Subject: Memorandum on Model GST Law

Respected Sir,

Your good self has rightly said that the “GST is a single biggest tax reform after 1947”, because it will remove the cascading effect, provide the seamless credit, remove multiplicity of taxes and create our country as a common market. Recently, the Government of India has made available the Model GST Law on the official website and invited the suggestion on this proposed GST law. “Laghu Udyog Bharati”, considers it a privilege to submit following suggestions on this Model GST Law:-

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<th>Sr. No.</th>
<th>ISSUE</th>
<th>JUSTIFICATION AND SUGGESTION</th>
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<tr>
<td>1.</td>
<td>Limit for SSI Unit</td>
<td><strong>Justification</strong>&lt;br&gt;We all know that SSI units are getting the benefit of basic exemption in excise upto 150 Lakhs (w.e.f. 01-04-2007) and we have been asking for increasing such limit since the current government has taken the charge. The current exemption of Rs. 150 Lakhs is also not sufficient for the SSI to get them competitive and now under the GST law exemption has been provided of Rs. 10 Lakhs. <strong>Suggestion</strong>&lt;br&gt;We request your kind attention towards this fact and want you to kindly propose a different basic exemption limit for the SSI units i.e. more than Rs. 150 Lakhs so that they get necessary support to grow and in turn help the growth of the GDP and also make the “Make in India” dream project of our Hon’ble Prime Minister, a reality.</td>
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<td>2.</td>
<td>CENVAT credit shall not be allowed to the receiver if the supplier does not pay GST.</td>
<td><strong>Justification</strong>&lt;br&gt;As per the clause (c) of sub-section (11) of section 16 of Model GST Law (hereinafter referred to as “Law”), no credit of GST shall be allowed of any supply unless the tax charged on this supply has been paid either in cash or by utilizing the CENVAT credit. <strong>This provision is prejudice to the situation when the receiver of supply has paid whole bill amount including the GST amount. But, the supplier has not paid the tax. In that situation, the receiver of the goods shall get the punishment for the act of the</strong></td>
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3. CENVAT Credit shall not be allowed after 30th September of next year.

**Supplier. How can one get the punishment for the act of another?**

**Suggestion**
This provision should be omitted to stop this injustice.

**Justification**

As per the sub-section (15) of section 16 of Law, a taxable person shall not be entitled to take input tax credit in respect of any invoice for supply of goods and/or services, after the filing of the return under section 27 for the month of September following the end of financial year to which such invoice pertains or filing of the relevant annual return, whichever is earlier.

Return u/s 27 for the month of September is to be filed up to 20th October and annual return if to be filed up to 31st December. Hence, the time limit for taking the credit shall be 20th October of next year.

Further, as per section 51 of the law, when the assessee has not paid the GST under bona fide belief that tax is not payable and without any intention to evade the payment of tax, the order for recovery of tax can be passed within the 3 year of annual return and if the assessee has not paid the tax for any reason of fraud or any willful-misstatement or suppression of facts to evade tax, then the order can be passed within the 5 years of filing of annual return.

Therefore, if the case is related to financial year 2017-18, then CENVAT Credit has to be taken up to 20/10/2018 and the GST officer can pass the order u/s 51 as follows:-

a) If the tax has not been paid under bona fide belief that tax is not payable, the order can be issued up to 31/12/2021.

b) If the tax has not been paid under mala fide intention to evade the payment of tax, the order can be issued up to 31/12/2023.

Hence, at the one side the government is proposing to recover the tax up to 31/12/2023 and at the other side, government is allowing the credit up to 31/12/2018. This will be against the basic intent of introducing the GST law i.e. "Seamless Credit".

Since, the proposed GST law will be a new law. In starting years of its introduction, assessee has to face many
### 5. Payment of tax on advance receipt of money

**Justification**

As per the section 12 of the law, if an assessee has received the advance money for supply, then it has to pay the GST.

Now, imagine a situation that if an assessee is involved in multiple supplies and all those supply is liable to taxes at different rates. Assessee has received advance money in round figure (say Rs. 50 Lacs) for these multiple supplies, without any knowledge that what amount is related to which supply. In that situation, assessee has to be facing the computation issues that at what rate GST should be paid. Further, advance money may be refunded without supply of goods and services.

**Suggestion**

GST tax should not be payable on the advance receipt of money.

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<th>4. Assessment of one transaction at multiple authority</th>
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| **Justification**

On the intra-state transaction, assessee has to comply two laws i.e. CGST and SGST and has to face two assessment proceedings one at CGST office and another at SGST officer for one single intra-state supply.

The government is proposing the GST law to end the multicity of taxes on one transaction and similarly allowing such provision in Model GST law for two assessment for single transaction.

**Suggestion**

A clause should be inserted in the CGST and SGST law that if the assessment has been completed in one law then the assessment should be deemed to be completed in another law.

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<th>5. Payment of tax on advance receipt of money</th>
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| **Justification**

As per the proposed provision, if the assessee has not paid the tax under the bona fide belief also, then the credit shall not be allowed.

