**GST - Summary of Basic Concepts under the Central Goods and Services Tax Act, 2017**

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**Introduction**

GST(Goods and Services Tax) in its avatar as the Central Goods and Services Tax Act, 2017(“**CGST Act**”) is a landmark legislation which reformed the indirect tax system prevailing in India. Its success is easily demonstrated by the very fact that almost all the States across India readily assented to adoption and implementation of this law within their own territorial jurisdiction. Morevoer, the GST collections across India are in excess of Rs. 8 lac crore for FY 2024-2025 which is unprecedented.

Given the importance of the CGST Act as a landmark legislation, and as a tax lawyer and enthusiast, I decided to pen this article by providing a summary of three basic concepts under the CGST/SGST Act.

Only the basic concepts are being discussed and each and every provision in the statute is not being adverted to for the sake of brevity.

**Basic concepts under the CGST/SGST Acts**

This Chapter is divided into the following topics to facilitate better understanding of the subject:

1. Registration
2. Returns
3. Assessment, Demand & Recovery
4. **Registration**

GST is essentially concerned with only those persons/suppliers who are registered. In the absence of any requirement for a business to be registered under the CGST/SGST Act, there is no need to comply with GST law and as a corollary there is no need to file returns, collect tax, pay tax etc. However, as we will observe hereunder, most of the businesses across India are liable to be registered since their ‘aggregate turnover’ exceeds the threshold. Therefore, ‘aggregate turnover’ is the yardstick to determine whether or not the business is liable to be registered and whether the provisions of the CGST Act apply to such businesses or not. Also, the business must be engaged in providing ‘taxable supplies’ which in most cases is a norm. Pertinent to note that there are some persons/businesses which are compulsorily required to be registered and we will deal with the same as well.

1. Every person registered under the CGST Act is assigned a Goods and Services Tax Identification Number(GSTIN) and is issued a registration certificate under Section 25(11) of the CGST Act in FORM REG -06.

1. Every supplier is required to be registered in the State/Territory from which he makes a taxable supply of goods or services or both, if his aggregate turnover for a financial year exceeds Rs. 20lakh(**Section 22(1)**). If the supplier is from a special category State, the aggregate turnover must exceed Rs. 10 lakhs.

* ‘Supplier’ is defined under Section 2(105) as a person, or his agent, supplying goods or services or both.
* ‘Taxable supply’ is defined under Section 2(108) means a supply of goods or services or both which is leviable to tax under the CGST Act.
* ‘Aggregate turnover’ is defined under Section 2(6) as the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and inter-State supplies of persons having the same Permanent Account Number, to be computed on all India basis but excludes central tax, State tax, Union territory tax, integrated tax and cess;
* Therefore, a person must be engaged in supplies of goods or services or both, must be engaged in taxable supplies, and must have an aggregate turnover which for the purpose of computation of such turnover includes exempt supplies, but does not include inward supplies, and must exceed Rs. 20 lakh or Rs. 10 lakh as the case may be. Exempt supplies are those supplies on which no tax is payable. Inward supplies are those supplies received by a business for example, when goods are purchased or services are received by the registered person on which input tax is paid. These inward supplies are not taken into account while calculating aggregate turnover.

1. Persons who are engaged exclusively in supply of goods or services which are wholly exempt, are not liable to be registered(**Section 23(1)**).

* The Government may, on the recommendations of the GST Council, notify classes of persons who are not required to be registered under the Act(**Section 23(2)**).

1. Some persons are required to be compulsorily registered under the CGST Act. For example, persons making inter-state supplies, or persons paying tax under the reverse charge mechanism, or non-resident persons making a taxable supply etc.(**Section 24**).
2. Every person must apply for registration within 30 days from the date on which he becomes liable for registration(**Section 25(1)**)
3. A person seeking registration will only be granted a single registration in a State/Union Territory. However, a person having multiple places of business within a State or Union Territory may be granted separate registration for each such place of business.(**Section 25(2)**).

* A person who has obtained more than one registration in a State/Union territory or in a different State/Union Territory, in respect of each such registration, will be treated as distinct persons under the Act.(**Section 25(4)**). However, a person having multiple places of business within a single State/Union Territory can have multiple registrations on the same PAN for each place of business vide CGST Amendment Act, 2018, effective from 1.2.2019.
* ‘Cross charge’ occurs when there is a supply of goods and services between these distinct persons. Any supply of goods or services *inter se* the same entity i.e between two units/establishments of the same entity, will attract GST as per Entry 2 to Schedule 1 of the CGST Act since they are to be treated as distinct persons if both of them are required to be registered. However, in the author’s view this seems erroneous since a supply within an entity cannot be taxed on applying the principles of mutuality, but would depend upon the facts and circumstances of each case.
* Entry 2 of Schedule I of the CGST Act makes a supply between distinct persons taxable even if made without consideration. The objective seems to be that even if there is no consideration received for supply of goods or services between such distinct persons, the transaction must not go untaxed. However, whether the said provision is valid on principles of mutuality may be considered, since generally, one person transferring something ‘from one pocket to another’ or ‘from one bank account to another of himself’ must not be considered a supply under law at all. While GST is calculated on turnover, and not profit, the turnover of the units is the turnover of the same entity of the same PAN, but this again would depend from case to case. For example, in a particular case, one registered person may have another full fledged business in the form of an incorporated company or other entity in the same State and if these businesses are dependent on each other, the supplies between these distinct persons will attract GST. However, in this example there are two different PAN’s, and it may be stated that supplies from one unit to the other under the same PAN may, on the principles of mutuality, not be taxed.

