



# INDIAN INDUSTRIES ASSOCIATION

AN APEX BODY OF MICRO, SMALL & MEDIUM ENTERPRISES

( IN THE SERVICE OF MSME SINCE 1985 )

Reference No.4/ GOV/001

29<sup>th</sup> September, 2016

To,  
Shri Arun Jaitley  
Hon'ble Finance Minister  
Govt. of India  
Ministry of Finance  
& Chairman GST Council  
Room No. 134  
North Block, New Delhi - 110 001

**Subject: Suggestions on GST Model Law by Indian Industries Association (IIA).**

Sir,  
Indian Industries Association (IIA) is an apex body of Micro, Small and Medium Enterprises (MSME) and a GOLD rated association by NABET, QCI. Through detailed discussions and feedback from our more than 7000 MSME members, we have prepared a comprehensive draft of suggestions/views on GST Model Law as attached herewith.

We request you to consider the suggestions/views of Indian Industries Association for suitable amendments in the Model GST Law.

Thanking you

For Indian Industries  
Association

Sanjay Kaul  
Chairman- Taxation  
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### Suggestions/ Feedback on Draft GST Model Law

1.	<p><b><u>Definition of services as per Sec 2(88)</u></b>- includes immovable property, intangible property, intangible property and actionable claim</p> <p><b><u>Suggestion:</u></b> Immovable property and actionable claims may be excluded from the definition of services.</p>
2.	<p><b><u>Composition levy Sec 8:-</u></b> the composition scheme is available only after permission from proper officer.</p> <p><b><u>Suggestion:</u></b> Composition scheme may be available to taxable person after giving online intimation. The requirement of seeking permission may be done away with.</p> <p>Section 8 also provides for the optional scheme of composition levy for the assessee having turnover upto Rs. 50 lacs in the previous year.</p> <p><b><u>Suggestion:</u></b> The limit of Rs. 50 lacs may be increased to Rs. 100 Lacs of turnover in the previous year and the minimum rate which is 1% in GST may be decreased to 0.5%.</p>
3.	<p><b><u>Value of Supply Sec 15(4):</u></b> provide for valuation of supply according to the valuation rules and thereby rejecting the transaction value in case there is reason to doubt the truth or accuracy of the transaction value declared by the supplier even when supplier and recipient are not related and price is the sole consideration</p> <p><b><u>Suggestion:</u></b> The transaction value should not be challenged when supplier and recipient are not related and price is the sole consideration. Giving power to challenge the transaction value even when above conditions are satisfied merely on the basis of reasons to doubt will lead to harassment of supplier. Hence this provision may be scrapped.</p>
4.	<p><b><u>Input Tax credit Sec 16(11)c:</u></b> provide that input tax credit would be available to the recipient only when “the tax charged in respect of such supply has been actually paid to the credit of appropriate government either in cash or through utilization of input tax credit admissible in respect of such supply.</p> <p><b><u>Suggestion:</u></b> Payment of tax by the supplier to Government should not be a precondition for availability of credit to the recipient. Possession of original invoices issued by registered taxable supplier should be the only condition. Denying the credit to recipient even after procuring goods/service from a registered taxable supplier due to non-payment by the supplier would pose an injustice on him.</p> <p>Further, even when the supplier has paid the tax by utilizing credit and later on his ITC is found to be inadmissible then credit availed by his recipient would get effected.</p> <p><b><u>Suggestion:</u></b> In case of inadmissibility of credit of the supplier his corresponding recipient should not be effected at all. The amount should be recovered from the supplier</p>

