



By:
CA Sanjay Dhariwal
sanjay@dnsconsulting.net
9972070601

Specific issues under Stock transfer: Consignment Sales, Inter unit transaction (Separate and Centralized Registration within State), E-commerce, Job wok, Captive consumption”.

The *Presentation* Covers

- Stock transfer:
- Consignment Sales,
- Inter unit transaction (Separate and Centralized Registration within State),
- E-commerce,
- Job wok,
- Captive consumption”.



Input Tax Credit

- Introduction of GST will be a game changer for the enterprises.
- Concepts like manufacture, captive consumption, inter-unit supply, branch transfer, consignment sale, sale at factory gate, etc. will lose their meanings under the GST regime.
- **New Article 246A Inserted-Special provision with respect to goods and service tax:** As per this section, the parliament and the legislature of every state have power to make laws with respect to GST imposed by the union or by such state. Parliament has exclusive powers to make law pertaining to GST in the course of Interstate trade or commerce.

- **Section 8: Amendment of Article 269**

- Article 269 talks about taxes on the sale or purchase of goods and taxes on the consignment of goods levied and collected by union but assigned to the states.
- Hence, except as provided in article 269A all other taxes on sale or purchase of goods and taxes on the consignment of goods can be levied and collected by union but assigned to the states.

- **Section 9: Insertion of New Article 269A – levy and collection of goods and service tax in course of interstate trade or commerce**

- GST on supplies in the course of Interstate trade or commerce shall be levied and collected by the Government of India.
- Such IGST will be appropriated between union and states in the manner specified by GST Council.
- The import into the territory of India will be deemed as supply of goods or services or both in course of Interstate trade or commerce.

- **Stock Transfer**

- In the current regime there is levy of excise duty on removal of goods when there is stock transfer of manufactured goods both within the state and outside the state.
- However there is **no impact of VAT or CST** in the case of stock transfer of goods.
- Under the GST regime there is **shift of the taxable event** that is supply.
- Schedule I of the Model GST law deems any **“Supply of goods or services between related persons or between distinct persons as specified in section 10 when made in the course or furtherance of business”** shall be treated as supply even if it is made without consideration. In other words, Schedule I cover the transaction of stock transfer which is without consideration.

- **Stock Transfer**

- The implication of the aforesaid provisions is as follows:
- Stock transfer of goods **between two states** would be liable to IGST.
- Stock transfer of goods **between two business verticals** in the same state where separate registration has been taken for each business vertical would be liable to CGST/ SGST.
- Since the registration under GST is based on PAN and there is also state wise registration the stock transfer made from one registration of the taxable person to another registration will be intra state (where the registration is business vertical wise) and interstate in all the cases

- Presently the problem is that **State VAT laws** require **reversal of input tax credit** on purchases made in the same state if such goods are transferred otherwise than by way of sale like stock transfer to branch or agent as the case may be. Due to this reversal cost of product increases.
- Stock transfer within the state **between the distinct persons is not liable to GST**. Stock transfer of goods between two business verticals in the same state where separate registration has been taken for each business vertical would be liable to CGST/SGST.
- **The GST Valuation Rules provide that the value of the goods shall be transaction value.**
- Where goods are transferred from one place of business to another place of business or the principal to an agent or vice versa whether or not situated in the same state the value of such supply shall be transaction value.

- The **Valuation Rules** as per Model GST Valuation (Determination of the Value of Supply of Goods and Services) Rules, 2016 will be applicable **if valuation is not possible as transaction value.**
- If stock transfers are made liable to tax in **originating State**, businesses may land in a situation of **funds blockage**
- Even in industries where production and sale is evenly distributed throughout the year, **certain level of inventory needs to be maintained in different states.** Funds will always remain blocked to that extent.
- This will add to **carrying cost of inventory.** To avoid this situation, entrepreneur will be tempted to maximize warehousing in the State of manufacture itself.

- **Consignment Sales**

- “agent” means a person, including a factor, broker, commission agent, *arhatia*, *del credere* agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services on behalf of another, whether disclosed or not.
- “Principal” means a person on whose behalf an agent carries on the business of supply or receipt of goods and/or services; The expression “recipient” shall also include an agent acting as such on behalf of the recipient in relation to the goods and/or services supplied.
- “Place of business” includes
- (c) a place where a taxable person is engaged in business through an agent, by whatever name called;
- .

