GOODS AND SERVICE TAX (COMPENSATION TO STATES) ACT, 2017

The Goods and Service Tax (Compensation to States) Act, 2017 provides for a mechanism to compensate the States on account of loss of revenue which may arise due to implementation of the Goods and Services Tax read together with the Constitutional (one Hundred and First Amendment) Act, 2016, for a period of 5 years.

This Act, inter-alia provides:

(a) That the base year during the transition period shall be reckoned as the financial year 2015-16 for the purpose of calculating compensation amount payable to the States;

(b) That the revenue proposed to be compensated would consist of revenues from all taxes that stands subsumed into the GST law, as audited by the CAG;

(c) For reckoning the growth rate of revenue subsumed for a State at 14% per annum;

(d) That the compensation will be released bi-monthly based on the provisional numbers furnished by the Central Accounting Authorities and the final adjustment to be done after the accounts are subjected to audit by CAG;

(e) That the revenue foregone on account of grant of exemption in the 11 special categories State (Article 279A), be counted for the purpose of determining revenue for the base year 2015-16;

(f) That the revenue of States directly devolved to Mandi / Municipalities would be considered as revenue subsumed;

(g) Levy of a cess over and above the GST on certain notified goods to compensate States for 5 years on account of revenue loss suffered by them;

(h) That the proceeds of the cess will be utilised to compensate States that warrant payment of compensation;

(i) That 50% of the amount remaining unutilised in the fund at the end of the fifth year will be transferred to the Centre and the balance 50% would be distributed amongst the State and Union Territories in the ratio of total revenues from SGST / UTGST of the fifth year;

Relevant Sections of the GST Compensation Act warranting attention are reproduced below:

2. Definitions:

(c) "cess" means the goods and service tax compensation cess levied under section 8;

(g) "input tax" in relation to a taxable person, means:

(i) the cess charged on any supply of goods or services or both to him;

(ii) the cess charged on import of goods, and includes the cess payable on reverse charge basis;

(p) "taxable supply'' means a supply of goods or services or both which is chargeable to the cess under this Act;

8. LEVY AND COLLECTION OF CESS

(1). There shall be levied a cess on such intra-State supplies of goods or services or both as provided for in Section 9 of CGST Act and such inter-State supplies of goods or services or both as provided for in Section 5 of IGST Act, 2017 and collected in such manner as may be prescribed on the recommendations of the Council, for the purposes of providing compensation to the States for loss of revenue arising on account of implementation of the goods and services tax with effect from the date from which the Central Goods and Service Tax Act is brought into force for a period of five years or for such period as may be prescribed on the recommendations of the council.

Provided that no such cess shall be leviable on supplies made by a taxable person who has decided to opt for composition levy under section 10 of the Central Goods and Service Tax Act.

(2). The cess shall be levied on such supplies of goods and services as are specified in column 2 of the Schedule, on the basis of value, quantity or on such basis at such rate not exceeding the rate set-forth in the corresponding entry in column 4 of the Schedule, as the Central Government may, on the recommendations of the Council, by notification in the Official Gazetted, specify.

Provided that where the cess is chargeable on any supply of goods or services or both with reference to their value, for each such supply the value shall be determined under Section 15 of the Central Goods and Service Tax Act for intra-State and inter-State supplies of goods or services or both.

Provided further that the cess on goods imported into India shall be levied and collected in accordance with the provisions of Section 3 of the Customs Tariff Act, 1975(51 of 1975), at the point when duties of customs are levied on the said goods under Section 12 of the Customs Act, 1962 (52 of 1962), on a value determined under the Customs Tariff Act, 1975.

9. RETURNS, PAYMENTS AND REFUNDS

(1) Every taxable person registered making a taxable supply of goods or services or both, shall –

(a) Pay the amount of cess as payable under this Act in such manner;

(b) Furnish such returns in such forms, along with the returns to be filed under the Central Goods and Services Tax Act; and

(c) Apply for refunds of such cess paid in such form, as may be prescribed.

(2) For all purposes of furnishing of returns and claiming refunds, except for the form to be filed, the provisions of the Central Goods and Service Tax Act and the rules made thereafter, shall, as far as may be, apply in relation to the levy and collection of the cess leviable under

section 8 on all taxable supplies of goods or services or both, as they apply in relation to the levy and collection of Central Tax on such supplies under the said Act or the rules made thereunder.

11. OTHER PROVISIONS RELATING TO CESS

(1) The provisions of the Central Goods and Services Tax Act and the rules made thereunder, including those relating to assessment, input tax credit, non-levy, short-levy, interest, appeals, offences and penalties, shall, as far as may be, mutatis mutandis apply in relation to the levy and collection of the cess leviable under Section 8 on the intrastate supply of goods and services, as they apply in relation to the levy and collection of Central Tax on such intra-state supplies under the said Act or the rules made thereunder.