5.	<p><b>Returns chapter VIII</b> : the act provide for various kinds of returns such as - outward supply , inward supply, tax return on different dates and monthly returns.</p> <p><b>Suggestion:</b> The provision of filing monthly returns may be done away with to avoid the cumbersome process under GST. Also, filing of so many returns would consume lot of energy and resources and thus all the returns may be combined to form a single return. The unmatched transaction can be informed lateron which can be corrected by the supplier by making necessary corrections.</p>
6.	<p><b>Maintenance of electronic credit ledger:</b> all inward supply will get updated in electronic credit ledger of the supplier. However, the admissibility of the credit would depend on input tax credit rules.</p> <p><b>Suggestion:</b> Such a provision may be made so that the credit which is not available to the supplier could not get updated in his electronic cash ledger or a warning message may be displayed if the supplier avails the same.</p>
7.	<p><b>Jobwork:</b> the goods can be supplied to a job worker only after permission by the commissioner</p> <p><b>Suggestion:</b> The requirement of permission may be done away with and the intimation by the supplier should be enough for such purpose. Also outward supply returns may include details of such transfer without payment of tax therefore department can always have a check and record of the goods transferred to jobworker without payment of tax.</p> <p>Further, the application for Jobwork may be granted sue moto.</p>
8.	<p><b>Summons Sec 63:</b> provide power to CGST/SGST officer to summon any person and require his personal attendance.</p> <p><b>Suggestion:</b> Summons requiring personal attendance are often used as a tool of harassment by some officers. And therefore, a provision may be made that all summons can be attended by the authorized representative in accordance with the ease of doing business policy.</p>
9	<p><b>Prosecution &amp; Penalty:</b> Power to arrest and levy penalty</p> <p><b>Suggestion:</b> No powers to arrest or prosecution should be there for defaults under GST in accordance with the ease of doing business policy.</p> <p>Further, assesses found to be evading tax or not paying taxes in time may be required to pay interest and penalty. In case prosecution is considered necessary, it is suggested that the provision related to prosecution should be kept in abeyance for the initial period of five years of implementation of GST.</p>
10	<p><b>Return of goods by unregistered recipient/consumer</b> - The model GST law is silent on how to deal with return of goods by unregistered /consumer. In absence of any specific provision it appears there would be loss of credit in such cases, since there is no enabling provision for adjustment on account of returned goods and in case of unregistered /consumer the matching of credit note /debit note would not be possible.</p> <p><b>Suggestion:</b> A specific provision should be enacted to provide for adjustment of return of goods.</p>
11	<p><b>Credit of excise to traders not having excise invoice but holding excisable goods on 1<sup>st</sup> day of GST regime-</b> Excise credit chain breaks after third dealer, which leads to a situation wherein a trader is in possession of excise paid stock but he does not have any excise paying document. The model GST law does not provide for a mechanism</p>

for availing such credit on opening stock of GST regime. This would lead to double payment of tax first as excise (before GST kicks in) and then as Central GST after GST regime is made applicable. This may result in hording of goods at manufactures end in the final months before GST regime kicks in.

**Suggestion:** A list of certain standard items (which are manufactured by non-ssi manufactures such fresh plastic granules, MRP based goods) should be prepared and an adhoc percentage of credit should be allowed on opening stock of GST regime

12 **Sec-19 Registration-**

**Suggestion:**

- 1) Initially the process of registration in GST is automatic, but a fresh registration is required to be done within six months. In this process, if there is a mismatch in PAN No. or place of Business the fresh registration will be cancelled and the dealer will not get ITC for the period during which the fresh application for registration was pending. In such cases the Input tax credit for the period during which the application for registration was pending may not be cancelled.
- 2) In registration under GST we suggest that a centralized registration system may also be incorporated for those service providers who has centralized billing and accounting system.

13 **Sec-38 Refund of Tax-** This section provides for refund of taxes paid before the expiry of 2 years from the relevant date. One of the requirement is that burden of tax should not have been passed on to another person. Proviso to sub section 3(b) provides that if the refund is less that Rs. 5 lacs; instead of filing the documents to support that burden have not been passed, the applicant may file a declaration, certifying that the incidence of such tax has not been passed on to any other person.

**Suggestion:** To avoid dispute and litigation in the matter, it is suggested that such refund claim may be got certified by a practicing chartered accountant certifying the correctness of claim and the fact that the burden of tax has not been passed on to any other person.