1. Where a person who is liable to be registered under this Act fails to obtain registration, the proper officer may, without prejudice to any action which may be taken under this Act or under any other law for the time being in force, proceed to register such person in such manner as may be prescribed.(**Section 25(8)**)
2. GST registration may be cancelled by the proper officer when the registered person has contravened any provision of the Act or Rules, or has not furnished returns for such continuous tax period as may be prescribed, or has obtained registration through fraud or wilful misstatement, or suppression of facts(**Section 29**). An application may be made for voluntary cancellation of registration as well in FORM REG-16. The order for cancellation of registration is made in FORM REG-19.
3. Any person whose registration has been cancelled may apply to the proper officer for revocation of cancellation of registration. The proper officer may either revoke the cancellation of registration or reject the application.

* This is an alternate remedy which is provided under the statute itself which needs to be exercised before approaching the constitutional courts. The application for revocation of cancellation of registration has to be made in FORM REG-21. The order passed revoking the cancellation of registration is passed in FORM REG-22. However, the order is preceded by a show-cause notice providing an opportunity of being heard in FORM REG-17 and the representation against this notice is to be made in FORM REG-18.

1. The registration granted under the SGST Act will be deemed to be granted under the CGST Act per Section 26 of the CGST Act. However, the application for registration must not have been rejected under the CGST Act.
2. **Returns**
3. Every registered person is required to file returns. Normally, for most businesses other than Input Service Distributor, non-residents etc., the return of outward supplies in FORM GSTR 1 needs to be furnished for every calendar month before the 10th day of the succeeding month(**Section 37**), containing details of outward supplies and the tax collected. Outward supplies are those supplies undertaken by the business such as sales, transfers to third parties etc. on the value of the supply on which tax is collected. On the other hand, inward supplies are for example, purchases of goods or receipt of services on which tax known under GST law as input tax is paid.
4. Once the return of outward supplies is furnished, an auto generated statement in FORM GSTR 2A will be issued on the common portal to the taxpayer containing details being inward supplies received by the registered person on which input tax credit may be availed and, supplies on which input tax credit cannot be availed(**Section 38**). Once the above are finalized by the registered person, the monthly return may be filed.
5. For every calendar month, the registered person must furnish a monthly return in FORM GSTR 3B containing the details of tax paid, input tax credit availed, inward and outward supplies etc. The tax payable is to be self assessed and paid along with filing of the return to be filed before the due date. This monthly return is to be furnished before the 20th of the succeeding month relevant to the calendar month(Maharashtra registered persons).(**Section 39 read with Rule 61 of the CGST Rules, 2017**).This monthly return cannot be furnished unless the return for outward supplies in FORM GSTR 1 has been furnished by the registered person.

1. An annual return is required to be furnished in FORM GSTR 9 containing year wise details of the tax paid, tax collected, turnover details etc. Reconciliation with the audited financial statement is to be done in FORM GSTR 9C. The due dates for filing this return have varied for different financial years.
2. A common question which arises is how is this mechanism implemented in practical terms i.e how is the input tax paid, output tax collected, and tax liability discharged by the registered person while filing returns?

* Every registered person has access to electronic ledgers on the common portal known as the Electronic cash ledger, Electronic credit ledger, and Electronic liability ledger which are statutory ledgers. The electronic cash ledger is used only to make payment of tax, interest or penalty. Money from the bank account of the registered person, UPI or any other mode of transfer can be utilized for credit of funds to the electronic cash ledger for payment of tax.
* However, most businesses are within the supply chain and avail input tax credit upon payment of input tax. This input tax credit is recorded in the electronic credit ledger of the registered person. It becomes available/ it is displayed when the necessary returns are furnished by the registered persons. The tax liability as displayed in the electronic liability ledger may be discharged either through the electronic cash ledger or electronic credit ledger. When either of these ledgers are utilized for payment of tax, the ledgers are debited. When cash is deposited into the electronic cash ledger, or input tax credit becomes available to the registered person in the electronic credit ledger, the ledgers are credited accordingly. Once the electronic credit ledger is utilized for payment of tax and is exhausted, and there is a balance for payment of tax in the electronic liability ledger, the electronic cash ledger needs to be utilized for discharge of the tax liability.
* Pertinent to note that when tax alongwith the consideration for supply of goods/services is collected from the recipient, the amount is directly credited to the bank account of the supplier/registered person. This amount may be utilized for deposit into the electronic cash ledger for payment of tax when for example, the rate of tax on outward supplies exceeds the rate of tax on inward supplies, or no refund is due.
* Therefore, it can be seen that GST is a compliance mechanism only, where the liability is discharged out of the tax collected(known as forward charge), and is not a direct tax such as income-tax where the liability needs to be discharged from the personal funds of the taxpayer.