**Suggestion**

The time limit for taking the credit should be linked to time limit for passing the order u/s 51.
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| 6. | Audit by Tax Authorities | **Justification and Suggestion**
|   |   | As per the section 49 of law, the GST officer may undertake audit of the business transactions of any taxable person. This provision is harmful to the assessee on following grounds:-
|   |   | a) As per this provision, the audit of any taxable person can be done by CGST/ SGST officer. This provision will allow the CGST/ SGST officer to conduct the audit of small assesses also which may result in their harassment and extra compliance cost. Hence, there should be turnover limit (Say Rs. 5 Crore) upto which no audit shall be conducted.
|   |   | b) Further, CGST and SGST officer both have the power to conduct the audit. Hence, assessee has to face to multiple audits for single intra-state supply. Therefore, if the audit has been conducted under one law then no order for audit shall be passed in another law.
|   |   | c) Further, a CGST/ SGST officer can pass the order for audit without assigning the reason of audit. This may result in arbitrary exercise of the power and introduction of Inspector Raj. The power of audit should be restricted to only special cases when the GST officer has the reason to believe that tax has not been paid with intention to evade the tax and before passing the order for audit the assessee should be allowed an opportunity of being heard.
|   | GST is also proposed on the stock transfer and receiving of goods by agent. | **Justification**
|   |   | As per the proposed GST law, the tax shall be payable on the stock transfer and receiving of goods by agent. This will increase the working capital requirements and cost.
|   |   | **Suggestion**
|   |   | No tax should be allowed on stock transfer. A clause should be inserted in the proposed GST law that if a person has supplied the goods to another person who has the same PAN (i.e. to its branch) no GST shall be applicable.
|   | The appeal cannot be filed unless assessee has not paid 10% of disputed amount. | **Justification and Suggestion**
|   |   | As per sub-section (6) of section 79 of the law, no appeal before the first appellant authority shall be filed unless the appellant has deposited a sum equal to ten percent of the amount in dispute arising from the order, in relation to which the appeal has been filed. We welcome this step of restricting the deposit of amount to 10% of disputed tax. But, still this provision shall be harmful on account of following reasons:-

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| 9. Multiple returns will increase the compliance burden. | **Justification**  
As per the proposed GST law the assessee has to file monthly 4 returns:-  
- Monthly Inward Return – upto 10\(^{th}\) of next month  
- Monthly Outward Return – upto 15\(^{th}\) of next month  
- Monthly Tax Liability return – upto 20\(^{th}\) of next month  
- Monthly Return of Tax deducted at source – upto 10\(^{th}\) of next month  
Besides these monthly returns, assessee has to file an annual return. Hence, as per the proposed GST law, an assessee has to file 49 returns in a year. This will result in increasing the compliance cost while government is introducing this tax for reducing the compliance cost.  
**Suggestion**  
All these monthly returns should be clubbed in a single return so as to provide that assessee need to file only a single return. |
| 10. CENVAT Credit of all GST taxes should be allowed for payment of all taxes. | **Justification**  
As per the existing provision, credit of CGST for payment of SGST and vice versa is not possible.  
Therefore, the assessee has to maintain the separate account for CGST and SGST and will not be unnecessary allowed to claim the credit of CGST for payment of SGST and vice versa while assessee has paid the taxes.  
**Suggestion**  
Credit of CGST for payment of SGST and vice versa should be allowed. Since, one tax is related to central government and another tax is related to state government, the adjustment can be done at government level. |
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| 11. | **Input Credit of earlier laws** | **Justification**
There is no provision in Model GST Law about the credit availability of VAT, Excise & Service Tax standing in books at time of introduction of GST. Hence, the position is not clear about these taxes whether credit shall be available of those taxes under proposed GST law or these taxes shall be refunded.

**Suggestion**
A clause should be inserted in law to provide that either CENVAT or refund of such type of credit shall be allowed under proposed GST law also.

| 12. | **Prosecution Provisions** | **Justification**
As per the section 75 of law, if any prosecution for an offence under this Act which requires a culpable mental state on the part of the accused, the Court shall presume the existence of such mental state and accused himself has to proof beyond reasonable doubt that he has no culpable state of mind.

This provision of shifting of proof of culpable mind on the assessee may result in harassment of assessee. In the normal circumstances also when the tax has not been paid without any intention of evasion, the assessee has to face the prosecution proceedings.

**Suggestion**
The burden of proving the culpable mind should be with the GST department.

| 13. | **Prosecution under Chapter –XVII** | **Justification**
Provision regarding prosecution for committing of offences of various nature as mentioned under Chapter –XVII from S.No. 1) a) to 1) k) which is punishable with imprisonment of upto 5 years is bringing a fear in the minds of genuine manufacturer. It is always on the minds of the Micro & Small Scale Industries that if even unknowingly they get under these provisions they will get harassed and they will be busy in getting themselves out of it by undue pressure from the officials rather than involving into manufacturing activity.

**Suggestion**
We request you to kindly take it into your kind attention towards the above fact and remove such provisions.
Sir, Apart from above suggestions which require amendment in existing provisions, we would suggest following to be taken care by suitable way under law of tax:-

1) Entry tax must be included with GST, no any state govt. Should allow to impose entry tax at their level.

2) Professional tax, Stamp duty & electricity duty should include in GST.

3) Provision of computation scheme with the limit of Rs. 1 crore should also included in GST.

Sir, we had tried to put throw our views in form of few suggestions so as to take a step forward for the Dream of Making India the Leader of the world. We like to be see this dream come true under the dynamic leadership of our Hon’ble Prime Minister Shri Narendra Modi and this would happen only when MSME sector is not overlooked.

Our organization is always a supporting hand of the Government of India and hence hope that our suggestions will definitely get heard and necessary amendments would be brought in present GST draft. This will not only influence peoples to pay tax honestly but will increase the creditability of the government also.

Sincere Regards

For Laghu Udyog Bharti

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