14 **Sec-78 Compounding of offences:** Clause (c) of sub-section (1) of this section says that compounding shall not be available in case where any offence is also covered under Narcotic Drugs and Psychotropic Substance Act-1985 (NDPS Act-1985), FEMA-1999 or any other act.

**Suggestion:** In this section, the words “any other act may either be deleted or if required then that act must be specifically mentioned.

The amount of compounding may be as under: -

As per GST Provision	We suggest
Minimum Amount is 10000/= or 50% of Tax Invoice whichever is greater.	10000/= or 100% of Tax invoice whichever is higher
Maximum Amount is 30000/= or 150% of Tax whichever is greater.	

Also, for initial period of five years of implementation of GST, an exemption of this section may be provided.

15 **Section 90 Advance Ruling:** At present, GST is silent for withdrawal of application

	<p><b>Suggestion:</b> It is suggested that there may be some provisions providing for withdrawal of application of Advance Ruling by the applicant.</p>
16	<p><b>Sec-125 Indemnity:</b> This section grants indemnity to the officers of department for the actions done in good faith.</p> <p><b>Suggestion:</b> A Grading system for assessment of quality of officers may be designed. In case the performance of the officer is not found to be satisfactory, then the concerned officer must be reprimanded. This is necessary for making the officers incharge accountable.</p>
17	<p><b>Sec-129 Rectification of - Mistakes or errors apparent- from record {PN-124):-</b> In this Section error should be reported to authority who passes the order, within 3 months from the "date of issue" of such order.</p> <p><b>Suggestion:</b> We suggest that the time limit of 3 months may be increased to 6 months (because in case the order is not communicated or late communicated, therefore a provision may be made for such cases)</p> <p style="text-align: center;">Or</p> <p>If above is not Possible to do, then at least word "date of issue" may be replaced with 'date of communication'.</p>
18	<p><b>Explanation of Sec.-145- Regarding "Eligible duties and taxes"-</b></p> <p><b>Suggestion:</b> This explanation is silent for credit of Krishi Kalan Cess {KKC) levied under Sec-161 of Finance Act-2016. KKC should be also incorporated in this explanation.</p>
19	<p><b>Sec 80: Revision power of commissioner</b></p> <p><b>Suggestion:</b> This section is similar to Sec-263 of Income Tax Act-1961. But Income Tax Act-1961 also have a sec. 264 which give power to commissioner to revision of order in favor of assessee. This Power should also be introduced in CGST, SGCT &amp; IGST.</p>
20	<p><b>Section 16(11)</b> Provisions relating to input tax credit provide that credit shall not be allowed if supplier has not made payment of taxes.</p> <p><b>Suggestion:</b> It would be noticed that it is the responsibility of supplier of goods and services to pay the corresponding taxes. Once the recipient of goods/services has proof of having received goods/services along with a tax invoice, there should not be any restriction on availing the credit.</p>
21	<p><b>Section 140(2)</b> specifies several taxes which will subsume in GST.</p> <p><b>Suggestion:</b> It is suggested that following taxes being levied by Government in different States/Cities/Districts may also be subsumed under GST.</p> <ul style="list-style-type: none"> <li>(i) Octroi Tax</li> <li>(ii) Mandi Samti Tax</li> <li>(iii) Electricity Duty</li> <li>(iv) Krishi Kalyan Cess</li> </ul>
22	<p><b>Section 16(9)</b> As per Cenvat Credit Rules 2004, builders are eligible for cenvat credit of service tax paid on various services. Exclusions also do not exclude the input services (particularly work contract services) so far as the said exclusion relates to services provided by builders. The proposed provisions under GST Section 16(9) appear to be worded in such a way that builder shall not be eligible to avail input tax credit.</p>