- **Consignment Sales**

- In case such branch is outside the state it is called interstate stock transfer and in case such agent is outside the state it is called as **interstate consignment transfer**.
- **No CST is imposed on consignment/stock transfer**. The burden of proving that the movement of these goods was occasioned not by reason of sale shall be on the dealer transferring the goods to his branch/agent/principal. F Form is given in case of Interstate sale to consignment agent, Interstate sale to Branch and Interstate sale to Job worker.

- **Consignment Sales**

- The matters to be treated as supply even if made without consideration in terms of clause (c) of sub section (1) of section 3 of Model GST law 2016 includes supply of goods (a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal, or by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.
- Therefore where goods are transferred from one place of business to another place of the same business or from the principal to an agent or from an agent to the principal, whether or not situated in the same State, the value of such supply shall be the transaction value.
- .

- Persons who supply goods and/or services on behalf of other taxable persons whether as an agent or otherwise, **irrespective of the threshold** specified are required to get registered irrespective of the threshold limit.
- Where an agent supplies or receives any taxable goods on behalf of his principal, **such agent and his principal shall be jointly and severally liable to pay the tax payable on such goods under the Act.**
- Expenditure or costs incurred by a service provider as a **pure agent of the recipient of service** shall be excluded from the value of the taxable service if specified conditions are fulfilled.

- **Special Issues/Impact on Stock Transfers**

- In the current system stock transfer are exempted under section 6A of the CST Act
- Input Tax reversal
- Depots and Godown have been created for non business reasons
- Excise Duty is payable on stock transfer
- Interstate stock transfers would attract IGST
- Currently manufacturers pay excise duty and not traders
- Huge cash flows on stock transfer
- Depots can avail IGST Credit subject to that sale happens
- Dealers willingness to hold stock
- Relevance of depots/godown/C&F

- Inter unit transaction (Separate and Centralized Registration within State),
- **Distinct Persons:** As per section 10(2) of the Model GST law a person who has obtained or is required to obtain more than one registration, whether in one state or more than one state shall in respect of each such registration be treated as **distinct persons** for the purposes of this Act/
- As per section 10(3) of the Model GST law, an establishment of a person who has obtained or is required to obtain registration in a state, and any of his other establishments in another state shall be treated as establishments of **distinct persons** for the purposes of this Act.

- Inter unit transaction (Separate and Centralized Registration within State),
- It is pertinent to discern that a person who has obtained registration in more than one state or more than one registration in a single state shall be treated *as distinct persons*
- If the taxable person is transferring any goods or services from one branch to another branch in the same state having the same GST registration Number then the taxable person is not required and will not be liable to pay GST on such transactions. They have to redesign business procurement models accordingly.

- Inter unit transaction (Separate and Centralized Registration within State),
- On Intra – State supplies of goods and/ or services – CGST & SGST shall be levied by the Central and State Government respectively, at the rate to be prescribed. The elaborative Rules have been provided to determine the place of supply.
- Intra state supply of goods and or services **where the location of the supplier and the place of supply are in the same state.**
- As per section 2(18) Business Vertical means **“business vertical”** means a distinguishable component of an enterprise that is engaged in supplying an individual product or service or a group of related products or services and that is subject to risks and returns that are different from those of other business verticals;

- Inter unit transaction (Separate and Centralized Registration within State),
- PAN based registration from each state from where the taxable supplies are being made. A person having multiple business verticals in a state may obtain separate registration for each business vertical.
- The registration is to be given by both Central and State Authorities on a common e application.
- Every person who is liable to take a Registration will have to get registered separately for each of the States where he has a business operation and is liable to pay GST in terms of Sub-section (1) of Section 23 of Revised Model GST Law.
- In terms of Sub-Section (2) of Section 23, a person having multiple business verticals in a State may obtain a separate registration for each business vertical, subject to such conditions as may be prescribed;

- Inter unit transaction (Separate and Centralized Registration within State),
- The cancellation of registration under one Act (say CGST Act) shall be deemed to be a cancellation of registration under the other Act (i.e. SGST Act). (Section 26 (6)).
- There is no option for centralized registration for services under Model GST law
- If the tax payer has different business verticals in one state it is not mandatory that he should obtain separate registration for each vertical in the state.
- However the taxpayer has the option to register such separate business verticals independently in terms of Section 23(2) of Model GST Law.
- The Input service distributor registration is for one office of the tax payer and it will be required to register separately irrespective of the threshold.
- The Tax payer can have multiple ISDS and different offices of a tax payer can apply for ISD registration.

