

A Comparative Study of Import and Export of Services under Services Tax and GST Law

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Abstract: *Import and export of services are two important constituents of international trade. Our GDP, employment growth rate, balance of trade and resource allocation is largely guided by import and export. Due to outstanding growth of service sector in India, it is of paramount importance that a suitable taxation policy be devised conducive to trade and business growth of India. Earlier import and export of services were subject to provisions of services tax law. Now Goods and Services tax has been introduced in India with effect from 1st July, 2017 which also includes in its ambit the provisions relating to import and export of services. Many new provisions have been incorporated to boost import and export of services as compared to services tax law. The basic objective of this paper is to make a comparative study of provisions contained in GST law with services tax law relating to import and export of services and study the related consequences on the growth of services in India.*

Keywords: Export, import, reverse charge, consideration and supply

1. Introduction

Change is the law of nature; it may be difficult but ultimately leads to growth. Our existing tax structures were based on situations of 1935. The major drawbacks of existing taxation systems were cascading effect, multiplicity of tax structures, hectic and time consuming compliances, killing lot of man hours on check posts, huge tax evasions, difficulty in classifying as to what is goods and what are services. Now GST has been introduced which is the biggest historical tax reforms in India. Its philosophy is to develop a market based economy and competitive taxation regime to boost exports GST will bring efficiency and transparency in the indirect tax mechanism in India (Sri Ram P. Govind, 2011). Peculiar feature of our GST is that it is dual in nature that means both centre will levy taxes on goods and services. GST will be benefitted to the economy as a whole right from manufacturers to consumers and from large tax payers to small tax payers by eliminating the complexities and lowering the overall tax burden. GST will ensure a transparent tax system based on online platform. GST is a clear and simple tax structure (Raj Kumar, 2016). It will be a user friendly simple but effective compliance system. GST will provide relief to both producers and consumers (Lourdunathan F and Xavier P, 2017). Government of India has developed a robust and comprehensive IT based platform, easy registration and returns processes, deemed credit scheme for the traders, composition scheme for small tax payers, minimal interfaces of tax authorities, HSN based classification, GST Suvidha Providers, help desks in each GST Commissionerate and GST Practitioners for effective and hassle free export of services in India. A proper policy with a combination of both import and export is necessary for growth (Dr. Sushil Kumar Rai and Ms. Purvashree Jhala, 2015). Government of India is consistently putting efforts through rebates, exemptions in taxation policies to boost exports. The philosophy of GST is all-round growth of service sector not only in India but also in abroad. Export of services including supply to SEZ has been made zero rated while import of services shall be levied IGST based on reverse charge basis. Furthermore, many of the loopholes as existed in services

tax law have been plugged in and many of the confusions existed earlier have been removed on import and export of services under GST law.

2. Literature Review

Azharuddin Mohammad Mussaiyib (2016) emphasized that GST will bring economic wellbeing by removing many of the complexities and will bring ease of doing business

Dr. Sushil Kumar Rai and Ms. Purvashree Jhala (2015) studied the Impact of Exports and Imports on Growth Rate of India. It came with the conclusion that both imports and exports are necessary for growth and therefore proper policy should focus on a combination of both exports and imports

Monika Sehrawat and Upasana Dhanda (2015) put forward that GST would be a simple, user friendly and will bring a transparent tax system in India.

National council of applied economic research (2009) studied the impact of GST on India's growth rate and international trade. This report came with the conclusion that GST will positively impact our GDP and growth in exports. It will lead to efficient allocation of resources and bring down the overall price level.

Pradeep Jain, CA & Neetu Sukhwani, CA (2016) have conducted a comparative study on appeals under revised GST. They concluded that the changes made in the appellate mechanism in Revised GST Law do not support the motto of Simplified Tax Reform.

Raj kumar (2016) did research work on comparison of GST law with existing indirect tax laws. In this paper author has described the impact of GST on employment and other sectors after making a brief comparison of GST framework and current taxation system

Sandeepan Banerjee and Mona Banerjee (2016) conducted a study on prospects and challenges of GST implementation in India. They came with the conclusion that GST compliance would require reassessing of systems by

business for tracking and capturing information and added that many of the concepts and practices existed today would fade away.

Sri Ram P. Govind (2011) in his study on GST as a tax reform and came with the conclusion that GST will bring efficiency and transparency in the indirect tax mechanism in India

3. Provisions of Import of Services under Service Tax Law.

Service tax is a type of indirect tax which levied on services. It is consumption based destination tax. It is governed by chapter V and chapter V-A of the finance act 1994. Thus, there was no separate enactment for service tax like for customs duty, excise duty and sales tax. Service tax was collected by service provider from the receiver of service and finally deposited to the credit of government after taking credit of tax paid on input service

As per sec 65 B. Clause (44) of finance act 2012, service was defined to means any activity carried out by a person for another for a consideration. Analysis of charging section 66B reveals the following for charging a service as taxable service:-

- a) It should fall with the ambit of definition of service
- b) It should not fall either in the negative list or under mega exemption notification
- c) It may be provided or agreed to be provided.
- d) It should be provided by one person to another
- e) It should be provided for consideration

As per section 66A, where any service as specified in clause 105 of section 65 was provided or to be provided by a person outside India and received by a person in India, such service was taxable in the hands of recipient of service. Thus, import of service was taxable on reverse charge basis. However, it was mentioned that import of service shall not be taxable if recipient is an individual and he has received the goods for his personal consumption.