(2) The provisions of the Integrated Goods and Services Tax Act, and the rules made thereunder, including those relating to assessment, input tax credit, non-levy, short-levy, interest, appeals, offences and penalties, shall mutatis mutandis apply in relation to the levy and collection of the cess leviable under Section 8 on the inter-state supply of goods and services, as they apply in relation to the levy and collection of Integrated Goods Tax on such inter-state supplies under the said Act or the rules made thereunder.

Provided that the input tax credit in respect of Cess on supply of goods and services leviable under Section 8, shall be utilised only towards payment of said Cess on supply of goods and services leviable under the said Section.

Salient features of the GST Compensation Act:

I. Levy of cess:

- GST Compensation Cess (under Section 8 of the Act) will be levied on all intra-State and inter-State supplies of goods or services or both, including import of goods.
- The following supplies will be liable at the rate specified below:
  - Pan Masala (not exceeding 135% *ad valorem*)
  - Tobacco and Tobacco products (Rs. 4,170 per 1,000 sticks or 290% *ad valorem or a combination thereof,* but not exceeding Rs. 4,170 per 1,000 sticks plus 290% *ad valorem*)
  - Coal, briquettes and similar solid fuels (Rs. 400 per tonne)
  - Aerated Water (15% *ad valorem)*
  - Motor cars and passenger motor vehicles (15% *ad valorem)*
  - Any other supplies (15% *ad valorem)*
- The Cess would not be leviable on supplies made by a person who has opted for composition levy.
- Those supplies that are liable to tax with reference to their value (i.e. all supplies except coal, briquettes and similar solid fuels), are to be determined based on the Valuation provisions under Section 15 of the CGST Act.

- The cess levied under this Act would be payable over and above the CGST, SGST/UTGST and IGST tax leviable on. Cess would be levied on whole value exclusive of GST i.e. for Transaction value as per Section 15 is Rs. 100 and GST Rate is 18% then Cess would be levied on Rs. 100 Calculation would be Rs. 100+18% GST+ % Compensation Cess (as specified).

  Central Government vide *Notification No. 04/2017- Compensation Cess (Rate) dt. 20th July 2017* has exempted intra-State supplies of second hand goods received by a registered person, dealing in buying and selling of second hand goods and who pays the goods and services tax compensation cess on the value of outward supply of such second hand goods as determined under rule 32(5) of the Central Goods and Services Tax Rules, 2017, from any supplier, who is not registered, from the whole of the goods and services tax compensation cess leviable thereon under section 8 of the Goods and Services Tax (Compensation to States) Act, read with Section 9(4) of the Central Goods and Services Tax Act.

II. Determination of Base Year Revenue:

- The Compensation amount to be paid in any year during the transition period is to be computed taking the base year as 2015-16 only.
- The provisions of Section 5(1) of the said Act lists the taxes imposed by State / Union that stand subsumed into the GST while the proviso to Section 5(1) lists out the taxes that shall not be included for calculation of base year revenue. The revenue collected by the States on account of the said taxed detailed in Section 5(1) of the Act alone would be considered for the determination of Base Year Revenue;
- The revenue collected would always be reckoned as 'net of refunds';
- The transition period will be the period of 5 years from the date when the respective SGST Acts commence.

III. Input Tax Credit and returns:

- Input Tax Credit on inward supplies liable to cess can be utilized only for payment of cess on outward supplies liable to cess under the Act.
- A taxable person effecting supplies chargeable to cess is required to file returns along with the returns prescribed under the CGST Act.

IV. General

- All provisions of CGST Act and IGST Act including input tax credit, assessment, offences, penalties, interest, non-levy and short-levy will apply in relation to the levy and collection of cess on intra-State and inter-State supply, respectively.

Note: The relevant notifications on Compensation Cess have been provided in forthcoming pages of this publications.

NOTE ON STATE GST LAWS & RULES

In the scheme of overall implementation of GST, the Parliament enacts Central GST Act, Integrated GST Act, Union Territory GST Act and when it comes to State GST Acts, each of the State legislature are to enact their respective State GST enactments.

As discussed in this background material in detail, on intra-state supply of goods or services, two levies would be attracted, i.e. Central GST and State GST in case of states; Central GST and Union Territory GST in case of Union Territory. When the same transaction attracts two taxes, obviously, both the enactments should operate simultaneously in the absence of which compliance with law arises. In that direction, the GST Council has provided all the States, a model version of State GST law for enactment in the respective states.