- Inter unit transaction (Separate and Centralized Registration within State),
- Even the service provided by the Head office to branches or from one branch to another branch or from Head office to Branch will be leviable to IGST if they are in different state and IGST would be payable on such supplies.
- In many instances the entries are not recorded in books of accounts for service provided by Head office to Branch or vice versa and therefore there will be implication of GST even if it is not recorded in books of Accounts or even if the entity (Head office/Branch) is not charging for such intra company service
- The taxable persons will not be eligible to opt for composition scheme only for one out of 3 business verticals as such composition scheme would be applicable for all business verticals/ registrations, which are separately held by the person with same PAN. If any 1 business vertical of a taxable person becomes ineligible for paying tax u/s 9 (composition scheme), then all other business verticals of the said taxable person shall become ineligible for paying tax u/s 9 (composition scheme).

- Inter unit transaction (Separate and Centralized Registration within State),
- Input Service Distributor should distribute the credit where distributor and recipient being business vertical are located in same states as CGST and IGST as CGST and SGST and IGST as SGST.
- In terms of Sub-Section (2) of Section 23, a person having multiple business verticals in a State may obtain a separate registration for each business vertical, subject to such conditions as may be prescribed.
- The transitional provisions would allot one registration certificate in each State based one PAN even though previously such person had multiple registrations in a State unless they qualify as distinct business verticals under the GST law.

- Inter unit transaction (Separate and Centralized Registration within State),
- All units/ business premises registered either under Central Excise or Service Tax law would be consolidated into a single CGST registration for that State, unless they qualify as distinct business verticals under the GST law.
- The services sector, which currently deals with just central service tax, will now have to contend with multiple states where they have business operations requiring registration plus the centre, unless the government finds alternative solutions. This will impact key sectors such as financial services, telecom, etc., from a compliance perspective and has been a point of intense engagement by these sectors.
- Valuation of services between branch and head office will be a litigated issue.

- E-commerce,
- Under GST, if the E-Commerce Portals engaged in buying and selling of goods on their own behalf then such E-Commerce Portals shall not be covered under the purview of electronic commerce operator. The provisions relating to TCS shall not be applicable on such portals and they shall be shall be liable to levy and collect tax from the customers and deposit it to the appropriate government like any other supplier.
- Examples:
 - 1. Titan Company Limited selling its 'titan' brand watches through its own E-commerce portal.
 - 2. Zodiac clothing Company Ltd. selling clothing and clothing accessories through its own E-commerce portal.

- E-commerce,
- The general modus operandi of operation of such E-Commerce Portals is that they allow sellers of the goods to upload their product details.
- Prospective buyers visit these portals, select the products and place order with them.
- The order details are then forwarded to the seller by E-Commerce portal and seller then sends the goods directly to the purchaser.
- Invoice towards supply of goods is raised by the seller however; payment of the goods is received by E-Commerce portal.
- E-Commerce portal then raises the bill of service charges towards the seller and after deducting the amount due to them towards their service charges, remits the balance amount to seller of the goods.

- E-commerce,
- “Electronic Commerce” means supply of goods and/or services including digital products over digital or electronic network.
- “Electronic commerce operator” means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce.
- Section 8(4) provides that categories of services may be notified where tax shall wholly be paid by e-commerce operators. All provisions of the GST law shall apply to such e-commerce operators as if such persons is liable to pay tax.

- E-commerce,
- Every e-commerce operator, not being an agent, has to collect 1% of net value of taxable supplies where consideration is to be collected by the operator.
- Net value = aggregate value of goods/ services [other than those notified u/s 8(4)] made during the month less returns during the month.
- The rate of tax for collection of tax source prescribed in the Revised Model GST Law is 1%. The said 1% would be on the net value of taxable supplies made through the electronic commerce where the consideration with respect to such supplies is to be collected by the electronic commerce operator.
- Net value does not include transactions where the GST is liable to be paid by the electronic commerce operator on services to be notified by the Government under section 8(4).

