
Phone: +91-33-40055570
E-mail :lskolkata@lakshmisri.com

C H A N D I G A R H

SCO No. 59, 1st Floor,
Sector 26, Madhya Marg,
Chandigarh – 160 026.
Phone: +91-172-4921700
E-mail: lschd@lakshmisri.com

G U R G A O N

OS2 & OS3, 5th floor,
Corporate Office Tower,
AMBIENCE Island, Sector 25-A,
Gurgaon - 122001
Phone : +91-124-477 1300
E-mail : lsgurgaon@lakshmisri.com