All the States have already passed State GST Acts including J&K whether through ordinance or by legislative assembly. On a perusal of the same it can be seen that almost all the provisions are in parallel with the provisions of Central GST Act, 2017 with suitable modifications as to State GST tax.

In this background material:

The Rules, which are available in public domain are considered and discussed at appropriate places. The Rules are issued under delegated legislation by the Central Government in so far as the CGST, IGST and UTGST laws are concerned whereas it will be issued by the respective State Government when it comes to SGST is concerned.

Special Category States under GST include:

1. Arunachal Pradesh
2. Assam
3. Himachal Pradesh
4. Jammu and Kashmir
5. Manipur
6. Meghalaya
7. Mizoram
8. Nagaland
9. Sikkim
10. Tripura
11. Uttarakhand

Composition Limits under various States

Notification No. 08/2017 - Central Tax dated 27.06.2017 has been issued so as to increase the threshold limit for opting composition scheme from ***Rs. 50 lacs to Rs. 75 lacs*** except when the eligible registered person is in the following States: -

a) Arunachal Pradesh,
b) Assam,
c) Manipur,
d) Meghalaya,
e) Mizoram,
f) Nagaland,
g) Sikkim,
h) Tripura,
i) Himachal Pradesh

Threshold limit of Rs. 50 lakhs would be applicable for these states under Composition

For all the remaining states as well as Union Territories the threshold limit would be Rs. 75 lakhs under Composition. It is important to note that even though Uttarakhand and J&K are Special Category States the threshold limit under Compositions for said states is Rs. 75 lakhs only.

Aggregate Turnover Limit for Registration

Section 22 of the CGST Act, 2017 provides that every supplier shall be liable to be registered under this Act in the State or Union territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds twenty lakh rupees:

Provided that where such person makes taxable supplies of goods or services or both from any of the special category States, he shall be liable to be registered if his aggregate turnover in a financial year exceeds ten lakh rupees.

Every supplier making a taxable supply of goods or services or both in the State, shall be liable to be registered under this Act if his aggregate turnover in a financial year exceeds ten lakh rupees.

(Only in SGST Law for special category States without the proviso)

How the Aggregate Turnover is Calculated?

XYZ Pvt. Ltd. is a manufacturing unit in Mumbai, Maharashtra along with unit at Assam. Turnover details of all the units are as follows:

Mumbai Unit: Rs. 8 Lakhs

Assam Unit: Rs. 11 Lakhs

Assam Unit is a special category state wherein the registration limit is Rs. 10 lakhs. Hence, in the given case XYZ Pvt. Ltd would be required to take registration in Assam due to aggregate turnover being Rs. 11 Lakhs. Now it needs to be analyzed whether Mumbai unit also requires to get registered even though the aggregate turnover of all the units is less than Rs. 20 lakhs.

So even through aggregate turnover is less than 20 Lakhs, registration would be mandatory in the Mumbai also by virtue of mandatory registration in Assam.

Cabinet approves Scheme of Budgetary Support under GST Regime to the eligible units located in States of Jammu & Kashmir, Uttarakhand, Himachal Pradesh and North Eastern States including Sikkim

The Cabinet Committee on Economic Affairs chaired by the Prime Minister Shri Narendra Modi has given its approval to the Scheme of providing Budgetary Support under Goods and Service Tax Regime for the eligible industrial units located in State of Jammu & Kashmir, Uttarakhand, Himachal Pradesh and North Eastern States including Sikkim. Budgetary support of Rs. 27,413 crore for the said Scheme has been approved for the period from 1.7.2017 till 31.03.2027 for such industrial units located in aforesaid States which availed the benefit of Central Excise exemption prior to coming into force of GST regime.

The Government of India was implementing North East Industrial and Investment Promotion Policy (NEIIPP), 2007 for North Eastern States including Sikkim and Package for Special Category States for Jammu & Kashmir, Uttarakhand and Himachal Pradesh to promote industrialization. One of the benefits of the NEIIPP, 2007 and Package for Special Category States was excise duty exemption for first 10 years after commencement of commercial production.

Upon repeal of the Central Excise duty laws, the Government has decided to pay a budgetary support equal to the central share of the cash component of CGST and IGST paid by the affected eligible industrial units. The support shall be available for the residual period (ten years from the date of the commercial production) in the States of North Eastern region and Himalayan States. DIPP will notify the Scheme, including detailed operational guidelines for implementation of the scheme within 6 weeks.

It is estimated that total number of 4284 eligible units located in the State(s) of Jammu & Kashmir, Uttarakhand, Himachal Pradesh and North Eastern States including Sikkim will benefit from the above scheme.

[PIB Notification Release ID 170016 dt 07-08-2017]