As per notification number 30/2012, in case of ten specified services liability to pay service tax shall be of recipient. However it should be noted that for qualifying any activity as service it was necessary that it should have been entered for consideration [section 66(B)]. Thus, import of service for no consideration was out of purview of service tax liability

1) Provisions of import of services under GST law.

Import of services as per section 2(11) of IGST Act, 2017 means

- a) Supplier located outside India
- b) Recipient located in India and
- c) Place of supply is in India

Import shall be in the course of interstate trade and hence IGST will apply on reverse charge basis [Section 7(4) IGST Act, 2017]. Import of services for a consideration whether or not in the course or furtherance of business is also supply [7(1) (b) CGST Act, 2017]. Thus import of services for personal consumption is also liable to IGST. Import of services by a taxable person from a related person from

outside India, whether or not for a consideration in the course or furtherance of business is supply [Schedule: I, CGST Act, 2017] and hence liable to be taxed. Place of supply of goods imported into India shall be the location of importer [Section 11 of IGST Act, 2017]. Value of services imported shall be determined as per GST Law, i.e., transaction value. If transaction value could not be adopted then value shall be determined as per valuation rules. Input tax credit shall be available on taxes paid for importation of services.

2) Tax implications for import of service under GST law

- a) Rate of service tax was 15% however under GST rate shall now be at applicable rate based on classification of service
- b) Valuation of services imported was based on gross amount charged under service tax while in GST value shall be based on transaction value. If transaction value could not be adopted then value shall be determined as per valuation rules.
- c) Under GST, import of service for a consideration is taxable even if not made in the course of business.
- d) Import of service between related or distinct persons even without consideration is also liable to tax under GST law.

3) Export of services under service tax law

As per rule 6A of service tax rules 1994, export of service means the provision of any service provided or agreed to be provided shall be treated as export of service when:-

- a) The provider of service is located in the taxable territory.
- b) The recipient of service is located outside India.
- c) The service is not a service specified in the section 66D of the act.
- d) The place of provision of service is outside India.
- e) The payment for such service has been received by the provider of service in convertible foreign exchange and
- f) The provider of service and recipient of service are not merely establishment of a distinct person

Thus, to qualify any provision of service as export of service, it was necessary to satisfy all above six conditions.

Two options were available under the service tax law as per export of service rules, 2005 to exporter of services. Firstly, exporting the services without payment of duty and secondly paying the duty on inputs/input services and claim the rebate for the same.

As per notification no. 39/2012, the central government had directed that there shall be granted rebate of whole of the duty paid on excisable inputs or whole of service tax and cess paid on all input services used in providing service exported subject to specified conditions.

Further as per notification no 31/2012, the central government exempted the taxable service received by an exporter of goods and used for export of goods from whole of service tax leviable thereon subject to specified conditions.

Again as per notification no 07/2010, refund of CENVAT credit was allowed for input and input services used in

manufacture of final product which was exported under bond or letter of undertaking and on input and input services used in providing output services which had been exported without payment of tax. Thus, under the regime of service tax also the focus of the Government was to encourage exports through exemptions, rebates and credit.

4) Provisions of export of services under GST law.

As per section 2(6) of IGST Act, 2017 export of service means supply of any service when

- a) The supplier of service is located in India
- b) The recipient of service is located outside India
- c) The place of supply of service is outside India
- d) The payment for such service has been received by the supplier of service in convertible foreign exchange and
- e) The supplier of service and the recipient of service are not merely establishments of a distinct person

If all above mentioned conditions are satisfied then service will be said to have exported and it will be zero rated. However, if any of the conditions are not satisfied and supplier is in India and place of supply outside India, it will be deemed to be supply of service and liable to IGST [Section 7(5) IGST Act, 2017]

Zero rated supply has been defined in an inclusive manner to include both export of goods or services and supply of goods/services to SEZ. Two options have been given for export:

- a) Export may be made under bond or undertaking without payment of duty and credit of ITC used in exported goods or services may be claimed as refund or
- b) Export may be made on payment of tax and the same may be claimed as refund

5) Tax implications for export of service under GST law

More or less the provisions regarding export of services are similar in GST law and service tax law. The focus of GST is also to encourage exports. However, a new concept supply of service has been added in GST law to clarify that if supplier is in India and place of supply outside India, it will be deemed to be in the course of interstate trade and liable to be IGST.

4. Findings and Conclusions

Unlike service tax, different rates have been provided for import of services. Valuation norm has been shifted from gross value of service receipts to transaction value. Import of services for personal consumption has been brought under the liability of GST. As far as export of service is concerned, zero rated exports will encourage development of export of services from India. A new concept supply of service has been added in GST regime to tax provision of service where supplier is in India and place of supply is outside India. Now GSTIN would be used for import and export. However, where GSTIN is not available, UIN or PAN may be used as an alternative. On overall basis GST law will prove to be a milestone in the growth and development of import and export of services from India.

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