

CST AND IGST – Comparative Analysis

Attempt is to analysis important provisions of Central Sales Tax and compare the same with provisions of Integrated Goods and Service Tax (IGST) as available under model GST law (MGL for short)

History of Legislation

Revenue generation through taxation always had its inherent complexities mainly due to compulsion on the part of State to generate revenue and tendency on the part of taxpayer to save money from the clutches of taxation. In a federal polity the issue is more complicated since each province is an independent unit with its own revenue targets and responsibilities. Cross border transaction across States were always a matter of concern in a Federal set up with inherent tendency of States to mop up as much revenue as possible by applying theory of 'territorial nexus'. Various states applying nexus theory to tax different limbs of same transaction resulted in subjecting same transaction to multiple taxes. At the same time, it is necessary to maintain free flow of trade across borders to maintain unity and oneness of the country. In India, this has necessitated incorporation of provisions regarding power and restrictions of States and Centre in the field of interstate taxation. This resulted in the birth of Articles 246 read with Entry 92A of List I (Union List) which empowers Central Government to impose tax on inter-state sales, Article 269(3) and Article 286(2) of Constitution which authorises Parliament to formulate principles for determining when the sale or purchase takes place outside a State or in the course of imports and exports and Article 286(3) of Constitution which authorises Parliament to place restrictions on tax on 'declared goods'. The constitutional provisions guaranteed free flow of trade and commerce across state boundaries and within the boundaries of India. The principles had been given effect to by formulation of Central Sales Tax Act, 1956. The Act was brought in to effect to fulfil mainly following objectives:

-To formulate principles for determining (a) when a sale or purchase takes place in the course of inter-state trade or commerce (b) When a sale or purchase takes place outside a State (c) When a sale or purchase takes place in the course of imports into or export from India

-To provide for levy, collection and distribution of taxes on sales of goods in the course of inter-state trade or commerce

-To declare certain goods to be of special importance in inter-State trade or commerce and specify the restrictions and conditions to which State laws imposing taxes on sale or purchase of such goods of special importance (called as declared goods) shall be subjec

Accordingly, CST which came in to effect on ... dealt with following main concepts

- Situations when a sale takes place in course of interstate trade and commerce.
- Sale in course of Export and import
- Treatment of Stock transfer
- Tax on Declared goods

Although CST with its procedures had been successful in regulating interstate /import and export trade, with implementation of VAT , it has become necessary to phase out CST, as CST went against basic tenet of VAT and CST became an obstacle in emergence of all India common market which was one of the laudable objectives of VAT. One major setback of the system continued to be that there was no input credit available for purchases made from outside State.

With GST, entire nation is turning to one market and therefore it is time of the hour that there shall not be a regressive tax which would prove detrimental to the concept of one Nation –One Tax. Therefore CST is one of the important tax that is proposed to be subsumed with the introduction of GST. This is proposed to be achieved by substituting CST with Integrated Goods and Service Tax Act, which would regulate transactions in the course of interstate trade and commerce and export and import transactions. The Constitution (One hundred and first) amendment Act, 2016, paving way for introduction of GST, inserts a new Article 246A , clause (2) of which grants power to Parliament to make laws with respect to supply of goods and service, when such supply takes place in course of interstate trade or commerce. The restriction as contained in Article 286 is retained as such with necessary amendments to suit new scenario of GST. Article 269A provides that amounts collected as IGST by Central government for interstate supplies shall be shared between central and State government.

Tax on sale of goods Vs. Tax on supply goods and services

The CST Act provides for levy of tax on 'sale' of goods whereas the IGST Act provides for tax on supply of goods as well as services. Therefore the scope of interstate levy has been widened with incorporation of services in addition to goods. Also the point of levy has shifted from 'Sales' to 'Supply' with would result in absence of exemptions so far enjoyed by all transactions which are not sales such as barter, exchange, stock transfer etc.