1. **Demand and Recovery**

The power to demand and recover GST is provided for solely in Chapter XV of the CGST/SGST Act. Without this Chapter, no demand of GST could be made and no GST could be recovered. Even if there is a shortfall in payment of tax pursuant to scrutiny of the returns filed, under Section 61, the demand is made only under this Chapter. In cases of audit and special audit under Section 65 and Section 66 respectively as well, the demand and recovery are ultimately made only under this Chapter.

* Section 73 and Section 74 provide for the demand and recovery mechanism under the CGST Act. When it appears to the proper officer that tax has not been paid, or is short paid, or erroneously refunded, or where input tax credit has been wrongly availed or utilized for any reason other than fraud, wilful misstatement or suppression of facts to evade tax, he shall serve notice under Section 73 on the person chargeable with tax to show cause why payment must not be made in accordance with the notice along with interest payable and a penalty. This notice is to be issued alongwith a Summary. The summary is to be issued electronically in FORM GST DRC 01. Section 74 applies for issue of notice only when there is fraud, or wilful misstatement or suppression of facts to evade tax by the registered person and a notice under Section 74 is issued only when these conditions are satisfied.
* By the Finance Act, 2024 Section 74A has been introduced into the CGST Act, but Section 74A which combines both Section 73 and Section 74 and applies irrespective of whether there is fraud, wilful misstatement or suppression, is applicable from Financial Year 2024-2025 onwards only.
* A representation may be made against the notice issued under Section 73, under section 73(9)/section 74(9), in FORM GST DRC 06. Thereafter, a speaking order is passed under FORM GST DRC 07.
* However, a pre-consultation regime has been introduced under the CGST Rules, 2017 where the registered person is communicated the details of the tax, interest, penalty ascertained by the proper officer under Rule 142(1A) before the formal notice is issued under Section 73/Section 74 and the proceedings thereunder are triggered. These details are communicated in Part A of FORM GST DRC 01A. The representation to this communication is made under Rule 142(2A) in Part B of FORM GST DRC 01A. Option is given to make payment of tax as well. Thereafter, the proper officer may issue an intimation in Part C of FORM GST DRC 01A accepting the submissions or payment or both.
* If the registered person makes payment of the tax, interest and penalty before service of notice under Section 73/Section 74, he must inform the proper officer under FORM GST DRC 03, and an acknowledgment will be made available to him in FORM GST DRC 04 on the common portal.
* When a notice under Section 73/Section 74 is received, the following guidelines may be kept in mind to test the validity of the notice:

1. Whether the notice is issued under Section 73 or Section 74 of the Act? If the notice is issued under Section 74 of the Act whether there exist allegations of fraud, wilful misstatement, or suppression of facts? Whether the allegations are whimsical or are prima facie true? If the notice is issued under Section 74 and there are no allegations of fraud etc., in the notice then the notice is illegal for that reason itself. However, if there are allegations and the allegations are arbitrary or whimsical, then it may be seen whether the limitation period to issue notice, or pass a speaking order under Section 73, has elapsed or not, since the Department has the remedy under Section 75(2) to continue the proceedings under Section 73 if the notice under Section 74 is ultimately held to be bad in law.
2. Whether the notice has been issued by the proper officer in compliance with the notifications issued by the authorities from time to time?
3. Whether the notice is within limitation? Whether even if the notice is within limitation, whether the speaking order to be passed is already beyond limitation due to efflux of time?
4. Whether the notice is signed?
5. Whether the person signing the notice and the person issuing the notice are the same persons?
6. Whether the notice has been served by e-mail/registered post or simply uploaded on the common portal without any further intimation?
7. Whether the summary has been issued in FORM DRC 01 alongwith the notice?
8. Whether the summary has been issued separately? Whether the allegations are absent in the notice, but contained in the summary making the notice bad in law?
9. Whether the show-cause notice proceeds on a bias i.e whether the proper officer has already made up his mind regarding the allegations and the notice is not a notice to show cause but a mere formality since the case has already been decided on the merits at the stage of show-cause notice itself?

**Conclusion**

I hope that after careful study of the above, the readers are equipped with a good understanding of these basic concepts under GST law. In several parts of this paper, some insights have been provided as well which touch upon the finer points of GST law. On the whole, it has given me immense satisfaction to expound on these basic concepts and I hope the readers benefit as well.