- E-commerce,

- The taxable supplies returned to the supplier on the electronic commerce are allowed as a deduction while calculating the net value.
- As per the provisions of Section 56(1), an electronic commerce operator shall collect tax at source only where the consideration in respect of supplies is to be collected by the operator. Therefore, he is not liable to collect tax in such a situation.
- Section 56(1) does not vest any powers with any authority to increase/decrease the rate of tax fixed at 1%.
- In case such supplier operates through an electronic commerce operator who is required to collect tax at source under Section 56 such supplier is required to register under GST. Also, the threshold limit specified under Schedule V shall not apply to such suppliers.

- E-commerce,
- The time at which the electronic commerce operator should collect the tax at source may be construed to be, the date of receipt of consideration by the electronic commerce operator on behalf of the supplier.
- The Revised Model GST Law published applies to both CGST and SGST, a view could be taken that 1% is applicable for separately for CGST and SGST aggregating to 2%.
- The amount collected by the e-commerce operator ('operator', in short) is to be paid to the credit of appropriate government within 10 days after the end of the month in which amount was so collected
- The operator is required to file return online giving details of all amounts collected by him for the outward supplies made through his Portal, within 10 days of the end of the calendar month to which such statement pertains. The return should contain the names of the actual supplier(s), details of respective supplies made by them and the amount collected on their behalf.

- E-commerce,
- **Inventory led model** is one where online retailer (E commerce player) maintains the inventory and timely delivery to customers and capital intensive model.
- In **open place model product** is directly shipped by reseller to customer and there is no influence on pricing and no inventory is maintained by online retailer and there is minimal capital investment
Example: E bay
- In **managed market place model** the fast moving goods are held on consignment and some products are sold by sellers. There is lower inventory and warehousing cost. Example: Amazon
- **Principal to Agent** (commission charges to electronic site owner) – commission charges example: Flip kart snap deal amazon
- **Aggregator services:** Ola cab Uber etc

- Compliances by E-commerce Operators,
- TCS to be paid to credit of appropriate government;
- To furnish a statement of such outward supplies of goods and / or services, electronically
- Both payment and statement to be made/ filed within 10 days from the end of the month in which the collection is made
- Statement to contain details of amounts collected, supplier-wise in respect of all supplies effected through the website / url of the e-commerce operator during the calendar month:

- Tax credit for the concerned supplier
- Amount remitted by e-commerce operator treated as tax paid by the supplier
- Supplier eligible to claim credit of the same in the electronic cash ledger.

- **Verification of the statement filed by the e-commerce operator**
- Details of the supplies furnished by the e-commerce operator to be compared with corresponding outward supplies;
- Discrepancies, if any, to be communicated to both
- Discrepancy, if not rectified by supplier, to be added to output liability of supplier for the month succeeding the one in which the same was communicated.
-

- Issues/Challenges

-
- High Technical Barriers to Market Entry
- Heavy discounts
- Aggressive pricing strategies
- Storage of goods
- Free delivery
- Return of goods
- Supply chain
- High Commissions to Vendors
- Impact of GST on different Models: Managed Market place Model, Open Market place model, Inventory led model, etc
- Current regime challenges
- Principal/Agent relationship
- Place of supply of goods (Local or interstate)
- Place of supply of services may give litigation

- **Job work**

- Meaning of job work

- Job work is the processing or working on goods supplied by the principal so as to complete a part or whole of the process.

- Job work under Central Excise:

- Job Work and Manufacture or Service:

- Job work under Service Tax :

- Provisions under CST/ VAT:

- Job work

-

- Section 2(61) of Model GST law states that **job work** means undertaking any treatment or process by a person on goods belonging to another registered taxable person and the expression “job worker” shall be construed accordingly.
- As per **entry 3 of schedule II (Matters to be treated as supply of goods or services)** state any treatment or process which is being applied to another person’s goods is a supply of services.
- Principal for the purpose of Job work is a registered taxable person, **who sends any inputs and or capital goods without payment of tax to a job worker** for job-work and from there subsequently send to another job worker (Section 55).