State of Origin Vs. State of consumption

Another major difference between CST and IGST is point of taxation. Under CST law the revenue from interstate sales accrue to State from where sale is effected,, in other words, the Originating State. This principle has been reversed under GST regime where the tax revenue accrues to the State consuming the supplies. This is in line with basic principle that Value Added Tax is a destination based consumption tax.

Although the shift from point of origin to point of destination appear to boost revenue of consuming states, the levy is subject to principles to determine the place of supplies.

Movement of goods Vs. Supply of Goods and Services

Section 3 of CST Act provides for principles when a sale can be said to take place in the course of interstate trade or commerce or in the course of export or import. A sale takes place in the course of interstate trade when –(i) such sale or purchase occasions movement of such goods from one State to another or (ii) if sale or purchase is effected by transfer of documents of title during their movement from one state to another.

To constitute a simple sale under CST, it is necessary that there should be movement of goods from one State to another as a result of such sale. When this condition is fulfilled all other factors such as buyer and seller in same State, goods taken delivery by buyer in originating State etc are irrelevant.

The second type of interstate sale contemplated under CST takes place through transfer of document of title to goods. The transfer of goods can happen at any time between when goods are loaded for delivery till same is actually delivered at destination. CST provides that in case of more than one sale happening in course of interstate trade as per provisions of Section 3 (b) only the first sale should suffer and that subsequent sales are exempted from payment of CST. This exemption is however subject to conditions as given below:

- *First sale should be an interstate sale*
- *subsequent sale must be effected through transfer of documents of title;*
- *Subsequent sales should be to a registered dealer;*
- *subsequent sale should be of goods mentioned in registratin certifcate of buyer*
- *The transaction should be established by furnishing documents as Form E1 to be issued by first seller and Form E2 to be issued by second seller. The purchaser has to issue Form C to seller.*

As per the proposed IGST Act, Sections 3 and 4 read with Sections 5 and 6 provides for supply of goods and services in the course of interstate trade. As far as goods are concerned interstate supply means any supply where location of supplier and place of supply are in different states. IGST contemplates supplies involving movement of goods, supplies with transfer of document of title, supply without actual movement of goods, goods assembled at site, goods supplied on board conveyance, vessel etc.

For interstate supply involving movement of goods, place of supply would be location where movement of goods terminates for delivery. In cases of supply of goods by supplier to recipient or other person as per instructions of third person by transfer of document of title or otherwise, it is deemed that the third person has received goods and place of supply shall be his place of business. This provision results in shifting of place of supply from actual State of consumption to location of third person. In respect of supply which does not involve movement of goods, place of supply shall be location of goods at time of delivery to recipient; in case of goods assembled at site, place of supply is location of instllation.

Section 6 provides for separate principles for determining Place of supply of Services. This section is akin to existing Place of Provision of Supply of Service Rules, 2011 under Service Tax

If location of supplier and place of supply are in same state, sale is treated as intra state sale. In this context also Place of supply in respect of goods would be governed by Section 5.

The proposed principles for determining place of supply would result in circumstances where place of actual delivery of goods is not deemed as place of consumption and if these events are happening in different States, there may occur conflict between States on account of issues regarding situs of ultimate consumption of goods.

Rate of Tax

Under CST, when goods are supplied against Form C (Certificate declaring transaction as interstate sale and purchase), applicable rate of tax is 1%. Sale of goods without Form C is be same as rate of tax applicable for said commodity under respective State VAT law.

With introduction of IGST, the rate of tax would be same as rate of GST. Since rate is yet to be declared, going by speculation, standard rate may be between 18% and 22%. The rate of tax on interstate transactions would therefore be generally high. Reduced rate of GST on essential item would apply even for interstate transactions.

Valuation

CST, is being levied on sale price whereas IGST is proposed to be levied on transaction value.

Sale price includes any sum charged by dealer at or before time of delivery of goods.. Examples of charges included in sale price - weightment charges, design charges, exciseduty, packing aterial charges, freight in case of FOR destination sales.