	<p><b>Suggestion:</b> Necessary amendments may be made under GST Section 16(9), so that builders are allowed benefit of Input Tax Credit.</p>
23	<p><b>Section 145</b> -Presently all traders are liable for payment of VAT on sale of their goods. They are not liable for payment of Central Excise Duty nor have they been allowed to take</p> <p>its credit. From perusal of section 145 of GST &amp; its condition therein, it appears that the said dealers would not be eligible for excise duty paid on purchase of goods lying in stock. But the said dealer would be liable for payment of IGST/CGST/SGST on sale of the goods lying in stock.</p> <p><b>Suggestion:</b> Section 145 should be worded such that it allows credit of excise duty paid on goods lying in stock to the dealers also and a specific provision may be made of CST paid on goods lying in stock on the date of transition.</p>
24	<p>As per the present draft, the officers are being provided police and magisterial powers as well which may pose a threat to the industrialists.</p> <p><b>Suggestion:</b> Revenue officers may not be provided with police and magisterial powers and these powers may be limited to Hon'ble courts only.</p>
25	<p><b>Appeal:</b></p> <ol style="list-style-type: none"> <li>1) For making first and second appeal, 10% of the disputed tax is required to be mandatorily submitted. Such a provision is against Natural Justice since the person accused of excessive tax may not be capable to depositing 10% extra tax amount and hence it would pose an injustice upon the dealer. Suggestion: For filing the Appeal, compulsion of depositing an amount of 10% of the disputed tax should be done away with to avoid harassment of the dealers.</li> <li>2) As per the current provisions of Model GST Law- no second appeal is admissible for an amount of Rs. 1 lakh and below. <b>Suggestion:</b> No such limit may be specified for making second appeal because with this limit Micro &amp; Small Scale dealers will be victimised.</li> <li>3) As per GST Model Law, the appeal is to be made for an amount of Disputed Tax+ Interest+ Penalty. <b>Suggestion:</b> The appeal may be allowed to be made for amount of disputed tax only excluding the interest and penalty amount in order to give relief to the dealer in payment of fee as well as stay amount to be deposited.</li> </ol>
26	<p><b>Representation of Stakeholders in GST Council:</b> Suggestion: GST Council in the Central and State Level may contain representatives of major Industrial Associations as "Special Invitees". The representative from MSME Association may be chosen from NABET Accredited MSME Associations with minimum "GOLD" Grade.</p>
27	<p>No specific provision has been prescribed for credit in case of return of goods by the unregistered dealer.</p> <p><b>Suggestion:</b> A specific provision may be provided for input tax credit in case of return of goods and a system may be prescribed for the same.</p>

28	<p>Presently 1% rate is prescribed for interstate transactions.</p> <p><b>Suggestion:</b> No rate of tax may be prescribed for interstate transactions.</p>
29	<p><b><u>Other General Suggestion:</u></b></p> <p><b>A)</b> The following provisions requires further clarification in GST: -</p> <ul style="list-style-type: none"><li>➤ Mismatch of credit will be major problem in GST regime. How to resolve cases which arises due to mismatch of credit, because any clerical mistake would trigger demand under this new law.</li><li>➤ Provision of Settlement of Cases is incorporated in IGST only. CGST &amp; SGST is silent about it. Whether this will be applicable in CGST or SGST also, should be clearly mention in GST.</li><li>➤ Parameters of GST Compliance Rating are not provided in this draft.</li><li>➤ If registration under CGST is cancelled, then the registration is deemed to be cancelled under SGST also (or vise-a-versa}, this is not clearly mentioned in this draft.</li><li>➤ Section 116 provides for GST Compliance relating score card on record or compliance with the provisions of this Act. It needs to be clarified as to what would be the impact of said GST compliance rating.</li></ul> <p><b>B)</b> The penalty provisions made under GST are quite harsh. The offences relating to taxable goods and/or services where the amount of tax evaded exceeds two hundred and fifty lakh rupees shall be cognizable and non-bailable.</p> <p><b>Suggestion:</b> Since in business, it is profit and loss both are bound to happen and therefore in case of loss businessmen are not able to make payment on time and therefore such harsh penalties may pose injustice to the genuine industrialist. Hence such provisions may be done away with.</p>