- Job work

- The deeming provision to treat goods (the inputs and capital goods respectively)
- sent by the principal to job worker as supply on the day when the inputs/ capital goods were sent out to any of his place of business
- is applicable **only when the condition with respect to receiving back the inputs, after completion of job work or otherwise and/or and capital goods within the stipulated period of 1 year and 3 year respectively of their being sent, is not satisfied.**
- The above conditions does **not apply to moulds and dies, jigs and fixtures, or tools sent to job worker.**

- Job work

- The additionally purchased material, by the job-worker, incorporated in the goods received from the principal amount to supply in the hands of the job workers and taxable at regular rates.
- The job worker is eligible to claim input tax credit since the processing charges received in respect of labor charges and additional goods added are taxable in the hands of the job worker.
- In terms of section 8(3) of the Revised Model GST Law on the specified categories of supply of goods and/or services, the recipient of such goods and/or services is liable to pay GST under reverse charge basis. Further, Section 55 of Revised Model GST Law does not provide any exemption to job worker in this regard.

- Job work

- Section 55(1) of the Revised Model GST Law provides that the registered taxable person (principal) can send the taxable goods to a job-worker for job-work without payment of tax. Further, he can send the goods from one job-worker to another job worker and so on subject to certain condition.
- It may be noted that provisions of Section 55 are not applicable if non-taxable or exempted goods are proposed to be sent for job-work

- Job work

- The goods of principal directly supplied from the job-worker's premises will **not be included in the aggregate turnover** of the Job Worker since the responsibility of accountability of inputs and/or capital goods lies with principal.
- Moreover, **Explanation 2 to clause 2 of Schedule V of the Revised Model GST Law clarifies that supply of goods, after completion of job-work, by a registered job worker shall be treated as the supply of goods by the “principal” referred to in section 55, and the value of such goods shall not be included in the aggregate turnover of the registered job worker.**

- Job work

- The principal can supply the goods directly from the premises of the job-worker without
- bringing it back to his own premises **subject to the condition that the principal should have declared the premises of such job-worker as his additional place of business**
- or the job-worker is a registered person or where principal is engaged in supply of goods as notified by the Commissioner.
- The **circumstances where the goods can be supplied directly from the place of business of job-worker without declaring it as additional place of business in two circumstances**
 - where the job worker is a registered taxable person or
 - where the principal is engaged in supply of goods as may be notified by the Commissioner in this behalf.

- Job work

- In terms of section 55(3), if the said inputs are not received back within the stipulated time i.e., one year, then it shall be deemed that the said inputs had been supplied by the principal to the job-worker on the day when the said inputs were sent out.
- In terms of section 55(4), if the said capital goods, other than moulds & dies, jigs & fixtures, or tools, are not received back within the stipulated time i.e., 3 years, then it shall be deemed that the said capital goods had been supplied by the principal to the job-worker on the day when the said capital goods were sent out.

- Job work
- The job worker can sell directly any waste and scrap generated during the job work and job worker shall discharge the tax if job worker is registered otherwise principal has to discharge the tax liability.
- Job worker may not be required to register compulsorily as the Section 55 of the Revised Model GST law does not prescribe any such condition. Hence, the threshold benefit of registration is equally applicable even in case of a job worker.
- To conclude, the study of implications under GST law on the aspects related to valuation of job-work transactions is very crucial having regard to various issues raised above and wherever there is a scope for ambiguous situation, necessary clarification is required in the GST Act, in order to save the job work industry from possibility of litigation in future.

- Job work
- **Issues/Challenges**
- Registration of Job workers within the state and outside the state
- Turnover will include the addition of material
- Accounting and Invoicing of Receipt of goods and return of goods and services is Required
- Valuation of the Job worker turnover
- Capturing Input Credit in GST unlike missed credits in Excise and VAT
- No statutory form for movement of goods from principal to job worker and job worker to Principal.

- Captive consumption

- Captive consumption means the consumption of goods manufactured within the same factory or transfer of goods to a sister unit or another factory of the same company/firm for further use in the manufacture of goods.
- Can one construe Captive Consumption as Deemed Supply.
- Yes the word supply is very wide term and it includes the captive consumption. This is the new provision for supply of goods and services.
- The valuation of the captive consumption is litigated issue.
- It is in provisions in line with customs valuation are incorporated.
- Now goods/services supplied even for captive consumption to related parties then valuation is to be made in accordance with computed value based on cost accounting standards.

THANK YOU