Under IGST, value of a supply of goods and/or services shall be the transaction value, that is the price actually paid or payable for the said supply of goods and/or services where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply. Transaction value include value of free supplies, royalties and license fee related to supplies, taxes, duties etc levied under other Acts, incidental expenses, such as, commission and packing, charged by the supplier to the recipient of a supply, including any amount charged for anything done by the supplier in respect of the supply of goods and/or services at the time of, or before delivery of the goods or, as the case may be, supply of the services, discounts made after supply etc.

In short, concept of transaction value includes all components of sale price plus more.

Stock transfer

Under CST, there is no tax applicability on stock transfers for the reason that CST is applicable for sales and branch transfers are not sales since consignor and consignee are one and same person and that there is no consideration for such branch transfers. The only requirement under CST in case of branch transfer is to establish fact of transfer by furnishing Form F declaration.

One of the major changes that will be brought in by IGST would be applicability of tax on interstate branch transfers. Tax is applicable on branch transfers since point of taxation has

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Comment [1]: Since transaction value is also nothing but sale price, subject to conditions, there is not much of a difference.

shifted from 'sale' to 'supply'. The situation would however be revenue neutral since tax paid on stock transfer is available as credit to supplier in other State.

Tax on Declared goods

Article 286 (3) (a) authorises Parliament to declare certain goods as goods of special importance and restrictions can be imposed on sale of such goods. Section 14 of CST Act gives list of such goods and Section 15 specifies restrictions on power to tax such goods. Declared goods include cereals, coke and coal, cotton, crude oil, hides and skins, iron and steel, sugar etc. States are not having power to levy tax on such goods beyond 5%. Up to 11.05.2002 tax on declared goods could be imposed only at one stage, but this restriction has been removed. When declared goods on which local sales tax is paid is sold interstate, tax levied on sale within State can be reimbursed subject to conditions.

The constitutional amendment bill paving for GST also provides of dispensing with concept of declared goods.

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Comment [2]: This para is not clear. Is it under CST or GST?

Exports and Imports

Under CST there is no tax applicable for sale in course of export. The exemption is applicable equally to penultimate sale, ie, sales immediately preceding export subject to conditions and furnishing declaration under Form H.

Similarly, no sales tax is applicable on import of goods or transactions of sale in transit as high sea sales. The transaction would remain exempt till goods crosses custom frontiers of India and forms part of mass of goods in India.

Under MGL also all imports and exports will be deemed as inter state supplies and IGST would be applicable for such imports. Exports on other hand continues to be tax free. But discussions are going on to grant exemption of tax on exports by way of refunds in order not to break credit chain.

Exemptions

Interstate sale transactions enjoy exemptions in the form of E1-E2 sales, exemption to foreign diplomatic missions, sale to government, penultimate sale, locally exempt, SEZ supplies, sale during export/import, branch transfer etc.

Since GST is expected to contain less exemption, it needs to be seen whether the above exemptions would continue even under GST scenario.

CREDIT

The main reason for proposal to abolish CST was that with introduction of VAT, CST posed problems in credit chain. Dealers are not entitled to credit of CST paid on interstate purchases. More over, on branch transfer, there exist specific provision for reversal of credit beyond

specified rate of tax. Again facility of compounding is not available to those effecting interstate purchases.

All the above problems would be solved with IGST. There is seamless flow of credit across the supply chain, Moreover, the tax payer can utilise available credit to pay his liability under IGST.

CONCERNS

Although on the whole IGST would unify the country in terms of one tax, still there are few concerns which are listed below:

- Whether CST would continue to apply for interstate sale of goods not subject to GST?
- Will there be a cap on tax that can be levied on declared goods?
- Whether retention of Entry 92 A in Constitution would mean that in future, if required, Parliament can impose CST in addition to IGST on interstate transfers?
- How will the place of supply rules impact interstate transactions?
- Whether exemptions under CST would continue under IGST?

Before parting

Let us hope that the GST Act would bring more clarity on all above issues and provide for an easy transition from CST to IGST.